The Basic Principles of International Water Law

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5th Nile Basin Development Forum
October 25, 2017
Structure of the Presentation

- Definition & Uses of International Watercourses
- Challenges facing international watercourses
- Evolution of International Water law
- UN Watercourses Convention: history, status & Basic principles
  - Equitable and reasonable utilization
  - Obligation not to cause harm
  - Notification
  - Environmental provisions
  - Dispute settlement
- Conclusion
Definition and Uses of International Watercourses

Definition of International Watercourses: surface waters (rivers, lakes & tributaries), and groundwaters shared by two or more states

Uses: three main uses:
- As boundaries between states
- Navigational Uses
- Non-navigational uses

Uses distinguish between surface and groundwaters (latter only for non-navigational)
International Watercourses as Boundaries

- Boundaries are generally set by treaties
- Different theories set by Treaties:
  - Thalweg – the deepest points of the river
  - The middle points of the river
  - On one of the banks of the river
  - The river as a condominium
- Rivers and lakes change their courses
  - Drought, floods, emergence, disappearance and re-emergence of islands
International WC as Boundaries
International Watercourses as Boundaries

Cases decided by the International Court of Justice interpreting treaties:
- Namibia/Botswana - Kasikilu-Sedudu Island
- Niger/Benin Frontiers – Niger river
- Nigeria/Cameroon – Lake Chad
- Nicaragua/Costa Rica - San Juan river

Other Disputes
- Mekong River – Lao PDR and Thailand
- Orange River – South Africa-Namibia
- Migingo island – Lake Victoria, Kenya-Uganda
Navigational Uses

- The earliest, oldest and cheapest of uses
- Ferrying of people and goods on boats and steamers within and across countries
- Treaties adopted for dealing with navigation
  - Act of Congress of Vienna 1815, Act of Congress of Berlin 1885, Barcelona Convention 1921
- Customary International law established freedom of navigation for states sharing the river or lake on reciprocal basis
- Navigational uses lost importance after industrial revolution – new modes of transport
Non-Navigational Uses

- Irrigation, dams
  - Largest user, 75% - 80% world-wide
- Hydropower generation, dams
- Domestic and municipal uses
- Industrial uses
- Waste dumping, pollution
  - Industrial, sewage, agricultural run-off
- Fisheries
- Other resources – methane gas
- Bio-diversity, ecosystem protection
- Religious activities
- Recreational activities
Water for:

Rural

Cities

Irrigation
Water for:

- Energy
- Transport
The Ganges River – India - Religious Ceremonies
Challenges Facing International Watercourses

- Steady increase in population
  - From 1.6 to 6.1 billion during last century
  - 2016 = 7.5 billion; 9 billion by 2050
- Urbanization, industrialization
- Climate change
  - Floods and drought
- Environmental degradation
- Temporal and spatial variations
- Poor management, pricing
- Large number of international watercourses
Historical global population growth

![Graph showing historical global population growth from 1750 to 2050 with a significant increase in the late 20th century.]
Global Population Growth

Historical View of Population Growth from 1 A.D. to 2000 A.D.
Projected Population Growth -2050

Source: UNFPA
Population Growth: urban/rural

Source: UN Population Data
Decline of Water Availability

![Graph showing the decline of water availability in different regions over time. The graph indicates a significant decrease in per capita availability, particularly in developing countries, arid regions, and developing countries, humid regions, compared to 1950. Source: World Bank 2002a.]
Challenges Facing International Watercourses

- Large number of shared watercourses
  - About 300 rivers, 100 lakes, and 300 aquifers shared by two or more states
- Many basins are without agreements
- When agreements exist, most are not inclusive of all riparians
  - Validity of some are even challenged - Nile
- UN Watercourses Convention entered into force only in August 2014
- Largely unilateral development plans
Major Shared Rivers & Riparians

- Danube: 16 countries
- Rhine: 11 countries
- Nile: 11 countries
- Congo: 9 countries
- Niger: 9 countries
- Zambezi: 8 countries
- Amazon: 8 countries
- Mekong: 6 countries
- Volta: 6 countries
- Jordan: 5 countries
Evolution of International Water Law
UN Watercourses Convention

- Early work of the United Nations on IW
- GA Resolution 1401 of 1959
  - Preliminary studies to determine if the subject is appropriate for codification
  - Study completed in 1963
- GA Resolution 2669 (XXV) of 1970
  - Progressive development and codification of the rules of international law relating to international watercourses –
  - referring matter to International Law Commission ILC
    - UNGA legal arm
Evolution of International Water Law
UN Watercourses Convention

