



Sustainable management of freshwater resources

Linking international water law and the *Sustainable Development Goals*

Ensuring the availability and sustainable management of water for all by 2030 is one of the Sustainable Development Goals (SDGs) adopted in 2015. Sustainable management of freshwater resources happens to be a purpose of international water law as well. This paper explains how the legal compliance mechanism of international water law and the extralegal compliance mechanism of the SDGs can be jointly harnessed to more compellingly encourage all states in the world to manage their freshwater resources in a sustainable way.

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Abstract

This paper demonstrates how the extralegal compliance mechanism of the *Sustainable Development Goals (SDGs)*, in particular as it is applied to sustainable freshwater management (SDG 6, 12, and 15), complements the legal compliance mechanism of international water law, thereby contributing to the resolution of one of the most pressing environmental problems in today's world: the sustainable management of freshwater resources. The SDG targets, commitments, progress indicators, and reporting obligations relating to the sustainable management of freshwater resources are paired with provisions from the *Law of the Non-navigational Uses of International Watercourses (UNWC)* and the *Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Convention)*. The main idea is that the above-mentioned treaties and the SDGs can strengthen each other's compliance pull when paired in this way. The paper zooms in on the SDG targets and international water law provisions relating to 1. the sustainable management of freshwater resources, 2. the prevention of freshwater pollution, and 3. the protection and restoration of freshwater ecosystems.

Keywords

compliance, freshwater, international water law, sustainable development, Sustainable Development Goals

Pairing legal provisions with political commitments

The *Sustainable Development Goals (SDGs)* were adopted by the United Nations General Assembly (UNGA), in a resolution entitled *Transforming Our World: The 2030 Agenda for Sustainable Development*, on 21 October 2015 (UN 2015). The aim of this paper is to show how specific targets in the SDGs, relating to sustainable freshwater management, can be linked to similar commitments in international water law, thereby strengthening each other's compliance pull. Before getting into the specifics of this cross-fertilization, a brief explanation is provided, intended mainly for those readers not specialized in international law, of how the SDG framework and international law can strengthen and complement each other. This is followed by a few remarks on the potential contribution this cross-fertilization might have on solving one of today's most pressing environmental and sustainability problems, that is, the sustainable management of the world's freshwater resources.

How does cross-fertilization work?

Both the ambitions expressed in international water law and in the SDGs are *normative*: they require of the addressee – primarily states – to take certain action. But they are not normative in the same way.

States are obliged to comply with their obligations under international (water) law. If they do not do so, their responsibility is engaged under international law. As a consequence, they must provide reparations for any harm caused to an injured state, or to the international community as a whole. This is based on the general rules of international law on state responsibility, as authoritatively written down by the International Law Commission (ILC) in its *Articles on the Responsibility of States for Internationally Wrongful Acts* (ILC 2001). These general rules are complemented by more specific rules relating to state responsibility in the context of the management of international watercourses. The *Law of the Non-navigational Uses of International Watercourses* (concluded in New York on 21 May 1997, entry into force on 17 August 2014) (UNWC)¹, and the *Convention on the Protection and Use of Transboundary Watercourses and International Lakes* (concluded in Helsinki on 17

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March 1992, entry into force on 6 October 1996) (*UNECE Convention*)² can be mentioned. Elements of compliance mechanisms can also be found in treaties regulating the joint management of a specific international watercourse, such as the *Convention on the Protection of the Rhine* of 1999³; and in regional water law, such as the European Union's *Water Framework Directive* of 23 October 2000⁴.

The *SDGs* are contained in a legally nonbinding resolution of the UNGA. From a purely formal point of view, no international legal obligations can be based directly on the *SDGs*. After all, when adopting the *SDGs*, states did not formally express their consent to be legally bound by these goals and commitments. They were adopted as political aspirations. Lack of compliance with the *SDGs* thus has no consequences under international law. But the *SDGs* do set in place an extralegal or political framework, with targets, commitments, indicators of progress, and state obligations to constantly report on progress made. The key role herein is played by the *High-level Political Forum on Sustainable Development*.

How then, can the legal compliance mechanism which exists under international (water) law be paired with the political or extralegal compliance mechanism of the *SDGs*? There are essentially three ways.

