

# Ensuring benefit sharing and joint management of dams: the role of international water law

**Host :** International Association for Water Law/Geneva Water Hub/University of Geneva/IUCN \*

## Presenters

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## Description

### Body

#### 1) Short Description

Dams are built for multiple purposes, including agricultural uses, production of energy, protection from floods. Many thousands of dams are planned around the world across different regions: South East Asia, South America, Africa and Balkans. The construction of dams may affect the flows of rivers and the quality of its waters. They have impacts on the rights of the riparian States and often on those of the local communities.

Many of the existing agreements governing dams in transboundary watercourses do not reflect current environmental concerns such as the impacts of climate change and environmental flows. The consequences on biodiversity or wetlands are also often not considered in these treaties. Moreover, social aspects such as those related to the access to water for irrigation purposes or domestic supplies can also be excluded from these instruments. There is therefore a need to develop agreements that regulate dams in an integrated manner considering benefit sharing both at the inter-State level and with local communities as well as joint management.

Dams on international watercourses are often at the center of disputes between States. Some of them have been resolved through the resort to international courts and tribunals. Examples include the *Lake Lanoux* case between France and Spain brought before an arbitral tribunal in 1957, the *Gabcikovo-Nagymaros* case between Slovakia and Hungary brought before the International Court of Justice in 1993 and the *Kishenganga* case between India and Pakistan brought before an arbitral tribunal in 2010. These case-law help to clarify existing principles and rules included in freshwater agreements which regulate the planning, building and management of dams.

The current legal regime governing dams is scattered in various international agreements, including the UN Convention on the Law of the Non-Navigational Uses of International Watercourses, the Convention on the Protection and Use of Transboundary Watercourses and International Lakes of the UN Economic Commission for Europe (UNECE) and a number of agreements at the basin level. The principle of equitable and reasonable use, the central pillar of international water law in the sharing of transboundary waters, may ensure the implementation of the concept of benefit sharing between riparian countries.

However, the interpretation and application of these instruments of international water law should not be

isolated from other areas of international law, including the agreements of international environmental law and human rights law. For example, the Convention on Biodiversity or the Convention on the Protection of Wetlands have to be taken into account when planning and building dams so that aquatic ecosystems are not affected by these water infrastructures. At the same time, the rights of consultation and participation of local communities in decision-making processes enshrined in human rights instruments such as the ILO Convention 169 on Indigenous and Tribal Peoples as well as the right to water, must be respected in the planning of dams.

Given this background, this special session aims at presenting the current state of the international regime on dams and the concept of benefit sharing in international water law.

This proposal is part of a series of special sessions that AIDA would like to organize within the structure of the IWRA Congress.

This special session is co-organized with the Geneva Water Hub/University of Geneva and the Environmental Law Center of International Union for Conservation of Nature (IUCN).

## **2) Objectives**

Taking into account the variety of international legal instruments governing the planning and building of dams, the objectives of this special session are:

- To examine the concept of benefit sharing and how this approach could help developing better agreements for the construction of dams;
- To discuss the role of international water law in benefit sharing and joint management of dams;
- To present existing good practices on dams planning and building in international watercourses;
- To explore the role of international courts and tribunals in the clarification of the regime applicable to dams;
- To guide the identification of benefit sharing opportunities and the processes for the negotiation of a benefit sharing agreement with a practical case.

## **3) Justifications**

There are currently more than 3'700 dams projects or under construction around the world. These projects may potentially contribute to the implementation of the Sustainable Development Goals (SDGs) and the Paris Agreement. However, the negative impacts of dams on the quality and quality of transboundary watercourses remain a challenge. This special session aims at addressing the role of international water law in tackling with this challenge.

## **4) Projected outcomes**

The projected outcomes of this special session include:

- Analysis of the concept of benefit sharing in international water law.
- Examination of the legal regime on dams in international watercourses.
- Practical exercise to identify common benefits and negotiation of a benefit sharing agreement.

### **5) Alignment with Congress**

This proposal is aligned with the topics of water governance and the development of pathways for cooperation and development. It also aims at enhancing knowledge and implementing sustainable policies on dams planning and operation.