

Water Resources Management Legal Perspectives

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Outline

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Background note: International law and transboundary freshwater

International law regulates riparian rights:

- Delimitation of boundary between states separated by watercourse
- Rights of navigation
- Allocation of shares
- Prevention of pollution

Sources

- Specific treaties: bilateral and regional
- Framework treaties: 1997 UN Convention on the Law of the Non-navigational Uses of International Watercourses
- "Customary international law:" state practice reflecting sense of obligation
- Interpretation of above sources by domestic and international courts, primarily the ICJ (1997 judgment concerning the Danube)
- Interpretations/pronouncements by public and private expert legal bodies (ILC, ILA)
- UN General Assembly resolutions? (Res 63/124 (2008) on "The law of transboundary aquifers")

2. Definition of transboundary freshwater

1997 UN Convention, Article 2:

- (a) "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;
- (b) "International watercourse:" a watercourse, parts of which are situated in different States;

UN GA, Res 63/124, Article 2 (c):

“transboundary aquifer” or “transboundary aquifer system:”
an aquifer or aquifer system, parts of which are situated in
different States

3. Status of transboundary freshwater

Sovereignty subject to obligations or shared ownership?

- UN convention: silent
- ICJ in 1997 judgment:
 - " the Danube is ... a *shared* international watercourse."
 - " The Court considers that Czechoslovakia, by unilaterally assuming control of a *shared resource*, ... failed to respect the proportionality which is required by international law."
 - Invokes "the concept of *common utilization of shared water resources*"
- But: GA on transboundary aquifers:
 - "Each aquifer State has *sovereignty* over the portion of a transboundary aquifer or aquifer system located within its territory. It shall exercise its sovereignty in accordance with international law and the present articles."

4. Basic rules

Substantive:

- Equitable, Reasonable & Sustainable Utilization
- Obligation to eliminate, mitigate or compensate for "significant harm"
- Human right to water

Procedural:

- Obligation to cooperate: exchange of information on conditions & planned measures, consultation, peaceful settlement of disputes
- Joint management?

5. Joint management

The obligation:

UN convention: "watercourse States *may consider* the establishment of joint mechanisms or commissions, *as deemed necessary by them*, to facilitate cooperation on relevant measures and procedures."

ICJ in 1997 judgment: the parties must "find an agreed solution that takes account of the objectives of [their bilateral 1977 treaty], which *must be pursued in a joint and integrated way*" "Re-establishment of the joint régime will also reflect in an optimal way the concept of common utilization of shared water resources"

GA Res on aquifers:

Article 7: "To attain equitable and reasonable utilization and appropriate protection of their transboundary aquifers or aquifer systems [...] aquifer States *should* establish joint mechanisms of cooperation."

Article 14: "... A joint management mechanism *shall be established, wherever appropriate.*"

6. Principles of Joint management

- Accountability, transparency, reason-giving
- Public Participation
- Representation

Standards set by Aarhus Convention 1998 (on Access to Information, Public Participation In Decision-making And Access To Justice In Environmental Matters, World Bank policies, etc.

- Equality, human rights, minority rights

7. Examples

a) IJC, International Joint Commission, 1909, as adjusted over the years (The Great Lakes and the St. Lawrence River):

- Public hearings, workshops, etc: deliberations among stakeholders
- Public advisory bodies advising and mediating between the population and the political institutions

based on Andreas Klinke, *Deliberative Transnationalism — Transnational governance, public participation and expert deliberation* (2009)

In this region:

b) Joint informal Israeli-Jordanian regulation of the use of the Yarmuk river , formal Joint Water Committee under 1994 Peace Agreement

c) Israeli-Palestinian Joint Water Committee under the 1995 Interim Agreement

d) Local level: The Alexander River Restoration Administration

Based on 1996 Agreement between the Regional Council of Emek-Hefer (Israel) and the municipality of Tul-Karem, (in the Palestinian-controlled area of the West Bank)

status: informal, funded by German government aid

Thank you