

No Significant Harm & Transboundary Environmental Impact Assessment Group Exercise

Dr Mara Tignino

Senior Lecturer and Coordinator
Platform for International Water Law/Geneva Water Hub

XVI World Water Congress

29 May 2017



Outline

- I. What are the facts?
- II. What are the objectives of the exercise?
- III. What is the applicable law?
- IV. What is the object of the dispute?
- V. Which dispute settlement mechanism is used?
- VI. What is the methodology of the exercise?

I. What are the facts?



Content of the exercise

The obligation of notification and consultation

- The 1997 United Nations *Convention on the Law of the Non-Navigational Uses of International Watercourses* (UNWC)
- The 1991 Espoo *Convention on Environmental Impact Assessment in a Transboundary Convention* (Espoo Convention)
- Regional and basin agreements
- Case law

The duty to carry out an Environmental Impact Assessment (EIA)

- The content and scope of an EIA
- The EIA must be conducted prior to the implementation of a project
- The principle of public participation: EIA is one mechanism to engage the public during an environmental decision-making process

Features of the Congra basin

Ecosystem: biodiversity of flora and fauna



80% of waters used for agriculture



Home of indigenous communities



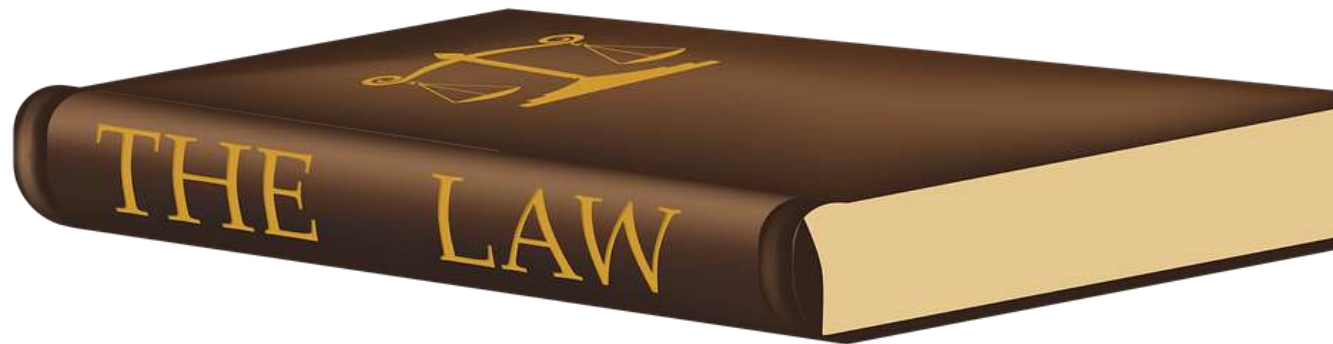
II. What are the objectives of the exercise?



Purpose of the exercise

1. To examine the duty of notification
2. To assess the obligation to carry out a transboundary EIA
3. To evaluate the principle of public participation
4. To build legal arguments for State A, State B and the communities affected by a project
5. To draft recommendations to settle the dispute

III. What is the applicable law?



Applicable law

- Convention on the Law of the Non-Navigational Uses of International Watercourses
- UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (not yet ratified)
- UNECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context
- UNECE Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

IV. What is the object of the dispute?



Key events

- Development of an hydroelectric project by Filicudi (2014)
- Submission of an EIA by the private company Salina (December 2014)
- Authorization of the project by the Ministry of the Environment of Filicudi (April 2015)
- Alicudi questions the initial environmental authorization

Claims by Alicudi

1. The EIA does not provide sufficient information
2. Non-compliance with the obligations on planned measures
 - Lack of notification, consultations and negotiation
 - Local communities have not been consulted

Responses of Filicudi

1. Suspension of the dam construction for 90 days
2. Failure of the negotiation between the two States
3. Filicudi moves ahead with the project: authorization of the construction of dam reservoir
4. The project completed by December 2017

V. Which dispute settlement mechanism is used?



Dispute submitted to the Fact-Finding Commission established under Article 33 of the UN Watercourses Convention

- Does the construction of the dam constitute an infringement of the following obligations:
 1. Notification
 2. Preparation of an EIA in a transboundary context
 3. Consultation with local communities

VI. What is the methodology of the exercise?



Group of 8 participants

- Two participants prepare a note on behalf of Filicudi
- Two participants prepare a note on behalf of Alicudi
- Two participants prepare a note on behalf of the indigenous communities
- Two participants will prepare a note on behalf of the Fact-Finding Commission

Thanks!

GWH/UNIGE Platform for International Water Law
www.unige.ch/droit/eau

Geneva Water Hub
www.genevawaterhub.org

Dr Mara Tignino
mara.tignino@unige.ch