First, if states are influenced by the *SDGs* when applying the provisions of binding international law treaties, this constitutes relevant subsequent practice in the application of those treaties, and places these treaties in a new and evolving context. And according to the rules on treaty interpretation, as codified in the *Vienna Convention on the Law of Treaties* (concluded in Vienna on 23 May 1969, entry into force on 27 January 1980)⁵, subsequent practice and context is essential in identifying the most authoritative interpretation of a treaty.

Second, the *SDGs* can be used to affirm an already evolving customary practice. That legally nonbinding UNGA resolutions can have this effect was already affirmed by the International Court of Justice in its *Advisory Opinion* of 8 July 1996⁶, in which it noted that UNGA resolutions “can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*” (at paragraph 70). It all depends on whether an intention to give them legal value can be derived from the resolution's content and the conditions of its adoption, but also from the way it influences decision-making afterwards. Declarations of the UNGA have had such normative influence in the past. One might think of the *Universal Declaration of Human Rights*⁷, but also of the *Rio Declaration on Environment and Development*⁸.

Or one might think of the influence that the predecessor to the *SDGs*, the *Millennium Development Goals (MDGs)*, have had on international (human rights) law (UNDP 2007). These goals, also adopted in a legally nonbinding UNGA resolution, have been used by many states as a basis for their own domestic development frameworks, and they have also been used by the international community – including states, the UN and other international organizations, but also nongovernmental organizations (NGOs) – to measure progress.

And third, the political or extralegal *SDG* compliance mechanism can induce states to manage their freshwater resources sustainably in ways that go above and beyond the compliance mechanism as it exists under international (water) law. It is this third way on which the remainder of this paper will focus. The *SDGs* come with their own commitments, targets, progress indicators, monitoring and reporting obligations. These exist in parallel with the compliance mechanisms of international (water) law. They involve other actors – primarily non-state actors. Instead of competing or conflicting with the compliance mechanism of international water law, the *SDG* mechanism complements it. And, as is shown in detail below, since the *SDG* commitments and the obligations under international water law are in many ways identical, the two mechanisms, operating in parallel, basically pull states towards the same behaviour.

In conclusion, states comply with international water law, because if they do not, they can be held responsible, according to the rules of general international law and more specific rules of international water law, for the harm done, resulting in an obligation to provide reparation to any injured party – the state, and/or to the international community as a whole. The compliance pull of the nonlegally binding targets in the *SDGs* is subtler: it is due to their close link to provisions of international water law that compliance with the *SDGs* ceases to be noncommittal and becomes just as compelling. And the *SDG* framework adds more creative compliance mechanisms, more flexible, also involving non-state entities (see the final section of this paper).

Focus on the most pressing environmental and sustainability problems

The cross-fertilization between international law and the *SDGs* will be analyzed, with a focus on international water law. The focus on international water law is motivated by the following convictions: 1. the sustainable management of freshwater is one of today's most pressing problems in the environmental context, and 2. the cross-

1 http://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf.

2 <https://www.unece.org/fileadmin/DAM/env/water/pdf/watercon.pdf>

3 https://www.iks.rg/fileadmin/user_upload/DKDM/Dokumente/Rechtliche_Basis/EN/legal_En_1999.pdf

4 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0060>

5 http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

6 <https://www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/Advisory%20Opinion,%201996%20I.C.J.%20226.pdf>

7 https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

8 <https://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>



fertilization between international law and the *SDGs* in the domain of freshwater management shows great potential.

One of the more formidable global challenges in the environmental context today is to ensure the sustainable management of the world's freshwater resources. This urgency is obvious. One need only to think of Cape Town's constantly looming "Day Zero", the day that this South-African city will run out of freshwater.⁹ Also, one might think of the link that is often made – and just as often denied – between drought and the present conflict in Syria (Selby et al. 2017, Hendrix 2017). There are many other examples. More generally, one often hears that urgent action is needed to avoid a nightmarish world with polluted lakes and rivers, deadly droughts and floods, water scarcity, and the resulting water wars.

Research method: textual analysis and interviews

This paper builds on earlier publications (Spijkers and Honniball 2015, Spijkers 2016). The focus of the present research is on the only two international water law treaties that have a global reach: the *UNWC* and the *UNECE Convention* (see above).

Below, a textual analysis is provided of the *SDGs* and relevant provisions of aforementioned treaties, linking them together. The purpose is to show that compliance with obligations under international water law and compliance with the *SDG* commitments relating to freshwater essentially requires the same state behaviour.

