

International Water Law

1. General Introduction, and
2. Current Status

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Historical Evolution

- Hugo Grotius wrote *Mare Liberum* -Freedom of the Seas (1609)
- The Act of the Congress of Vienna, 1815
- Navigational (Ship): Single user and all riparians reciprocal basis
- Non-Navigational Uses (irrigation, hydro-power generation, industry)
- The General Act of Congress of Berlin, 1885
- The Madrid Declaration by the Int'l Law Asso., 1911: both navigational and non-navigational

Historical Evolution.....

➤ The Peace Treaty of Versailles, 1919

- All navigable rivers in Europe to all the European countries

➤ The Barcelona Convention, 1921

- Confirmed principle of freedom of navigation

➤ The Geneva Convention on Hydrolic power, 1923

- Affecting more than one state

➤ PCIJ: The Oder River Case, 1929: Jurisdiction of the Int'l Com. of the River Oder extended to the of sections of the tributaries of the Oder

Evolution of Rules

➤ The Institute of Int'l Law

- The Salzburg Resolution, 1961: Equitable utilization; Riparian state's use without concern to other state

➤ The Int'l Law Association work, 1966: The Helsinki Rules on Uses of the Waters of Int'l Rivers

- Based on the principles adopted by the Asso. at its Conferences held in Dubronik, NY and Tokyo
- These rules were included in the 1997 UN Convention
- The Asian African Legal Consultative Committee (AALC) recognized them as customary int'l law

➤ 1972: Articles on Flood Control

Evolution of Rules...

- 1976 (Madrid): Rules on Administration of Int'l W.C.
- 1980 (Belgrade): Two sets of rules
 - Regulation of the water of Int'l W.C. and Relations of IWC with other natural resources
- 1982 (Montreal): Articles on Water Pollution in an Int'l Drainage Basis
- 1986 (Seoul): Complementary rules on IWR, included groundwater
- The Convention on the Protection and Use of Transboundary Watercourses and Int'l Lakes (1992, Helsinki) (Water Convention) entered into force in 1996: Initially for the countries in the region of UN Economic Commission for Europe; now open to all UN Member States

The UN Watercourses Convention

- The UN Convention on the Law of the Non-Navigational Uses of International Watercourses
 - Adopted on 21 May 1997 by the UNGA (Reso. 51/229) by vote 103 yes-3 against-27 Abstained.
 - Entered into force on 17 August 2014, current State Parties 36 as of 24 July 2018.
- Codified customary international law principles
- 7 Parts, 37 Articles and Annex Arbitration of 14 Articles

Salient Features of UNWC

- Define “Watercourse” as surface and groundwater
- Article 5: *Principle of Equitable and Reasonable Utilization and Participation*
- Art.6: *Factors relevant to equitable and reasonable utilization*
- Art.7: *Obligation not to cause significant harm (“No harm rule”)*
 - Take appropriate measures; obligation to co-operate-
Joint Mechanism for exchange of data, information

UNWC....

- **Part III:** *Planned measures (9 Articles):*
Notification, period of reply, absent of reply, consultation and implementation
- **Art.21:** *Prevention, reduction and control of pollution* (Provisions for environment)
- **Art.33:** *Settlement of disputes* by peaceful means: negotiation, good offices, mediation, conciliation, arbitration or ICJ
- **Art.36:** *Entry into force*-35th instrument of ratification (Viet Nam, May 2014), State of Palestine 36th Party.

Acknowledgement and Practices of UNWC

- *The Gabčíkovo-Nagymaros case (Hungary V. Slovakia, ICJ, 1997)* : Referred to the UNWC, particularly Art.5
- Revision of the Southern African Development Community Protocol on Shared Watercourse system to incorporate the UNWC's Principles
- The World Commission on Water and the World Commission on Dams endorsed the Conv.
- *The Pulp Mills Case (Argentina V. Uruguay, ICJ, 2010)* also referred the UNWC.

UNWC in South Asian context

- At UNGA, Nepal and Bangladesh voted in favor and three countries Burundi, China and Turkey voted against.
- India and Pakistan abstained
- India's reservation:
 - Art.3:Watercourse agreements
 - Art.5 : Equitable Utilization
 - Art.32: Non-discrimination
 - Art.33 Dispute Settlement
- Pakistan reservation:
 - Art. 2:Definition of groundwater
 - Art. 7:Obligation not to cause significant harm
 - Art.23: Protection and preservation of the marine environment
- The Indus Waters Treaty between India and Pakistan Sept.19, 1960
- India-Nepal Water Treaties: Koshi, Gandak and Mahakali
- India-Bangladesh Farakka Barrage Treaty
- Approaches for bilateral, trilateral, regional and multilateral cooperation

Some Complementarities of the Two Conventions (UNWC and the 1992 Water Convention)

- Both Conventions are framework convention
- River basin specific agreement can be made as per the need of the ground
- One country can be party to the both Conventions
- Provisions for factors related to equitable and reasonable utilization, procedures for consultations on planned measures and occurrence of transboundary impact
- Specific agreement and tasks of joint bodies (the 1992 Conv.) complement the UNWC.

Conclusions

- Int'l river basins account for about 50% of the earth's land surface and generate nearly 60% global freshwater flow.
- Transboundary water cooperation is vital to prevent conflicts and for effective and sustainable use and management of shared resources
- Global population growth, rapid urbanization, increasing industrialization, agricultural intensification and tourism putting water resources under stress.
- Further aggravated by climate change and hydrological extreme events (droughts and floods)
- By 2025, 1.8 billion people predicted to be living in regions with pressing water-scarcity problems
- Cooperation between countries essential to manage water resources effectively judiciously.