- ILC Work started in 1971, completed in 1994
  - 23 years, 5 rapporteurs, 15 reports
- Sixth Committee convened as a working group of the whole
  - Issued 9 statements of understanding
- UNGA adopted Convention on May 21, 1997
  - 103 for, 3 against, 27 abstentions
  - Burundi, China and Turkey voted against Convention
  - Opened for signature until May 20, 2000
- Entered into force on August 17, 2014
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UN Watercourses Convention

- A Framework Convention to be complemented by agreements between the parties
  - Aims at ensuring the utilization, development, conservation, management and protection of IW, and promoting optimal and sustainable utilization.
- Most provisions reflect customary international law
  - Binds states whether members to the Convention or not
- Main areas addressed by Convention:
  - Definition of watercourse, watercourse state
  - Equitable and reasonable utilization & participation
  - The obligation not to cause significant harm
  - Notification for planned measures
  - Environment protection & preservation
  - Dispute settlement
Definitions

❖ Watercourse
❖ a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus
❖ Other types of groundwater?

❖ International Watercourse
❖ a watercourse parts of which are situated in different States
Definitions

Watercourse State

a State Party to the present Convention in whose territory part of an international watercourse is situated
Equitable and Reasonable Utilization and Participation

Watercourse states shall utilize the international watercourse in an equitable and reasonable manner.

Watercourse States shall participate in the use, development & protection of an international watercourse in an equitable and reasonable manner.

Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith.

Cooperation is the cardinal principle of international water law.
Equitable and Reasonable Utilization

Factors for determining equitable and reasonable utilization of an international watercourse include:

- Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character
- Social and economic needs of the watercourse states
- Population dependent on the watercourse in each state
- Effects of the use or uses of the watercourses in one watercourse state on other watercourse states
- Existing and potential uses of the watercourse
- Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect
- Availability of alternatives, of comparable value, to a particular planned or existing use

The weight to be given to each factor to be determined by its importance by comparison with other factors
Prevention of Significant Harm

- A riparian must do its best not to cause significant harm to another riparian sharing an international watercourse – another aspect of cooperation.

- If despite its best efforts significant harm is nevertheless caused, it must again do its best, in consultation with the other riparians involved, and having due regard for equitable and reasonable utilization, to eliminate or mitigate such harm, and to discuss compensation.
Prevention of Significant Harm

- The obligation applies to both quantitative and qualitative effects
- The obligation applies to both upstream and downstream riparians
  - Implications on notification requirement
- This obviously requires cooperation between the states involved
- The obligation subordinates the principle of equitable and reasonable utilization
Harm Possible by Both Riparians

- The widely-believed assumption: harm flows from upstream to downstream, with the water.

- In fact, as an international watercourse is increasingly developed by a downstream state, the scope for development upstream shrinks progressively.

- Result: harm through foreclosure of future uses.
  - Prior uses and claiming of right to such uses by the downstream riparian – quantity issue.
Relationship Between the Two Principles

Equitable utilization is recognized by the International Court of Justice (ICJ) (*Gabcikovo Nagymaros, Danube* case, Hungary/Slovakia, September 1997) as fundamental:

- There is a “basic right to an equitable and reasonable sharing of the resources of an international watercourse.”

- The “proportionality” and “perfect equality of all riparians” concepts under international law.

- No mention by ICJ of obligation not to cause significant harm.
Notification of Planned Measures

- Obligation to exchange information and consult, and if necessary negotiate on possible effects of planned measures
- Notification of other states (both upstream and downstream) of planned measures which may have significant adverse effects, accompanied by data & information
  - Period for reply, obligation during this period
  - Reply to notification, absence of reply, objection
  - Procedures in absence of notification
  - Indirect procedures
- In case of an objection
  - Negotiations – fact finding
Environmental Provisions

- Obligation to protect and preserve the ecosystems of the IW
- Obligation to prevent, reduce and control pollution of IW which may cause significant harm to other watercourse states
- Obligation to take measures to prevent introduction of alien or new species
- Obligation to take measures to protect and preserve the marine environment
Resolution of Disputes

- Negotiations – diplomatic route
- Joint mechanism - Commission
- Good offices, mediation, conciliation by a third party
  - World Bank – Indus Waters Treaty
- Impartial Fact Finding
  - Detailed rules for a fact finding commission
  - Report to be considered by parties in good faith
- Parties may decide at time of ratification to:
  - Refer dispute to International Court of Justice
  - Refer dispute to Arbitration (Annex to Convention)
Conclusion

- International water law is a law of cooperation
  - Cooperation/cooperate mentioned 15 times in UNWC

- The basic principles of the UN Convention reflect customary international law
  - Equitable and reasonable utilization
  - Obligation not to cause significant harm
  - Notification of planned measures
  - Peaceful settlement of disputes

- These principles are binding whether a state is a party to the Convention or not
Thank You

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