To assess the potential of the *SDGs* as additional compliance pull, the author of this paper, together with Ursula Zampieri, who was at the time a Legal Research Master student at Utrecht University, conducted interviews (face to face and via skype) with key players chiefly responsible for the implementation of the *SDGs*: government officials, representatives of corporations and of NGOs. Each person was asked how she/he used – or intended to use – the *SDGs* as a tool in her/his advocacy and policy-making work. This paper shares experiences and insights, which they gained in developing policies aimed at achieving the *SDGs* on the ground.

SDGs relating to sustainable management of freshwater resources

When it comes to sustainable freshwater resource management, the most immediately relevant of the *SDGs* is *SDG 6* on clean water and sanitation and its eight targets (box 1). Not all these targets can be linked to provisions of international water law, which deal with the relations between states sharing a watercourse, such as a lake, river, or aquifer. Some targets have a more natural link with international human rights law, the human right to water in particular. One does not find a human right to water explicitly listed in any of the major international human rights treaties, but such right can be derived from the human right to an adequate standard of living, which we find in Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (the text of the treaty was annexed to General Assembly resolution 2200A (XXI) of 16 December 1966, and the treaty entered into force on 3 January 1976)¹⁰, formulated as follows:

BOX 1: *SDG 6*

Ensure availability and sustainable management of water and sanitation for all.

6.1 By 2030, achieve universal and equitable access to safe and affordable drinking water for all.

6.2 By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations.

6.3 By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally.

6.4 By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity.

6.5 By 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate.

6.6 By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes.

6.A By 2030, expand international cooperation and capacity-building support to developing countries in water- and sanitation-related activities and programmes, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies.

6.B Support and strengthen the participation of local communities in improving water and sanitation management.

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. [...]

This link between the human right to an adequate standard of living and individual access to freshwater for drinking and sanitation purposes was developed in *General Comment No. 15*¹¹ on the right to water, adopted by the Committee on Economic, Social and Cultural Rights in 2002. *SDG 6.1* (access to drinking water) and *6.2* (sanitation) have obvious links to the human right to water and sanitation.

As will be explained in more detail below, targets *SDG 6.3* to *6.6*, as well as *SDG 6.A* and *6.B*, have more natural links with international water law. *SDG 6.4* can be linked both to human rights and to international water law. The pledge contained therein refers to the importance of giving "special regard to the requirements of vital human [water] needs". This priority on satisfying vital human water needs is based on Article 10 *UNWC*. In its *Draft Articles* (ILC 1994), which formed the basis of the *UNWC* of 1997, the ILC explained that giving special regard to the requirements of vital human water needs meant that "special attention is to be paid

⁹ <http://coct.co/water-dashboard>

¹⁰ <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

¹¹ https://www2.ohchr.org/english/issues/water/docs/cescr_gc_15.pdf



BOX 2: Selected targets from SDG 12 and SDG 15

SDG 12: Ensure sustainable consumption and production patterns.

12.2 By 2030, achieve the sustainable management and efficient use of natural resources.

SDG 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.

15.1 By 2020, ensure the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services, in particular forests, wetlands, mountains and drylands, in line with obligations under international agreements.

to providing sufficient water to sustain human life, including both drinking water and water required for the production of food in order to prevent starvation". Thus target *SDG 6.4* can be linked to a provision in international water law, that is, Article 10 *UNWC*. But the focus on satisfying basic water needs of individual people also reminds one of the language of international human rights, which aims to secure minimum standards for individuals.

The focus of the present research clearly is on the water goal, *SDG 6*. But some targets, contained in other *SDGs*, are equally relevant in making a link between international water law and the *SDGs*: target *SDG 12.2* on natural resources and their sustainable management, target *SDG 15.1* on freshwater ecosystems (box 2).

Cross-fertilization between international water law and the SDGs

In the sections below, the cross-fertilization between the *SDG* targets mentioned above and provisions of international water law is analyzed in more detail. The focus is on the sustainable management of freshwater resources (*SDG 12.2*), the prevention of freshwater pollution (*SDG 6.3*), and the protection and restoration of freshwater ecosystems (*SDG 6.6*, *SDG 15.1*). These provide the most fertile ground for successful cross-fertilization with the relevant provisions in the *UNWC* and the *UNECE Convention*.

