

International Association for Water Law

The evolution of international water law and the 'greening' of water law

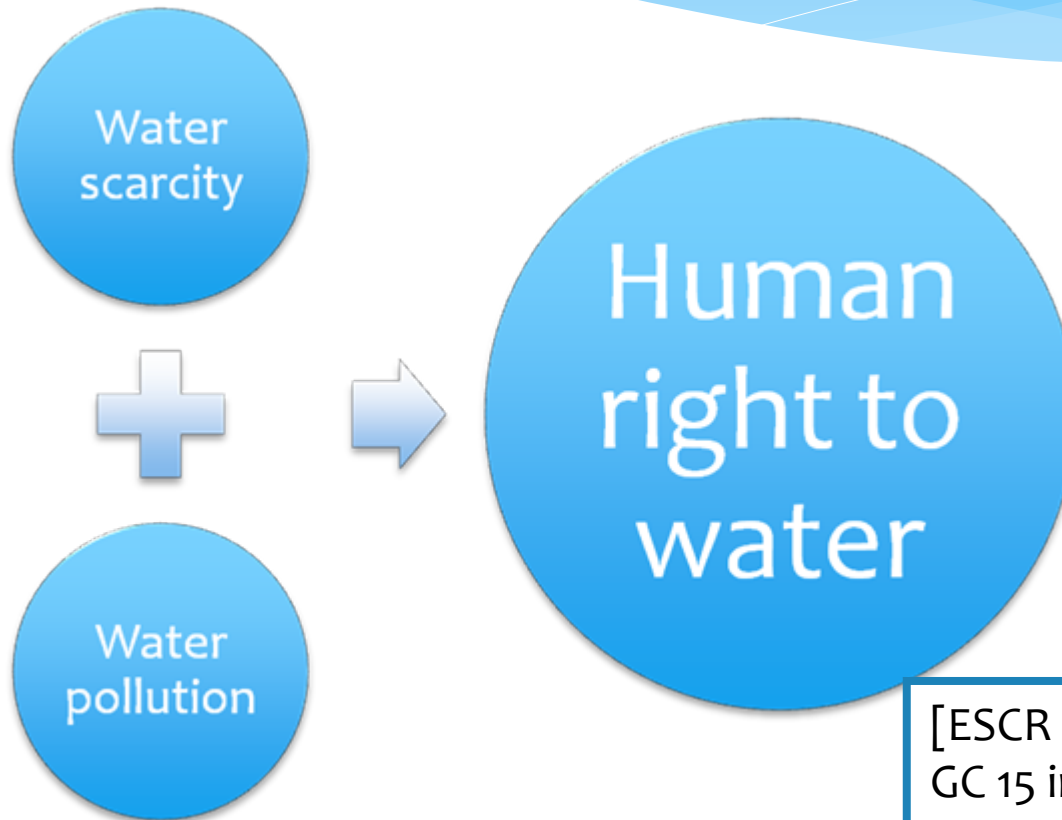
First International Environmental Forum
for Basin Organizations

Towards Sustainable Freshwater Governance

Nairobi, Kenya – 27 November 2014



Focus on water use & development has led to:



[ESCR Covenant, 1966]
GC 15 interpretation,
2002

UN Resolution, 2010

'Greening' of water law: a process

Consider the finite and vulnerable nature of freshwater & dependent ecosystems

Integrate environmental concerns in decision-making & regulatory measures

Reconcile socio-economic development and environmental protection

Balance health & protection of aquatic environment with society's needs

Main 'greening' approaches

- * Environment, species, humans are all water users (=)
 - Humans are part of the ecosystem (intrinsic value)
- * Healthy ecosystems provide services to humans (\$\$\$)
 - Humans are the ultimate water users (opportunistic)
- * *Which approach is more likely to work?*
- * **Main policy objective:** increase water allocation for the environment to ensure human health, safety & socio-economic development

Main Multilateral Environmental Agreements (MEAs)

1971 Ramsar Convention on Wetlands

1979 Bonn Convention on Migratory Species (CMS)

1989 Basel Convention on Hazardous Waste Movement & Disposal

1992 Rio Convention on Biodiversity (CBD)

1992 New York Convention on Climate Change (UNFCCC)

1994 Paris Convention on Desertification (UNCCD)

1998 Rotterdam Convention on Hazardous Chemicals & Pesticides

2001 Stockholm Convention on Persistent Organic Pollutants (POP)

International water law: *international waters*



Aim: Dispute prevention & settlement (2+ States)



Historically: Surface water boundaries and allocation (navigation, flood control, irrigation & other uses)



Last century: Water pollution, environmental & ecosystem protection, groundwater specificity ('90s)



