



# Transboundary cooperation of Western Balkan states in the field of water resource management: Between the existing treaties and a new international treaty

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## ABSTRACT

The objective of the paper is to explore the existing conditions and possibilities for the improvement of co-operation between some Western Balkan states (Bosnia and Herzegovina, Montenegro and Republic of Serbia) which occupy the Drina River basin (DRB). The article analyses the existing international treaties with the purpose of giving an answer to the question whether they present a satisfactory legal framework. It points to the factors which determine co-operation, and explores the possibilities for the conclusion of a new international treaty on the co-operation between the three states. It explores the possibilities for the conclusion of a new international treaty on the establishment of co-operation between the three states, this implying consideration of the reasons for and against the adoption of a separate international agreement on co-operation between the states in the region. The paper considers the thesis on the need for the improvement of co-operation between the DRB states to be based on the concept of integrated water resources management.

## 1. General context

The analyses emphasising the significance of water resources in the world and discussing potential disputes and conflicts between two or several states prevail in the literature that treats water resource management (Wouters et al., 2008; Stetter et al., 2011; Fischhendler, 2015). The need to reconceptualise water law, human rights protection in the field of water resources (Obani and Gupta, 2015), water resource management system reform (Saleth et al., 2007), transboundary groundwater management (Linton and Brooks, 2011), then the reform of the whole environmental management system (Ivanova, 2012) within the context of sustainable development goals (Orme et al., 2015), etc. are also being discussed. Although some “traditional” issues are still significant (apart from navigation and waterpower, irrigation, etc.) the states are also basically focused on other issues among which are environmental ones (Giordano et al., 2014). Apart from the general conditions one should keep in mind, the exploration of possibilities for cooperation between the states also implies the consideration of the specific regional conditions and practices of implementation of international legal rules in the field of transboundary water resource management as well as in some other relevant fields. The implementation of the principle of equitable and reasonable use of shared natural

resources is of special significance (Lankford, 2013). Integrated water resource management (IWRM), and bringing into accord various uses of water resource use are facing versatile theoretical and practical challenges (de Strasser et al., 2015; Muller, 2010; Allouche, 2016).

In the framework outlined above, the co-operation of the Western Balkan states (WBS) in the field of transboundary water resource management could be reconsidered in the light of various factors which are characteristic for the states in this region. The objective conditions resulting from its geographic position, natural features of the region, the state of the environment and security issues related to this (Todić, 2011) as well as the socio-economic development deserve considerable attention. The paper endeavours to give an answer to the question to what measure the existing international legal framework of co-operation in the field of water resource management in the Drina River basin (DRB) could be regarded as satisfactory or whether the existing state could be improved by concluding of a new international treaty. It considers the current state of international legislations in the field of water resources management which is significant for the three DRB states as well as some determinants which determine the situation in the water sector. It is assessed that the lack of systemically regulated co-operation is one of the key characteristics defining the current state of affairs which has resulted from the establishment of new states after the

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former Yugoslavia ceased to exist. The authors support the opinions that the existing international legal framework is not satisfactory and that proper conditions have been created for its improvement; that the integration of the WBS to EU and the harmonisation of their national legislations with EU legal norms are not sufficient for the improvement of co-operation; that the conclusion of trilateral international treaty between Republic of Serbia (RS), Bosnia and Herzegovina (BiH), and Montenegro (ME) that would regulate IWRM in the DRB would contribute to the promotion of overall relations in the region. Although the term Western Balkans has been recently introduced into the political terminology within the process of EU integration of the states from this region denoting those which were created by the break-up of the former Socialist Federal Republic of Yugoslavia (excluding Slovenia including Albania), for the purpose of this article, the basic subject of the research involves three states in the DRB - BiH, ME, and RS.

## 2. Background information

The significance of the DRB for the three states which are a part of it can be considered in various ways. The three WBS: BiH, RS, and ME whose common natural resource is the Drina River (DR) occupy the central part of the Western Balkans. At the same time, they are a part of the Danube river basin (See Table 1. below). They also belong to the Sava River (SR) subbasin and this river is the biggest right side tributary of the Danube.

As the biggest tributary of the SR, the DR (long 33,567 km) (ISRBC, 2014, 8) is also the state border. It became an international river after the dissolution of the former Socialist Federal Republic of Yugoslavia in the early 1990s. However, the issue of borders between countries is not considered in this paper (Geddes and Taylor, 2016). The DR is formed by merging of the Tara River (the subbasin area amounts to 2005 km<sup>2</sup>), the Piva River (1784 km<sup>2</sup>) and the Lim River (5968 km<sup>2</sup>). The meeting point of the Tara and Piva Rivers is near Šćepan Polje along the border between BiH, and ME, while the Lim empties into the DR near Višegrad. The Lim (the biggest right side tributary of the DR) flows from ME into

