

## ZOOM IN

### *The Question:*

#### **Parallel treaties, (un)parallel commitments? The struggle between universalism and regionalism in international water law**

*Introduced by Maurizio Arcari and Enrico Milano*

While long-awaited, the entry into force on 17 August 2014 of the 1997 UN Convention on the Law of the Non-navigational Uses of International Watercourses – a framework treaty designed to set forth general principles for the equitable use and protection of transboundary freshwaters – is not the only significant contemporary development in international water law. In 2003 the Conference of the Parties to the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes – a regional treaty concluded under the auspices of the UN Economic Commission for Europe (UNECE) in force from 6 October 1996 and binding 40 States of the European area – approved some amendments to the Convention which widened its scope to allow the participation of States who are not members of UNECE. As those amendments entered into force on 6 February 2013, we are by now faced with another framework treaty endowed with potential universal reach, which arguably may duplicate or at the very least enter into competition with the New York Convention.

Insofar far as the Helsinki Convention appears *prima facie* to be a more sophisticated text in comparison to the New York Convention, it can be expected that this duplication of instruments in the field of water law will not be unproblematic. On the one hand, one may ask what the incentives would be for States considering whether to accede to the New York Convention, which appears to be less sensitive to the environmental protection of water resources and apparently offers weaker mechanisms for the promotion of cooperation between riparian States in comparison to its regional counterpart, the Helsinki Convention. On the other hand, one cannot exclude that the very flexible character of

the substantive principles encapsulated in the New York Convention will prove attractive to riparian States wishing to elaborate solutions that are fitted to the special needs and conditions of their particular watercourses. In the same vein, it cannot be underestimated that among the current 35 States Parties to the New York Convention, 16 European States are also bound by the Helsinki Convention. This seems to demonstrate the attraction that the New York Convention exerts on the Parties to the regional (by now potentially universal) instrument.

The parallel existence of the New York and Helsinki conventions is likely to raise a cluster of critical questions, pertaining to the specific area of water resources law and covering, at the same time some general issues, such as the different normative levels [layers] of international law, their coordination or the potential fragmentation arising therefrom. For example, what is the dialectic between universal and regional treaties addressing the basic principles and guidelines for the regulation of freshwater resources, and is such a dialectic conceivable at all? Can the basic principles governing international watercourses be conveniently streamlined through different, but complementary framework instruments of universal application, or is that phenomenon conducive to further fragmentation in this area of law? What is the relationship between the different framework treaties and the States parties thereto, and what is the criteria for tackling cases of conflict or divergence between the basic principles contained in those instruments? *QIL* has invited two renowned experts in the field of international water law, Alistair Rieu-Clarke and Attila Tanzi and to elaborate their personal responses to those intricate questions and to add further fuel for reflection.