



INTERNATIONAL RIVER WATER LAW: DISPUTES AND SETTLEMENT AT GLOBAL LEVEL

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Abstract

This research paper gives an overview of international water law, which deals with disputes pertaining to river waters. It gives an overview of global trends in water law and policy and looks at how water is being governed around the world right now and explains why water management is still not stable. It gives an overview of how international water is managed presently, how it is evolving, and what legal theories are in motion with respect to changes in international water law. It further focuses on water law and discusses the characteristics of international water law, providing a comprehensive assessment of the state of water law in the present world order. It also looks at how international water law is used around the world, paying special attention to implementation and compliance. It gives an overview of the main organizations and of the Convention. The main objective of the paper is to find out how cooperative processes are enabled, and what role does international law play in these processes. For which the paper is divided as follows:- Firstly, an analysis of the history of water law is carried out. Secondly, a careful perusal of the modern features of international water law around the world is done. Lastly, we look at the changes in international water law. Finally, broader conclusions are drawn out regarding global water law.

Keywords: *Disputes, Transboundary, International Water Law, Convention, Settlement.*

Introduction

Water links us to all facets of our existence. It is a unique and strange substance which is irreplaceable for all forms of life on our planet, which makes it very important. Water is a fundamental determinant of where, in what numbers, and under what conditions human societies live. Surface or underground waters that mark, cross, or are situated on intra- or inter-borders are referred to as "transboundary waters". When transboundary waters flow directly into the ocean, they terminate in a straight line between places on the low-water line of their respective banks. (Bergesen et al.,2018).

Water resources are governed by international water law, and there are different treaties enacted that say how to utilise and conserve water resources. Water disputes may not have led to conflict, but they have been used as a political and military tool. Several upstream and downstream riparian countries did not ratify the convention. Even though most of the regional or basin-level agreements may include some of the articles or principles of the water conventions may still be missing some of the main principles of the conventions, or in some cases, they may include some of the principles that the conventions may be missing. And that explains the fact that riparian countries may have ratified one but not the other. Without any legal protection, it will be hard, if not impossible, for watercourse states to work together to deal with current and future threats caused by human activity and changes in the environment (Loures et al., n.d.).



To meet new water needs, we need new water laws that not only make it easier and more effective to use or move resources and protect the environment, but also work toward achieving social, economic, and other national goals (Caponera & Nanni, 2007).

The Evolution of International Transboundary River Water Law

At the beginning of the 1950s, international lawyers had to figure out what the rules were for using international water resources. There wasn't any consensus regarding this topic. In 1954, the International Law Association (ILA) started working on a set of rules for how international freshwater resources can be used (Bourne, 1996).

Professor Clyde Eagleton of New York University proposed at this time to the ILA's Executive Council that the association constitute a committee to examine this area of international law and give recommendations. The idea was liked, and it was put on the agenda for the ILA Conference, which was held in 1954 in Edinburgh. So, the Conference passed a resolution "highlighting the vast potential importance of the question of rights and obligations between states with respect to groundwater sources" and "resolving to set up a committee under the leadership of Professor Eagleton to study the different legal, economic, and technical aspects of this important subject." This group was originally called "The Committee on the Uses of the Waters of International Rivers," but it soon became known as "The Rivers Committee," which is what it will be called here (Bourne, 1996).

Thus, the ILA began a legal study of how international freshwater resources are used. This study is still going on to this day. The fact that the ILA continues to study international water resources law shows how important the subject is to the relationships between states. All of the major international river disputes of the 1950s, except for the Jordan River, were settled by treaties by 1961. However, as a result of the U.S.S.R. and Yugoslavia falling apart and the liberating of former colonies, the number of international drainage basins has increased, which has increased the probability of future disputes. This area of international law still needs to be made clearer and more in-depth. National courts have also contributed to the evolution of international law (Bourne, 1996).