**Table 1**  
Basic data on WBS in DRB.

	BiH	ME	RS
Share of Danube RB %	4,6	0,9	10,2
Share of national territory in the Sava RB (%)	75,8	49,6	7,7
Total area of countries belong to DRB % (Portion State territory)	143*	45	7,7
Drina RB belong to countries % (Portion of DRB)	37,1	31,6	30,5
Population in DRB	520 000**	300 000	150 000
Land use in the DRB (%)			
Agricultural land	22,5	15	30
Forest	61	47	40
Other land uses	16,5	38	30
GDP/pc (2015)	4,197	6,415	5,143
Existing dams and hydropower	2 (BiH/RS) 1***	2	5
Protected area, % of DRB	3	7,9	10
Population connected to public water supply % (2015)	556 (2013)	–	82,9
Population connected to waste water treatment system (at least secondary treatment) (2015)	1,8 (2013)	–	106
Waste generated (kg/pc) (2015)	311 (2013)	533	259
Total waste treatment (kg/pc) (2015)	233 (2013)	518	194
Landfill disposal	233 (2013)	488	192

Sources: ICPDR, 2015: 4; ISRBC, 2014: 5; WBG, 2015: 2; UN, 2017, 5 (for land use); WB, 2016; WBG, 2015, 29 (for existing dams and hydropower); WBG, 2017; Eurostat, 2018a, b; Eurostat, 2018c (for data on water supply and waste).

\* In the case of the Republic of Srpska 257%; and 3,2% of the Federation of BiH territory.

\*\* 450 000 in the Republic of Srpska and 70 000 in the Federation of BiH.

\*\*\* Republic of Srpska and Federation of BiH.

the territory of RS near Bijelo Polje, and flows out it near Priboj leaving to BiH where it empties into the DR.

The DRB area amounts to 19,570 km<sup>2</sup> (19,680 according to the WBG, 2015, 2, or 20,319.9 according to the ICRBC 2014, 8) stretching across the following three states: BiH which is divided to two entities (the Republic of Srpska - RSBiH, and the Federation of Bosnia and Herzegovina - FBiH); ME, and RS (Prohaska et al., 2004). According to the data presented in the Water Management Strategy on the territory of the RS 220 km the DR is the border between BiH and RS (MPZZS 2015, 8). Albania occupies a very small part of the DRB.

The basic data show that out of the total area of BH – 14.3% belongs to the DRB (in the case of the RSBiH it occupies 25.7% of its territory and 3.2% of the territory of the FBH); 7.7% of the territory of RS belongs to the DRB while 45% belongs to the territory of ME (WBG, 2015, 2). The biggest part of the DRB belongs to BH (37.1%) of which 31.7% belongs to the RSBiH and 4.2% to the FBH; 31.6% of the DRB belongs to ME, and 30.5% to RS (For other data see Table 1). Almost a million inhabitants live in the DRB.

## 3. The existing international legal framework

### 3.1. Water treaties

The existing international legal framework is one of the general conditions which determine the possibilities for the establishment of co-operation between the WBS and is a starting presumption for perceiving the situation in this field. For the WBS, the membership in several international treaties in the field of water resource management is a general legal framework. Three international treaties are of key importance. These are as follows: The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 1992) (UNECEWC), The Convention on Co-operation for the Protection and Sustainable Use of the River Danube (Sofia, 1994) (DRPC), and The Framework Agreement on the Sava River Basin (Kranjska Gora, 2002) (FASRB). Among other international treaties in the field of water management especially significant for the WBS could be the following: Agreement on the Protection of Tisza River (members are RS, Romania and Hungary), Convention on the Protection and the Sustainable use of the Carpathians (RS, Romania and Hungary), Convention on the Protection of the Mediterranean Sea against Pollution (members are BH and ME, this also including the following neighbouring states: Albania, Romania and Croatia).

All three states are members of the UNECEWC and Amendments to Articles 25 and 26 as well as of the DRPC. Two states are members of the FASRB (BH and RS), while the third state (ME) has regulated its status in this international agreement by signing a special Memorandum of Understanding. As for the membership in the Convention on the Law of Non-Navigational Uses of International Watercourses as a global international treaty, it should be recognised that ME is the only state belonging to the DRB which is a member of this international agreement.

Presenting the results of the analysis which follows it is pointed to several elements that are a part of the three treaties being relevant for water management in the DRB (UNECEWC, DRPC, and FASRB) such as the objectives, object of regulation, and fields of co-operation. Regarding this, one should also mention the principles of co-operation which are regulated by the international treaties. In short, both the UNECEWC and the FASRB point to the principles of equality (“sovereign equality”). These two treaties also involve the principle of mutuality (UNECEWC), or actually “mutual benefit” and “good faith” (FASRB). UNECEWC and the DRPC overlap since they both involve the precautionary principle, the polluter-pays principle and the principle of sustainable development. The FASRB particularly elaborates the principles of reasonable and equitable utilisation, no harm rule and elimination of transboundary impacts on the waters. It directly refers to the EU regulations which also contain the rules that are set down. In the

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