



Discussing Water Rights, A Western Pastime

A foundational point

- The treaty is a vital cornerstone of international law
- The **stability** of treaty regimes is essential, as demonstrated in *Gabčíkovo-Nagymaros Project* (1997 ICJ)
- Yet the increasingly rapid and fundamental changes being brought by climate change demand **flexibility**
- Reconciling these two values, stability and flexibility, will be one of the greatest challenges of our time

The regular exchange of data and information relating to international watercourses will contribute to meeting this challenge

- Regular communication concerning the condition of shared freshwater resources is essential
- The obligation to do so rests most fundamentally on the duty to cooperate

Equitable and Reasonable Utilization

- However, an obligation to exchange relevant data and information is also derivative of the fundamental obligation of **equitable and reasonable utilization**
- In *Gabčíkovo*, the International Court declared there is a “**basic right** to an equitable and reasonable sharing of the resources of an international watercourse.” (1997 ICJ p. 54)

But how can a State realize this right, and fulfill the corresponding obligation, without knowing what's going on in co-riparian States?

- The short answer is, it cannot, as a practical matter.
- “Equitable utilization” connotes a **fair balance of uses**
- But a state cannot realize its rights, or fulfill its obligations, without knowing what's going on at the other end of the balance

Enter the package of obligations under the umbrella of Exchange of Data and Information

- These obligations provide co-riparian states with the tools they need to ensure that they comply with their obligations, and enjoy their rights, with regard to shared freshwater resources

I use the word “package” of obligations advisedly

- There are two sets of obligations under this umbrella:
 - The obligation to exchange hydrological, and related, data and information; and
 - The obligation to provide prior notification of projects that have significant adverse effects on other riparian States
- Increasingly, the two sets of obligations are grouped together under the category of the exchange of data and information

The International Court
emphasized the importance of
these “procedural” obligations in
Pulp Mills (2010 ICJ)

The most effective way of fulfilling these obligations is through a joint mechanism

- This is demonstrated clearly by the experience of India and Pakistan with the Permanent Indus Commission, established by the 1960 Indus Waters Treaty
- The Commission serves as the “regular channel of communication on all matters relating to the implementation of the Treaty, and, in particular, with respect to [cont.]

[cont.]

(a) The furnishing or exchange of information or data provided for in the Treaty; and

(b) The giving of any notice or response to any notice provided for in the Treaty.” (IWT, Art. VIII(1).)

I am sure we will hear much more about the value of joint management mechanisms in facilitating the regular exchange of data and information of various kinds, but this particular mechanism is a striking example of the effectiveness of such mechanisms, even under otherwise difficult circumstances.

Thank you!