The Role and Effect of Freshwater on International Law Security and Peace

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Abstract
Due to population growth and increasing water demands and shortage of water resources that caused involvement of governments and with regard to economic and socio-political factors specific to each river shared by many international governments and large populations rely on them for feed and subsistence and survival and continuity of river and its ecosystem, Growth, development and promotion of this branch of public international law that international Freshwater law is very necessary. As it is, this branch of law has close relationship with crucial and important issues of public international law, including international environmental law, human rights, humanitarian and conflict law, international economic laws and other issues. As we have seen in many definitions and concepts of international law, Freshwater has borrowed from the principles of customary international law. Conservation of International River’s Ecosystem, peaceful and fair relations, cooperation on the basis of sovereign equality and conservative management or fair use of the rivers all are issues in this branch of international law that development and expansion of each of these concepts, observation and growth of international freshwater law and growth of international freshwater law help the continuation and dynamics and deep understanding of the concepts and practices in government relations. So governments in order to more and better support of watercourse-related conventions and conclusion or satisfying regional agreements, should take more effective step in order to keep peace and security.

Keywords: international law, freshwater, security, peace, conflict.
Introduction:

It is expected that world population increase from 7 billion to 10 billion by 2025 and the indiscriminate use of water resources will follow this increase. Human being inevitably is forced to use more water resources to supply food and water. As we know, available waters for human which are hydric water constitute about 3% of the world's water. The remaining water resources are not useful and desirable for mankind and meeting his needs. Most of the Earth's surface is covered by oceans. 97% of visible and obvious water is salty and 2% of it is frozen and only one per cent can be used as fresh water. Important rivers of the world are only divided among several countries that this unequal geographic distribution is one of the challenges confronting human. 9 countries have divided almost 45% of the world’s annual share among themselves and there isn’t a balanced geographic distribution in them. In India there are many differences between the plains and the Himalayas. In China water freezes for several months and in the Amazon that constitutes 15 percent of the world's fresh water, its North East suffers from drought.

Climate change, increasing the temperature mean in different parts of the world, changing patterns of human consumption and changing farming methods, increasing irrigation levels for food and feed, population growth have prompted opportunities for study and research in the field of public international law that is called Freshwater International Law. This branch of international law is formed around several principles of international customary law and some international conventions and document that of course, a large number of bilateral and multilateral agreements should also be added. Since 1945, nearly 300 Treaties on the theme of resource allocation and management of water in Border Rivers have been concluded. Customary law and international conventions contain several diverse topics such as shipping, hydroelectricity; fight pollution, Regulation and water rationing and agreement on water use and sharing of resources and several other issues.

This branch of international law is linked with important issues of international law such as international environmental law, human rights and the principles of customary law and important classical doctrine.

1. Definition of international Freshwater law:

International freshwater laws are international legal norms that specifically apply to international watercourses or are important for their use. So according to this, current
objectives of this field includes a commitment to the peaceful settlement of disputes, human rights related to water, human rights of indigenous peoples, customary human rights and local population.  

2. formation of water-related international law and relevant documents

2.1. classic doctrine:

Water-related International Law was created at the end of the nineteenth century and was formed based on the concept of territorial sovereignty. Since then, two doctrines are in competition with each other: Harmon doctrine that is known with the name of United States of America Attorney General and was created at the end of the nineteenth century and was formed based on unlimited territorial sovereignty and other doctrine that is based on unlimited territorial integrity. Harmon Doctrine was created when a dispute between the United States and Mexico on the Rio Grande river water allocation occurred on the border between the two countries.

2.2. Customary law principles:

Customary law related to water significantly developed in the twentieth century which introduces a set of principles that weakened the doctrine of territorial sovereignty or unlimited territorial integrity. 5

Principles such as public interest, limited territorial sovereignty, the principle of reasonable and equitable use of watercourses that were repeated in the Convention of the United Nations watercourses and several regional agreements are result of that period.

2.3. Declaration

Stockholm Declaration on Environment and Development of 1972 declared a series of principles that later were repeated in the next several conventions and declarations, including the Rio Declaration on Environment and Development.

Principle 21 of the Stockholm Declaration has recognized right of governments to exploit the water resources in their territory, so that this operation does not cause damage to neighboring states and provides a reasonable balance between sovereignty over water resources and their protection. 6

Principle 24 of the Stockholm Declaration invites governments to cooperate and to ensure environmental protection.

Principle 19 of the Rio Declaration: The principle says that governments should inform governments can be affected of their actions before and at the right time and communicates all adequate information about the activities that can seriously affect their border rivers.  

