



The role and relevance of the 1997 UN Convention in the Aral Sea Basin

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Outline

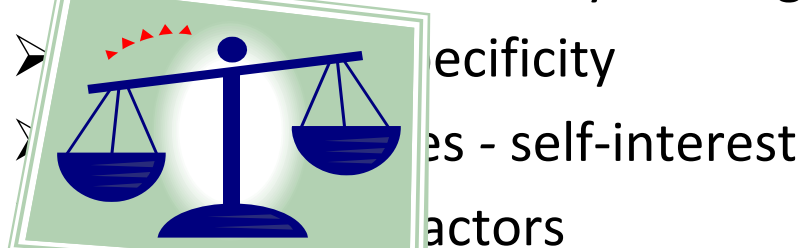
1. International law
2. Comparative analysis of the existing agreements and 1997 UN WC
3. Value added from joining 1997 UN WC and its implementation



International Law

- ❑ A product of the wills and practices of states (& indirectly other actors)
- ❑ A product of political and social processes
- ❑ An instrument to meet changing ends and value
- ❑ Lacks centralised authority to determine what law is and enforce it
- ❑ Operates in diverse political, economic, social and cultural environment and multi-level governance context

➤ Stability/Predictability - Change/Flexibility

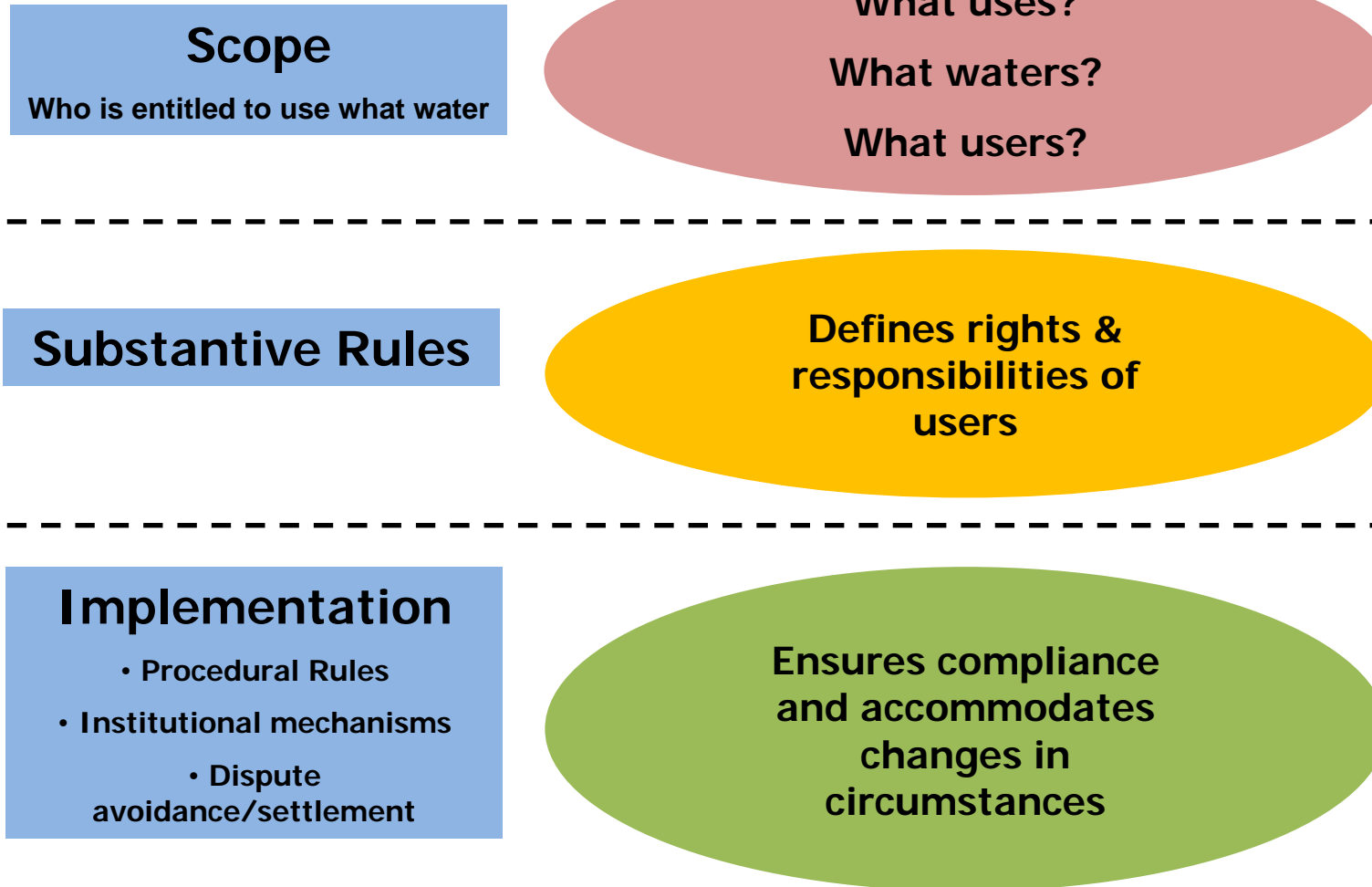


➤ Bilateral, basin, regional, global levels

Treaties at different levels

- Bilateral agreements
- Basin agreements
- Commonwealth of Independent States Agreements
- UNECE agreements
- Global agreements
 - **UN 1997 Convention on the law of the non-navigational uses of international watercourses**
 - **24 contracting states, including Uzbekistan**
 - **11 short of the number required for entry into force**

