Finnish–Swedish Frontier River Commission – Effective water co-operation

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Abstract. The paper examines the structure and the competence of the Finnish–Swedish Frontier River Commission (the “FSFRC”) as an example of close and very successful co-operation between two States, based on the approximation of national laws. This essay will also prove that the Agreement establishing this FSFRC has incorporated, already as early as 1971, the contemporary principles of water co-operation that were first incorporated to a certain degree in 1966 Helsinki Rules on the Uses of the Waters of International Water Basin, and later found their expression in the 1997 United Nations Convention on Non-Navigational Uses of International Watercourses.1

Keywords: Finnish–Swedish Frontier River Commission, Finish–Norwegian Commission, international co-operation, principle of equitable utilisation, principle of significant harm, watercourses

1. The main contemporary principles governing the watercourse co-operation

The contemporary principles that govern water co-operation are incorporated into the 1997 Convention.2 The Convention includes several substantive and procedural principles. The most important substantive principles are contained in Articles 5–7 of the Convention, i.e., equitable utilisation (Article 5), factors relevant to equitable and reasonable utilisation (Article 6) and obligation not to cause significant harm (Article 7). The principle of equitable utilisation is without doubt the governing principle of the non-navigational uses of international watercourses.3 It may be said that this principle has entered into the body of international customary law. It was for the first time

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3 Article 5: “1. Watercourse States shall in their respective territories utilise an international watercourse in an equitable and reasonable manner. In particular, an international watercourse
conceptualised by the International Court of Justice in the *River Oder* case.\(^4\) The Court said as follows:

\[t\]he community of interests in a navigable river becomes the basis of a common legal right, the essential features of which are the perfect equality of all riparian States in the user of the whole course of the river and the exclusion of any preferential privilege of any riparian State in relation to the others.

This principle of the community of interests has found its continuation and further development in the principle of the equitable utilisation. It was confirmed by the International Court of Justice in the *Gabcikovo- Nagymaros* case.\(^5\) The Court said as follows:

[m]odern development of international law has strengthened this principle for non-navigational uses of international watercourses as well, as evidences by the adoption of the Convention of 21 May 1997 on the law of Non-Navigational Uses of International Watercourses by the United Nations General Assembly.\(^6\)

According to McCaffrey, the principle of equitable utilisation should be understood as a dynamic process, “which depends heavily upon active cooperation between states sharing freshwater resources.”\(^7\) The second fundamental principle is the principle of “no-harm”, or more precisely the principle of “no significant harm.” The difficult relationship between these two principles, as pointed out above, was resolved according to the principle of equitable utilisation. This principle derives from the obligation codified in general law and expressed in the maxim *sic utero tuo*. This principle is not absolute, but is mitigated by several factors; the harm must be significant; the obligation must be one of due diligence; the harm must be unreasonable. As to the relationship between the principles of equitable utilisation and no-


\(^6\) Paragraph 85; see also McCaffrey, note 2, p. 164.

\(^7\) McCaffrey, note 2, p. 345.