The Issues of Water Resources Management

The state at the top of the river always claims "absolute territorial sovereignty" at first. This is also called the "Harmony Doctrine," and it means that the state has the right to do whatever it wants with the water, no matter how it affects the other states. Downstream states usually start by saying they have a right to the "absolute integrity of the watercourse," which means that upstream states can't change the amount or quality. When it comes to international drainage basins, the lack of proper conventions and institutional arrangements makes it hard to build projects that use water resources and can sometimes lead to international water disputes.

Water flowing in its natural state recognizes no political or other human boundaries. When there isn't enough water, it becomes a crisis issue that is highly symbolic, contagious, and intense, making it prone to conflict and often tough to solve. So, water has become an issue of international borders and sovereignty as well as a source of conflict between and among communities and people who live close to each other. In a basin whose water must be shared, there are often long distances between the first and last users. This means that the first and last users live in different domains and communities with different languages, cultures, institutions, laws, policies, and attitudes about water. These basic characteristics make water an incomparable political issue.



Water remains a closely guarded subject over which states want to maintain control (Cullet, 2011). The more important water use is for meeting economic and social needs, the more it is required to satisfy those needs, and the more likely people will fight over it. As human societies grew, rules were made about who owned and how to use natural resources so that the community could stay alive and grow.

As a result of these facts, people are becoming more aware of the need to think more carefully about all the problems that come with using water resources. Legal and administrative issues are at the top of this list. It is also clear that programs and activities to improve water resources need to be supported by policies. The main goal of a water policy is to get the most out of the water resources that are available and to manage them in the best way possible. Time has overtaken the laws that gave users a free hand on water, and advances in knowledge and technology have outdated many early types of control. In the search for new sources, people have used a lot of groundwater, trans-basin transfers, water storage and distribution systems of a size that was previously unimaginable, recharging aquifers, recycling water and using treated wastewater. Many countries do not have laws which provide for the management of these new sources or for controlling these projects.

It did this because it was worried about a number of serious international river disputes that had arisen after 1945. India and Pakistan fought over the Indus River. Egypt and Sudan fought over the Nile River. Israel and its neighbours fought over the Jordan River. And Canada and the US fought over the Columbia River. In these cases, the international legal rights of the involved states to use the rivers' water were at stake. The upstream states had different ideas about the law than the downstream states (Bourne, 1996). This difference in opinions shows that there is an urgent need for a clear statement of international law that applies to how international rivers are used. A shared understanding of this law would have made it much easier for the disputes to be settled peacefully, and it would also have made it less likely that similar disputes would happen again in the future. Transboundary agreements usually set out the same rules and principles for how the states that share a river should protect and use the water (Wouters, 2013).

Principles of International River Water Law

For judicial purposes, the many uses of international rivers and lakes have been separated into two categories: navigation and non-navigation. The major cause of this split is the development of two independent bodies of international law, one for each application. Beginning in the early 19th century, rules emerged to govern navigational usage. At the time, navigational uses were given more attention, and it was easier for people to agree on rules for navigational uses. True, the first navigational use treaty was signed at the turn of the nineteenth century, and it was followed by several more. Even though there are some basic customary rules, there is no worldwide agreement on how international waterways can be used for things other than navigation (Salman, 2007).

The Helsinki Rules don't say that the water of international rivers can't be taken from where it naturally flows, but they understand that this is legal if the state is using the water in a fair and reasonable way. Article V says that the principle of equitable use must be used in a way that takes into account all relevant factors. Article IV's commentary says that a use "must be economically or socially valuable", as opposed to, for example, a state diverting water to bother another state. So, the Helsinki Rules can be used to prove that it is legal to move water from one place in the drainage basin to another. What are the rules about taking water out of its natural flow? The people who made the Helsinki Rules didn't directly answer this question, but it could be argued that the rules support the legality of these diversions as long as they are seen as "relevant factors" in figuring out a state's share of the beneficial uses of the basin's water (Tarlock, 2008).