The key elements of legal regime



Adapted from Wouters, 2009

1. Scope

Do not include all riparian; Limited scope on groundwater and ecosystem

- ✓ a system of *surface waters and groundwaters* - 1997 UN WC, arts 2(a) and 2(b); 1992 UNECE, art 1(1)
- ✓ 'ecosystems' - 1997 UN WC & 1992 UNECE)
- ✓ 'drainage basin approach' - 1997 UN WC, art 1(1)

2. Substantive obligations

2.1. Equitable and reasonable use

No explicit provisions

- ✓ Detailed provisions – 1997 UN WC
- ✓ Links with other substantive and procedural rules - 1997 UN WC
- ✓ Complimentary and residual role to existing agreements

2.2. No harm

✓ The existing treaty law incorporates the no-harm rule.

- ✓ Codified in 1997 UN WC and 1992 UNECE
- ✓ Details due diligence - 1992 UNECE
- ✓ Clarity in the legal relationship with ERU which is lacking in the existing legal framework in the basin (1997 UN WC).
- ✓ Complimentary and residual role

2.3. Protection of international watercourses and their ecosystem

There are provisions to protect environment but these are mostly general.

- ✓ Detailed provisions in 1992 UNECE
- ✓ 1997 UN WC - Environmental consideration included in ERU and other provisions art 20-23

3. Procedural obligations and joint bodies

3.1. Cooperation through joint bodies

Establish joint bodies their mandate is weak

- ✓ 1992 UNECE spells out the basic tasks of these bodies

3.2. Regular information exchange

Promote rather than ensure the exchange of information. Scope is wide but the *content is less specific*.

- ✓ Stringent terms in 1997 UN WC & 1992 UNECE
- ✓ A basis for development of a specific sets of data and information

3.3. Consultations

No direct reference to regular consultations, except 1998 CIS TW Agreement

- ✓ Clear guidelines on consultations on different matters - 1997 UN WC and 1992 UNECE.
- ✓ Role for river basin commissions – 1992 UNECE

3.4 Prior notification on planned measures, reply or absent of reply

No agreed detailed provisions
'joint consideration'

✓ Sound and detailed procedural framework
- 1997 UN WC & Espoo Convention

3.5. Environmental impact assessment

✓ Require conduct assessments,
harmonise national EIA
procedures, and exchange
information

No detailed procedure on
transboundary EIA

✓ Detailed procedure in Espoo Convention
✓ 1997 UN WC includes EIA in the package of
notification documents