International: 1997 UN Watercourse Convention



Regional: 1992 UNECE Conv. & 2000 SADC Protocol



Draft: 2008 ILC Articles on Transboundary Aquifers

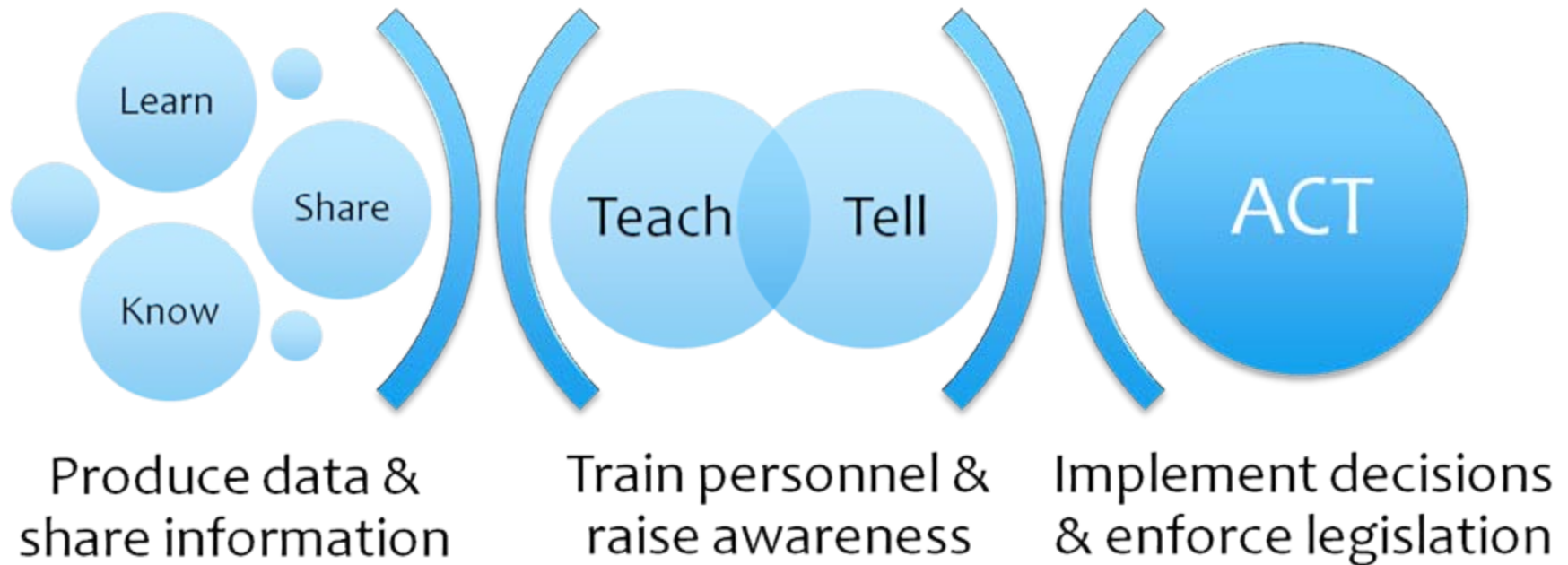
'Green' principles of int'l water law: established & emerging

1. **Equitable & reasonable utilization** (fair & sustainable)
2. **No significant harm** (eliminate/ mitigate/ compensate)
 - * Pollution prevention, reduction and control (quality stds)
 - * Transboundary environmental impact assessment (EIA)
3. **Ecosystem approach** (protect aquatic species/ habitats)
 - * Minimum environmental flows (ecosystem integrity)
4. **Groundwater specificity** (vulnerability to pollution; aquifer recharge zone; effective functioning)

'Green' national water laws: *domestic waters*

- * General environmental provisions (RSA 1998, Mali 2002)
- * Environmental criteria in water permits (USA-Minnesota, Samoa 2008)
- * Wastewater treatment & discharge permits (Nigeria 1991, Uganda 1998)
- * Prioritization of water allocation for the environment (Mozambique 2007)
- * Trade in water rights (Mexico 1992, USA-California)
- * Minimum environmental flow (USA-Oregon 1987, Chile 2005)
- * Aquifer safe yield (Namibia 2004, Tanzania 2009)
- * Water reserves for priority uses (RSA 1998, Kenya 2002)
- * EIA (Kenya 2002, Paraguay 2007)
- * Payment for ecosystem services (Costa Rica 2005)
- * Treated wastewater reuse (Israel 1981, Spain 2007)
- * Groundwater protection (Australia-New South Wales 2000, EU 2006)

And now what?



... while continuing the 'greening' process

AIDA is a non-governmental, non-profit, international association of lawyers and non-lawyers active in the field of fresh water resources. Join us!

Thank you!

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Asociación Internacional de Derecho de Aguas
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