There are some basic rules of international water law applicable to transboundary water resources. These rules and principles give countries a way to work together to make sure that transboundary waters are managed in a fair and sustainable way. Similar draft articles that are only about transboundary groundwater aquifers are currently being talked about and negotiated. Compared to the UN Watercourses Convention, they are still in the early stages of being recognized around the world.

1. The principle of equitable and reasonable utilisation

This was an important addition to international law about water resources. This principle is a component of the limited territorial sovereignty theory. Article 4 of the Helsinki Regulations from 1966 and Article 5 of the United Nations Convention on Waterways from 1997 say that it gives each river basin state the right to share its water resources fairly and equitably for good reasons within its own territory. Equal rights and shared sovereignty form the basis of equitable and reasonable utilisation, which does not necessarily entail an equal share of the waters.

Since then, the ILA has based its work on the idea that this principle is the fundamental law. The more specific rules it has made since then are just more precise ways of saying what the principle is. People think that the best way to manage these waters is to follow the principle that says the benefits of water in an international drainage basin should be shared in a fair and reasonable way.

Article V of the Helsinki Rules, Article VI of the UN Watercourses Convention, and Article XIII of the Berlin Accounts Behaviour all say that a fair and reasonable share should be based on the basin's geography, hydrology, the number of people who depend on the water, economic and social needs, how the water is used now and how it might be used in the future, natural climate and ecological factors, and the availability of other resources (Katta, n.d.). It calls for a harmony of values that takes into account the requirements and purposes of each riparian state. There is a lot of evidence for this idea in the way states act, the decisions of the courts, and international law. So, equitable use is based on the idea that an international drainage basin is a single legal and management unit.

2. An obligation not to cause significant harm

This rule says that each country shouldn't do "substantial damage" to the environment or the natural state of the water outside of its own borders. This is often referred to as the "no harm" rule. The rule has been codified several times, most influentially in the Helsinki Rules of 1966. The International Law Association made other rules for things that the Helsinki Rules didn't cover directly or well enough, such as flood control (1972), pollution (1972 and 1982), navigability (1974), and protecting water installations during wartime (1975). Armed conflicts (1976), joint administration (1976 and 1986), flowage regulation (1980), general environmental management concerns (1980), groundwater (1986), cross-media pollution (1996), and remedies (1996) are some of the issues that have been addressed. Some people think that the International Law Association also came up with a second rule for how to manage internationally shared water resources. The organization didn't try to figure out how the "no harm" rule and the "equitable use" rule related to each other, which would cause a lot of confusion and trouble in the future (Dellapenna, 2006).

Lastly, the Helsinki Rules say that information should be shared between countries and that there should be rules for preventing and solving conflicts. The rule that says people should share information has become a requirement under the UN Watercourses Convention and has been added to a number of other international laws that deal with water resources. The Berlin Rules of 2004 are an attempt to change the Helsinki Rules. But while the Helsinki Rules were based on current international water law, the Berlin



Rules focus on recent changes and trends, especially how water resource management is becoming more aware of the environment.

3. Principles of notification, consultation and negotiation

Any riparian state in a shared watercourse with another riparian has the right to know in advance how that use may affect its rights or interests. It also has the right to consult with the other riparians and negotiate. Article 3 of the International Law Association's (ILA) Complementary rules applicable to international resources, which were approved at the 62nd conference held in Seoul in 1986, says that "when a basin State proposes to undertake or to allow the undertaking of a project that may significantly affect the interests of any co-basin State, it shall give notice of the project to such State or States." The notice must include enough information, data, and specifications to figure out how the project will affect things. Most modern international water conventions, treaties, and agreements include these principles. These include the 1966 Helsinki Rules (XXIX [2], XXIX [3], XXX, XXXI), the 1997 UN Watercourses Convention (Articles 3.5, 6.2, 11–19, 24.1, 26.2, 28, 30), the 1960 Indus Waters Treaty (Articles VII [2], VIII), the 1995 SADC protocol on shared watercourse systems (Articles 2.9 (Article 10)). Modern international environmental conventions and declarations, such as the Rio Declaration on Environment and Development (Principles 18, 19) and the Convention on Biological Diversity (1992), also agree with these principles (Article 27.1) (Katta, n.d.).