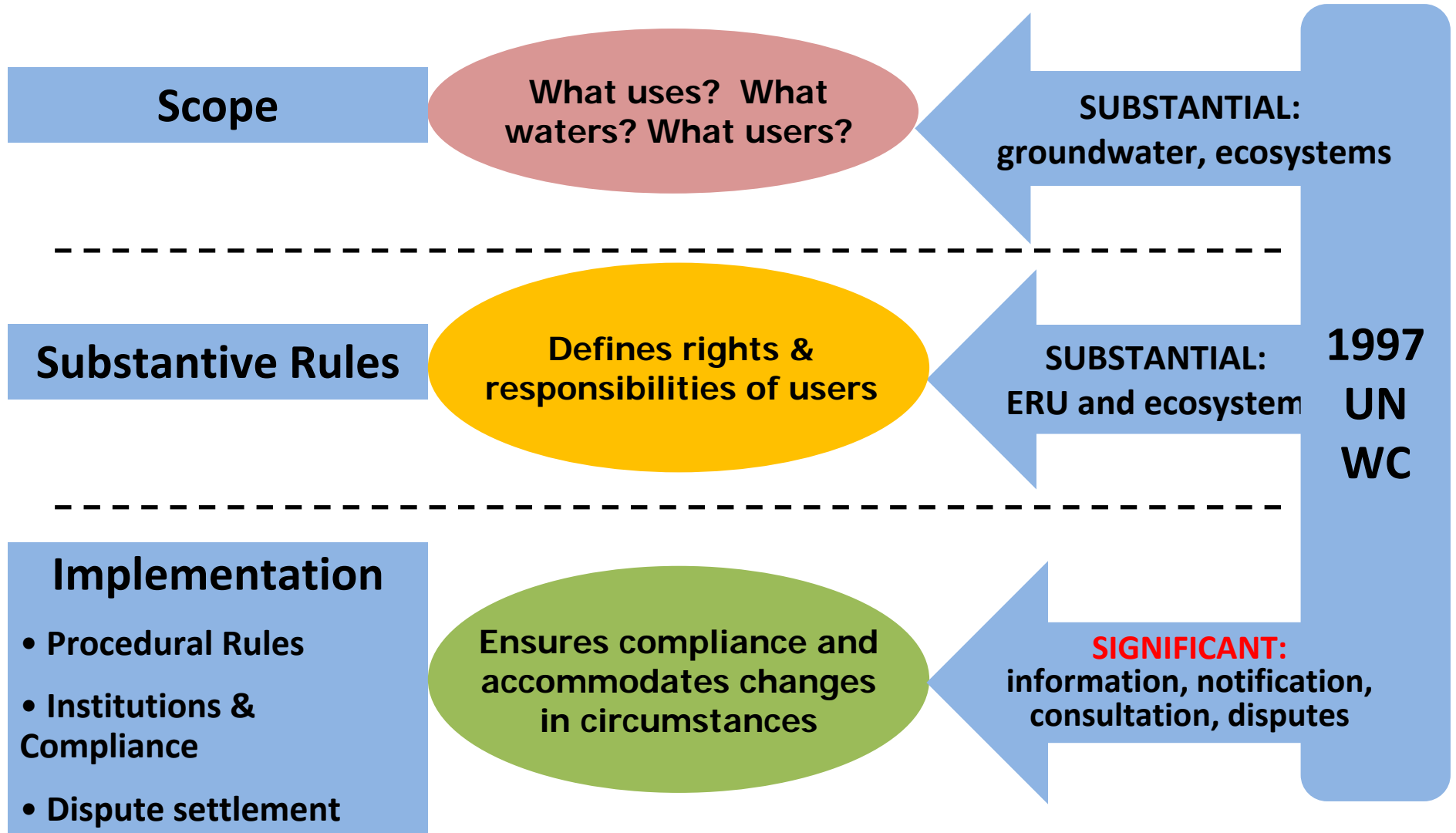
3.6. Emergency cooperation

The presence of emergency-
related obligations is laudable.

1997 UN WC (art 27-28) complimentary role
✓ a single reference point for emergency in
transboundary waters
✓ Links with other obligations

Treaties in the ASB, AFG, and CIS	1997 UN WC & UNECE Conventions
4. Compliance review	
No compliance review procedures	<ul style="list-style-type: none"> ✓ Compliance review and monitoring (e.g. reporting) under Espoo Convention and Aarhus Convention ✓ Institutional mechanisms such as the Meeting of the Parties, Secretariats, Implementation and Compliance Committees, Working Groups) under the UNECE Conventions ✓ Does not exist in 1997 UN WC but can be established by the decision of the parties
5. Dispute settlement	
No detailed dispute settlement procedure	<ul style="list-style-type: none"> ✓ A range of means, including an innovative mechanism of an impartial fact-finding commission - 1997 UN WC ✓ A would-be implementation mechanism under 1992 UNECE Convention

Value added from the 1997 UN WC



The relationship of the 1997 UN WC with watercourse agreements

1. Residual

1997 UN WC **does not affect** the rights and obligations of a watercourse states arising from **existing treaties**, unless agreed otherwise - art 3(1)

2. Guiding

1997 UN WC **encourages** watercourse states to **harmonise watercourse agreements** with its basic principles, to avoid conflicts - art 3(2).

3. Universal framework

1997 UN WC **may be applied and adjusted** to the characteristics and uses of a particular international watercourse or part thereof arts 3(3) & 3(5).

4. Protective

1997 UN WC articulates that rights and obligations of **third states**, namely non-participating watercourse states, **shall not be affected** by such watercourse agreements – art 3(6)

1997 UN WC contribution to transboundary cooperation in the Aral Sea Basin

1) Increases **transparency** of international law and **trust** between states

2) Promotes new approaches to water management and creates **new legal norms**

3) Provides for legal **protection**

4) **Supplements** the existing agreements

5) Establishes **a regime** which results from all of its provisions in conjunction

6) Provides a common **platform** to negotiate **future agreements**

7) **Signals the willingness** of the countries to deploy international law in dealing with water challenges

8) Enhances the **collective interest** dimension of the law on international watercourses

9) Enhances the **domestic dimension** of water management

10) Contributes to the **peaceful** settlement of disputes

Implementation of the 1997 UN WC in the Aral Sea Basin

1) Dispel **misperception** about the Convention

2) Develop a national strategy and **action plan**

3) Conduct an '**inventory**' of national legal and institutional frameworks

4) Enact implementing **laws** and regulation

5) Strengthen **institutional** basis at **national and regional levels**

6) Strengthen the **institutional** basis at the **global level**

7) Build **capacity** and raise awareness at national level

8) Identify the **resources** available and potential **barriers** to implementation

9) Identify potential **projects** to build national and regional capacity to implement the 1997 UN WC

10) Place the 1997 UN WC in a broader context of **good governance**

Conclusions

- ❑ **1997 UN WC can make a contribution to transboundary water cooperation in the Aral Sea Basin**
- ❑ **Decisions by individual states to ratify it**
- ❑ **Promotion of implementation and compliance**
 - A sense of obligation must be cultivated at the international level and connected into states' domestic spheres
 - Lawyers, policy-makers, and scholars can promote norm-internalization – *one of the ways to build capacity on IWL*

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