2.4. International agreements and treaties:

Several international agreements and treaties have been signed in particular with regard to water that contains provisions relating to water resources. A detailed study of the legal documents is outside the scope of this article but the most important of these conventions are Environmental Change Convention, the Convention on the protection and use of Border Rivers and international lakes and the Convention on the Rights of the use of international rivers for other than navigation purposes. 

Convention on the use of international rivers other than navigation purposes after 27 years of work adopted by the International Law Commission, finally the UN General Assembly and finally came into force on 17 August 2014 by approving of 35 countries.

Another convention related to this field of law is the UN Economic Commission for Europe Convention on the Protection and Use of Transboundary watercourses and International Lakes Convention (ECE) which can hardly be considered an international convention because involve governments in the ECE region and therefore is discussed at the same level.

2.5. Regional Agreement

These agreements that have been signed between the governments of an international river, although are not comprehensive regional agreements have played an important role in desirable management and utilization and adjustment of disputes which can be mentioned a few of them:

1. treaty Amazon
2. Convention on Cooperation for the Protection and Sustainable Use of the Danube (Danube Convention)
3. Agreement on Cooperation for Sustainable Development of the Mekong River Basin (Mekong Agreement)
4. Agreement on Murray – Darling basin (Murray - Darling Agreement)
5. Boundary water treaty between the United States and Canada

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6. Convention on the Volta River situation

Some of which are bilateral and some are multilateral.11

3. A brief overview of Convention on use of the International river other than navigation purposes of New York 1977

This convention is undoubtedly an expression of the main norms of customary international law related to international watercourses.

According to article 1 of the Convention, the convention aims to protect, maintain and manage international watercourses and their waters other than navigation purposes. Article 5(1) of the Convention (first normative paragraph of the Convention) states fair and reasonable exploitation that are the principles of customary international law related to watercourses. Commitment to cooperation, No significant harm, fair and reasonable use, commitment to regularly transfer of information in relation to the conditions of watercourses all are principles of customary international law that has been crystallized in different articles of convention. UN Watercourses Convention does not mention to Human Rights to Water but in Article 10 of the Convention states that particular attention must be given to the requirements of fundamental human rights that Senegal River Water Charter explicitly referred to the human rights to water.

4. organization of international law freshwaters

Many organizations are formed for protection and conservation of water resources and execution or modification of regulations related to water courses. The most important role is regulatory and functional role. It can be noted to regional organizations, international organizations established by multilateral agreements, international courts of disputes settlements, public and private international financial institutions. But categorization of these organizations is useful according to their supervisory role.

4.1. UN agencies

Some United Nations agencies that are active in the water courses are as follows: UNDP, UNESCO, UNEP, United Nations conferences such as the UN Convention on Sustainable Development in 2012, the United Nations regional offices around the world, the Corporate Council on Water Supply and UN specialized agencies such as FAO.12

11 H. R. Fabri, 1990, Règles coutumières générales et droit fluvial, Annuaire français de droit international, Vol. 36. Paris, Université de Paris II, p.832. The Barcelona Statute was ratified by twenty states, one of which, India, withdrew in 1956; in the period after 1960 ten more states acceded to or succeeded to the Statute, four of which were island States, http://treaties.un.org/Pages/LONViewDetails.aspx?src=LON&id=555&lang=en#3.

4.2. International Financial Institutions:

Multilateral development banks, such as the World Bank, international financial participation (AFC) and regional development banks finance several projects specifically international watercourses or influence on it either directly or indirectly.

4.3. World Environment Center (GEF)

World Environment Center was created in 1991 as a pilot project by the World Bank. GEF works on a variety of environmental topics, one of them is international waters. The focus areas of international waters are freshwaters system and sea water. GEF has taken significant steps for management of transboundary lakes and rivers and GEF projects include 10 transboundary lakes and are7 groundwater. The center’s web page states that the center has changed management of 33 major rivers basin.13

4.4. Private financial institutions

These institutions like international financial institutions such as the World Bank provide funds of projects related to watercourses but awareness of their work is difficult because unlike the World Bank don’t have clear protectionist measures and will not provide no accountability mechanism that allows complaints by people affected by this institution.

4.5. Other activists:

4.5.1. International Network of Basin organization (INBO): This organization is the first environmental International Court about Basin organization

4.5.2. Global Water Partnership organization (GWPO): This International Network Agency is formed by the World Bank and the Swedish International Development Agency and now works with UNWATER, UNEP, UNDP and the Organization for the world’s climate.

4.5.3. World Water Council: World Water Council works under French law and every three years organizes the World Water Court.