This is not to suggest that the other targets listed above cannot be linked to international water law provisions. As said, targets *SDG 6.1*, *6.2* and *6.4* can be linked to Article 10 *UNWC*. And the target on integrated water resources management cooperation (*SDG 6.5*) could be linked to Article 24 *UNWC*, which calls upon states to "enter into consultations concerning the management of an international watercourse". The target on international cooperation in the utilization and management of freshwater resources (*SDG 6.A*) could be linked to Article 8 *UNWC*, which calls upon states to cooperate with each other "to attain optimal utilization and adequate protection of an international watercourse". But the former are better linked with human rights law; and the latter are formulated in such general terms, that meaningful cross-fertilization is difficult to achieve.

Target *SDG 6.B* is on the participation of local communities in the management of freshwater resources. Here, the possibilities

for cross-fertilization are basically nonexistent. In the *UNWC*, there is no mention of a right to public participation in transboundary freshwater management. The article that comes closest is Article 32, which calls upon states not to discriminate based on nationality when granting to persons, in accordance with its legal system, access to judicial or other procedures. The *UNECE Convention* does only a little bit better. It includes an obligation for states to ensure that information on transboundary waters is made available to the public (Article 16). But a right to be informed of freshwater management plans and policies is, of course, not the same as a right to be actively involved in the making of such plans and policies.

Sustainable use of freshwater resources

Let us now begin to look at the most promising cross-fertilization possibilities. Target *SDG 12.2* is on the sustainable management of all natural resources. In *Transforming Our World* (UN 2015, paragraph 9), this clearly refers also to freshwater resources:

[We, the Heads of State and Government and High Representatives, meeting at United Nations Headquarters in New York from 25 to 27 September 2015, envisage] a world in which consumption and production patterns and use of all natural resources – from air to land, from rivers, lakes and aquifers to oceans and seas – are sustainable.

Read with this paragraph in mind, target *SDG 12.2* becomes a clear, unambiguous, and unequivocal call for sustainable utilization of freshwater resources.

UNWC

To which provisions in international water law can target *SDG 12.2* be linked? The principle of equitable and reasonable utilization is defined in Article 5 *UNWC*, as follows:

Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.

Notably, there is an explicit reference to sustainable utilization, which is of course interesting for the present research. What does it mean exactly? Most commentators believe that sustainable use is part of the obligation of equitable use (see, e.g., Wouters 2010, McIntyre 2006). Similarly, the International Law Association defined sustainable use in its *Berlin Rules* (ILA 2004, Article 3.19) as:

The integrated management of resources to assure efficient use of and equitable access to waters for the benefit of current and future generations while preserving renewable resources and maintaining non-renewable resources to the maximum extent reasonably possible.

In this definition, the use of freshwater resources is considered both equitable and sustainable, if and only if the access of both



present and future generations to these waters is taken into account. The definition thus uses an interpretation of equity, which includes both intra- and intergenerational equity. In practice, that would mean that the present generation must consider the interests not just of neighbouring states with whom a watercourse is shared, but also with (its own) future generations.

Article 6 *UNWC* complements Article 5, by providing a non-exhaustive list of factors relevant to determining what constitutes equitable and reasonable utilization. There is a reference in Article 6 to balancing “existing and potential uses of the watercourse”, which can be interpreted as an obligation to balance present and future uses of the watercourse. The former is done in the interest of the present generation; the latter is mainly in the interest of the future generations.

UNECE Convention

The *UNECE Convention's* focus is on the no harm rule (see section below), but there are some references to the equitable and reasonable use principle as well. Most importantly, Article 2(2)(c) of the *Convention* says that states must take all appropriate measures:

To ensure that transboundary waters are used in a reasonable and equitable way, taking into particular account their transboundary character, in the case of activities which cause or are likely to cause transboundary impact.

That is the only explicit reference to the equitable and reasonable use principle. But in practice, all provisions in the *UNECE Convention* are interpreted with the equitable and reasonable use principle in mind. Such reading of the *UNECE Convention* is particularly encouraged in the *UNECE's Guide to Implementing the Water Convention* (UNECE 2013). This guide is itself not legally binding but suggests the best interpretation and application of the treaty to the states party to the *UNECE Convention*. There, we also find a reference emphasizing the importance of linking the principle of equitable and reasonable use to the principle of sustainable development. The guide explicitly notes that the principle of equitable and reasonable use (*UNECE Convention's* Article 2(2)(c)) should be read “in conjunction with” the reference to the precautionary principle, the polluter-pays principle, and the principle of sustainable development (Article 2(5)(c)). The explanation (in UNECE 2013, paragraph 102) is worth quoting in full:

This is fully in line with the contemporary developments of international customary water law according to which the principle of equitable use incorporates that of sustainable development. That is to say that a use of an international water body may not be considered as equitable, therefore legal, if it is not sustainable.