4. Principles of cooperation and information exchange

It is up to each country that borders an international waterway to work together and share data and information about the way the waterway is being used now and what plans are in place for the future. Articles XXIX and XXXI of the Helsinki Rules from 1966 and Articles 8 and 9 of the UN Watercourses Convention from 1997 make these rule a must.

5. Settlement of disputes in a peaceful manner

This theory says that all countries that share a waterway should work together to solve a problem. If the parties can't come to an agreement through talks, the problems will be solved peacefully.

Most modern international water conventions, treaties, and agreements include this principle. For example, the 1966 Helsinki Rules (Articles XXVI–XXXVII), the 1997 UN Watercourses Convention (Article 33), the 1960 Indus Waters Treaty (Article IX, Annexure F, G), the 1995 SADC protocol on shared watercourse systems (Article 7), the 2002 Sava River Basin Agreement (Articles 1, 22–24, Annex II), the 1996 Maha (Article 22, Annex IV). Modern international environmental conventions and declarations, such as the Rio Declaration on Environment and Development (Principle 26) and the Convention on Biological Diversity (1992), also recognise this principle (Article 27, Annex II) (Katta, n.d.).

Role of International Organisations in River Water Dispute Settlement

As shared water resources are so important and could cause problems, many of the United Nations (UN) agencies are working on a wide range of projects to manage water and make it easier for governments to work together. Water cooperation has helped keep fights from getting out of hand because there are more opportunities to work together than there are to fight (Dellapenna & Gupta, 2009). The UN Secretariat has put out books to help states work together to develop shared water resources. It has also helped design, set up, strengthen, and support intergovernmental water resources institutions to make it easier for countries to work together across borders. In 1969, a group of experts got together to study the legal and institutional aspects of developing international water resources. The



panel talked about how important it is to not only make sure that the United Nations has the right rules for managing international non-marine water resources but also the states that share the same water basin have the right administrative systems in place(Caponera, 1985).

At the 1972 U.N. Conference on the Human Environment, which was held in Stockholm, a number of water-related principles were also announced as part of the larger goal of protecting the human environment. For example, both Principle 24 and the Action Plan, for example, say that international cooperation through multilateral or bilateral agreements is a must. relations to protect and improve the environment. Outside of the UN, the number and complexity of intergovernmental agencies that share responsibility for managing water resources have grown. The Organisation for Economic Cooperation and Development (OECD), which is made up of eighteen European countries, is one of the best. The main goal of the OECD is to promote policies that will help the economy grow while keeping the financial system stable.

Conclusion and Way Forward

The rules and principles of international water law that are laid out in this section are not yet set in stone. International law also helps states set up the right procedures and tools for working together and running things together. International law also helps states set up the right procedures and tools for working together and running things together. Virtual and in-person meetings that focus on water issues could help people in different countries and parts of society understand the UN convention from 1997 better. Dialogues within the same basin and between basins would definitely help bridge the gap between riparian countries and get them closer to the goal of coming to a wider agreement on where they agree and disagree on the 1997 UN Convention. If a given legal and institutional arrangement is strong enough and simultaneously flexible enough to handle even big changes in the basin without making it harder for riparian states to work together, it may go a long way in redressing the issues at very earlier stages.

While each state has sovereign control over international rivers within its borders, this control must be exercised with due regard for the effects on other riparian states. It is not possible to "propose uniform detailed regulations for all countries and all river basins" because "the diversity of conditions in different river basins is very great." The problems that need to be solved by water laws vary from country to country, and some countries may have bigger problems than others. Still, even though there are differences and the law needs to be changed to fit the needs of each country, there are some rules that apply to all water laws and some problems that may have the same solution. It is clear that good water administration is needed to make sure that the rules in a water act or code are followed.

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