4.5.4. International Union for the Conservation of Nature (IUCN): the union works with governments, NGOs, experts and stakeholders and its activities has developed in different parts of the world and also runs the Ramsar Convention on Wetlands.

4.5.5. International NGOs: For example, the Committee on the water Rights of International bar Association and the Wildlife Fund which are active in promoting ratification of the UN Convention on the water courses, and many others related topics. And sometimes INGO budget is more than other agencies or regional bodies related to water.

4.5.6. Domestic NGOs: These organizations are also very active for water related issues and their activities have a wide range. Cleanup of contaminated water courses, ecosystem restoration and education programs are part of these works. The result

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is these organizations and institutions that were named, play an important role in effective and efficient monitoring as well as the evolution of international law towards better protection of freshwater ecosystems and sustainable use of international watercourses.

5. Cases related to international Freshwater law:

As noted, 1977 United Nations watercourse Convention that has been formed by efforts of international law Commission and adopted by the UN General Assembly is one of the most important financial conventions that has been developed in the field of watercourses and has played an important role to complete conventions such as the Convention on combating Desertification (CCD) and the Ramsar Convention (wetlands) and Environmental Convention on Biological Diversity (CDB). 14

But this Convention didn’t establish any treaty body for implementation or monitoring and from September 30, 2014 this Convention does not specify what organizations do these tasks. As a result for the settlement of disputes between states that is contingent on water, parties must refer to the same established international tribunals in international law that such as the International Court of Justice (ICJ) and arbitration courts. 15

5.1. Cases raised before ICJ

Among the claims raised before ICJ was Gabčíkovo case between Hungary and Slovakia which was related to build a dam on the Danube. Pop Miler case between Argentina and Uruguay deals with building a sugar mill on the Uruguay River.

5.2. Pop Miler case

In this case, the Court stated that under public international law doing an environmental impact assessment is a requirement but did not describe the scope and content of the environmental assessment. Taking into account the decision of ICJ and Pop Miler case, it is clear that environmental impact assessment in cases under the supervision of the United Nations Convention on watercourses and in situation of significant transboundary harm to other river governments is mandatory.

5.3. Gabčíkovo case

In this case the Court stated that for various reasons over the centuries, human interfere in nature and often has done so without considering its impact on the environment and norms and standards that have been established during the past two decades must be considered. Not only about the government's new measures, but when they follow their past actions, these norms and standards should be considered.

5.4. Court documentation

Court in any case referred to it, has an effective role in solving cases, sometimes by referring to articles of Watercourses Convention and other environmental convention and sometimes based on certain principles of international customary law. For example, Article 21 of the Stockholm Declaration as part of customary international law related to water in the judgment of the International Court of Justice in 1997 and the settlement of disputes between Slovakia and Hungary about redirecting Danube River to create a hydroelectric dam was approved. 

6. Role of international Freshwater law in international peace

With the adoption of the UN watercourse Convention, undoubtedly relations and disputes of governments entered into a new phase. Doctrines which had formed based on absolute territorial Sovereignty or integrity and later were formed by the customary principles of public interest, limited territorial sovereignty, and mutual benefit, reasonable and fair use; give their way to new and legal concepts that these concepts were placed on the United Nations watercourse Convention and give new effects to the Convention and the acceptance and adoption among river governments.

Undoubtedly the Convention will play an important role in settlement of international disputes and peace. Especially with joining and participating of more governments to this convention is hoped that water disputes become more inconspicuous.16

As mentioned, entrance of new concepts rooted in customary international law into field of international Freshwater law made possible to resolve peacefully several disputes. What is essential in the context of international Freshwater law is monitoring of water courses that requires effective cooperation and coordination among governments which is one of the manifestations of peaceful relations. International law requires that disputes between states should be resolved in a peaceful manner. This not only involves avoiding force, which is expressed in the Charter of the United Nations, but also every government should strive in good faith to resolve any International dispute peacefully. This principle also applies for water disputes.

Article 33 of the UN watercourse convention states that disputed governments in the absence of an agreement should settle their dispute in a peaceful manner and interestingly regional and basin agreements have also such provision. For example, the Mekong Agreement provides that the commission established by the agreement first must attempt to resolve the dispute and then assign that task to other governments in the dispute.17

Or the Danube Convention requires parties to bring a dispute to arbitration or to the ICJ. Murray - Darling agreement requires parties to refer the dispute to arbitration. So, in addition to watercourse convention that in Article 33 has invited governments to resolve disputes in a peaceful manner, many regional and basin agreements inspired by the 1997 Convention or on the basis of principles of customary international law and the Charter are required to resolve

disputes in a peaceful manner that promises a peaceful and stable relations between the government and for future generations.
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