All this is fully in line with the interpretation of Article 5 *UNWC*, which contains an explicit reference to sustainable use, which is exactly what target *SDG 12.2* prescribes.

Preventing freshwater pollution

Target *SDG 6.3* deals with preventing pollution of freshwater resources, which can be regarded as an aspect of the general obliga-

tion not to cause harm to the watercourse, to neighbouring states, and/or to the international community as a whole. First, the relevant provision in the *UNWC* is introduced, followed by the relevant provision in the *UNECE Convention*.

UNWC

The no harm principle is defined in Article 7 *UNWC*, as follows:

Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.

This provision obliges states to undertake to prevent the utilization of a watercourse within their territory from causing harm to (the environment of) a neighbouring state.

Article 21 *UNWC*, on the prevention, reduction and control of pollution, is phrased as a further elaboration of the no harm rule of Article 7. It obliges states to “prevent, reduce and control the pollution of an international watercourse that may cause significant harm to other watercourse States or to their environment”. Taking a more intergenerational approach, this provision could be interpreted as obliging states also to prevent, reduce and control the pollution of an international watercourse that may cause significant harm to that state's own environment, thereby jeopardizing the interests of that state's own future generations.

UNECE Convention

Article 2(1) *UNECE Convention* reads as follows:

The Parties shall take all appropriate measures to prevent, control and reduce any transboundary impact.

The term transboundary impact is defined in Article 1, as follows:

Any significant adverse effect on the environment resulting from a change in the conditions of transboundary waters caused by a human activity, the physical origin of which is situated wholly or in part within an area under the jurisdiction of a Party, within an area under the jurisdiction of another Party.

The entire *UNECE Convention* further elaborates on the no harm rule, as defined in its Article 2(1). The convention has plenty of provisions specifically on preventing transboundary pollution. Most importantly, Article 2(2)(a) *UNECE Convention* calls upon states to “take all appropriate measures to prevent, control and reduce pollution of waters causing or likely to cause transboundary impact”. See also Article 2(3), and Article 3(1)(a), (b), (k) and (l), in the same convention.

Protection and restoration of freshwater ecosystems

When adopting the *SDGs*, the member states of the UN jointly expressed a determination to conserve and sustainably use freshwater resources and to protect ecosystems (UN 2015, paragraph 33). And thus, it is not surprising that we find plenty of references to the ecosystems approach in the *SDG* targets. Most importantly, target *SDG 6.6* is on the protection and restoration of water-related ecosystems, including wetlands, rivers, aquifers and



lakes. Target *SDG 15.1* calls upon the conservation, restoration and sustainable use of all types of ecosystems, including freshwater ecosystems. Taken together, these targets contain a pledge, by all states in the world, to protect, conserve, restore, and make sustainable use of their freshwater ecosystems.

UNWC

Looking at international water law, we quickly find a legal basis for the embracement, and further evolution, of an ecosystem approach to the protection, preservation and restoration of freshwater ecosystems. This basis is Article 20 *UNWC*, combined with Article 3(1)(i) of the *UNECE Convention* (more on the latter below). Both these provisions contain an explicit reference to the ecosystems approach. With the help of the *SDG* ecosystem targets, Article 20 *UNWC* may well become a treaty-within-a-treaty, setting up by itself a legal regime on the protection of freshwater ecosystems. Article 20 *UNWC* reads as follows:

Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.

A freshwater ecosystem is described, by the ILC, as an “ecological unit consisting of living and non-living components that are interdependent and function as a community” (ILC 1994, p. 118).

Article 20 refers to two separate obligations: the duty to protect, and the duty to preserve. These two can – and must be – clearly distinguished from each other. According to the ILC’s commen-

tary, protection means shielding the ecosystems from harm; preservation means maintaining the ecosystems as much as possible in their natural state (ILC 1994, p. 119). There is no explicit reference in Article 20 to the concept of sustainable development – there is only one such reference in the treaty, in Article 24 – but from the ILC’s commentary we can derive that the protection and preservation of freshwater ecosystems is done “to ensure their continued viability as life support systems, thus providing an essential basis for sustainable development” (ILC 1994, p. 119).

The *UNWC* thus establishes an obligation to protect and preserve freshwater ecosystems. Preservation is synonymous to conservation. But the *SDGs* go one step further and call upon states also to restore damaged freshwater ecosystems.

UNECE Convention

This far-reaching obligation can be derived from the *UNECE Convention*. Article 2(2)(d) calls upon the parties to take all appropriate measures to prevent, control and reduce any transboundary impact, and to take all appropriate measures “to ensure conservation and, where necessary, restoration of ecosystems”. If we compare this with the obligation under the *UNWC*, we see that the *UNECE Convention* does not only require states to protect and preserve, in other words: to avoid future damage; but even to restore damage done in the past.

Article 3(1)(i) *UNECE Convention* reads that:

To prevent, control and reduce transboundary impact, the Parties shall develop, adopt, implement and, as far as possible,



The Westduinpark (West Dune Park) is situated in The Hague, Netherlands. It is part of a European network of legally protected nature reserves, referred to as *Natura 2000*.



render compatible relevant legal, administrative, economic, financial and technical measures, in order to ensure, inter alia, that [...] sustainable water-resources management, including the application of the ecosystems approach, is promoted.

The states have taken this obligation very seriously. They have already adopted an impressive series of guidelines on the ecosystems approach to the management of transboundary freshwater resources (UNECE 1992, 1993, 2007, 2015).

Practitioners on SDGs and their potential compliance pull

How realistic is the hope of the above-proposed cross-fertilization? We contacted key players involved in the SDG compliance process. We approached various corporations that identified themselves with the SDG process, but most were not so eager to be interviewed by us. Susan Kimkes, the senior external relations advisor of Shell, told us that the company lacked the time and resources to make someone available for an interview, and Heineken kindly referred us to the website, where their sustainable development policy was described. In the end, we only interviewed one representative of the corporate world (Mark Didden, sustainability reporting manager at AkzoNobel, a multinational company specialized in paints and coatings). We also approached NGOs that played a role in the SDG drafting process. We spoke with Julie van der Blik and Chris Dickens of the International Water Management Institute (IWMI); Edith van Ewijk, then senior researcher with Kaleidos Research; Leonard Sonnenschein, president of the World Aquarium and Conservation for the Oceans Foundation; and Carolina Latorre, programmes officer of the International Water Association. Finally, we interviewed two of the most senior members of the Dutch government, responsible for the drafting and implementation of the SDGs (Hugo von Meijenfeldt, coordinator of the implementation of the SDGs at the Netherlands Ministry of Foreign Affairs, and Peter van der Vliet, Netherlands ambassador for the SDGs).

We asked the interviewees what they felt was the actual and potential relevance of the SDGs in their advocacy and policy-making work, and how they saw their role in the drafting of the SDGs and in the implementation thereof after their adoption by the UNGA in 2015. In the following we highlight what we learned from the interviews about the potential of the SDGs as additional compliance pull and in the light of cross-fertilization between international law and SDGs.

Self-commitment of corporations: As *Mark Didden* explained, for a corporation like AkzoNobel, the first task was to translate the SDG targets, which were primarily directed at states, into targets directed at corporations. The idea was to select from the SDG targets only those that were of direct relevance to corporations. AkzoNobel decided to focus its efforts on the sustainable cities goal (SDG 11), because most of its products end up being used in the world's big cities. Didden told us that, in setting corporate SDG-

based targets, some corporations were engaged in a kind-of-competition on whose targets were the most ambitious. At the same time, they had to constantly keep in mind the shareholders, and not scare them off by being overly ambitious. From this we learned that – at least some – multinational corporations felt that they too were addressees of the SDGs and they voluntarily subjected themselves to the SDG compliance framework; this is something one does not find in relation to international water law.

Role of NGOs in drafting SDG 6: According to *Chris Dickens*, the IWMI had an influential role in the drafting of the ecosystem target in SDG 6. The institute was concerned, like many other environmental NGOs and thinktanks, that the SDG process would be just as development-focused as the MDG process had been. Thus, they constantly insisted on a more environment-focused approach, both at the drafting and implementation stage. And they succeeded. From this we learned that some NGOs had actually been very influential in the drafting of the SDG commitments themselves. In international water law, such non-state influence is hard to find.

Role of NGOs in monitoring of state compliance with the SDGs: From *Edith van Ewijk* we heard that those NGOs that were previously engaged in monitoring the implementation by states of the MDGs now saw the SDGs as the next step in a continuing effort towards socio-economic global development. Purely environmental organizations were not – or hardly – involved in the MDG process and were now not so keen on embracing the SDG process. From this we learned that – at least some – NGOs identified very strongly with the SDG framework and saw for themselves a considerable role in the monitoring of progress thereof. Although some specific compliance mechanisms regulating particular rivers exist which give a considerable role to non-state entities in monitoring, this is much less the case in the general international water law compliance mechanism.

Involving individuals in monitoring processes: The input of *Leonard Sonnenschein* in the SDG process focused largely on SDG 14 (*life below water*), but some of his ideas related to the ecosystems approach in a broader sense and have also influenced the drafting of SDG 15 (*life on land*). He told us about some of his innovative ideas to involve people visiting aquariums in the SDG implementation process. He thus saw a role of individuals in monitoring progress in SDG implementation – through naming and shaming mostly. Individuals have no such role under international water law.

It is of course interesting to know that NGOs see their own role in monitoring compliance as significant. But do the state representatives agree with that assessment? It turns out that the representatives of the Netherlands government do.

Governments as coordinators, incorporating non-state actors/valuing the contribution of non-state actors: From our discussion with *Hugo von Meijenfeldt* we learned that the Netherlands' ambition was to achieve the SDGs together with various non-state actors. The government intended to play rather a coordinating than a lead-





ing role. It is the government's task to develop a common narrative with which all stakeholders can identify and align themselves. These stakeholders include business, financial institutions, academic institutions, and other NGOs. All these stakeholders contribute to the *SDG* implementation progress reports that the government submits to the UN each year. This way, the NGOs are also reminded of their own responsibilities. From this we learned that the role in monitoring progress that the NGOs claimed for themselves was actually welcomed by – at least some – states.

Essential learning processes for NGOs: Peter van der Vliet shared some of the advice he always gives to NGOs asking him how best to influence the drafting and implementation of the *SDGs*. In his view, the NGOs should not be content if they manage to be at the place where decision-making occurs. “Being there,” he reminded them, “is not the same as being influential.” Even speaking at a conference is not the same as having influence, as in many cases NGOs are simply talking to each other, to satisfy their donors, etc., and are not influencing the decision-makers. They should “plug and play”: identify where input is needed and then provide it directly to the member states. In doing so, they should be concise, specific and make evidence-based statements. Ideally, they should identify a specific problem or deadlock and provide a way out for the member state. He also told us of the importance to prioritize: NGOs should only propose one idea that has their top priority, and not impress with hundreds of different ideas. Instead of giving public speeches, the most effective way to influence policy-making was, in his view, still the old-fashioned way: to approach negotiators in the delegates lounge or in the capitals back home (often the proposals are not drafted in New York at the annual meetings of the UNGA, but in the world's capitals, at home). From this we learned that NGOs still have a lot to learn before they can play their new role in the *SDG* compliance mechanism to the fullest.

Concluding remarks and practical conclusions

By linking the *SDGs* to existing obligations under international water law as was done above, it is hoped that the compliance pull of both is increased. The *SDGs* are to be achieved by 2030, the provisions of international water law lack such a time-specific deadline. Also, the *SDGs* address not only the governments – as international water law does – but encourage all elements of society to contribute towards achieving the *SDGs*. In short, the *SDG* framework has a much more flexible and inclusive compliance mechanism, which can complement the more traditional, state-based compliance mechanism of international water law.

This view has been confirmed in the interviews with practitioners. We learned that both the NGOs and the Netherlands government indeed see a major role for the former in the *SDG* compliance mechanism. The NGOs are themselves made partly responsible for this, and they seem to accept this responsibility. That is interesting, as this is something international (water) law, which applies primarily to states, cannot achieve. In the compliance

mechanism as it exists under general international water law, NGOs basically have no role in setting the targets, monitoring progress in achieving these targets, and in reporting on progress made. All that is done primarily by states and their representatives. In the *SDG* framework, the NGOs play a key role in all three processes.

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