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Chapter 10—Conclusion

International Watercourses: Enhancing Cooperation and Managing Conflict

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The preceding chapters have clearly underscored the fact that water is a scarce resource characterized by both spatial and seasonal variations. It is a resource with no substitute and on which there is total dependency. In many parts of the world today demand for water is approaching supply, and in other parts such demand has already surpassed supply. This situation is, to a large extent, a direct result of the fast population growth and the consequential negative impact of such growth on both the quantity and quality of available water, and on the environment as a whole.

The competing demands over the limited supply of water emanate from a wide array of users, starting with the earliest competitors: nature and man. Nature, which was the dominant user for thousands of years, has gradually been marginalized by man, with the ecosystem downgraded to the bottom of the list of users in many parts of the world. At the local scene of most societies the available supply of water faces competing demands from domestic, agriculture, industry and municipal uses, and equally fierce internal competition among the different users within each of these sectors. At another level, there could also be competing demands over water between the different provinces, states or districts within the same country. However, the most difficult competing demands are those arising between different sovereign states. They are most difficult because they have been escalated in a number of regions into tensions and disputes between the states sharing the same international watercourses. Those disputes are not confined to the issue of quantitative allocation, but they also extend to water quality and regulation of the international watercourses. Some of those disputes have defied resolution for a long time.

The failure to address and resolve these disputes has been blamed, inter alia, on the absence of a comprehensive set of international legal norms dealing with international watercourses, as well as on the lack of political will to address these disputes. However, because water is an inter-disciplinary resource, international legal norms cannot by themselves provide resolution to disputes over international watercourses. Equally important is the fact that there can be no resolution of water disputes without international legal norms on international watercourses. As a matter of historical fact, the conclusion of bilateral and multilateral agreements has always been
instrumental in reducing conflict among different riparians. Arrangements providing for cooperative management schemes have shown their virtue for enhancing cooperation as well as for managing conflict, especially when all the riparians of an international watercourse are parties to such arrangements.

Recognition by the international community of the importance of bilateral, regional and multilateral legal strategies has manifested itself in the recent conclusion of a number of treaties, protocols and conventions on international watercourses. Such instruments include: the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes; the 1994 Convention on the Cooperation for the Protection and Sustainable Use of the Danube River; the 1995 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin; the 1995 Protocol on Shared Watercourse Systems in the Southern African Development Community (SADC) Region; the 1996 Mahakali and Ganges treaties; and, more recently, the adoption in 1997 by the United Nations General Assembly of the Convention on the Non-Navigational Uses of International Watercourses. The conclusion of these various instruments is a clear and strong evidence of both, the recognition by the international community of the importance of international legal norms for enhancing cooperation and managing conflict, and the need for cooperative arrangements to resolve the quantitative and qualitative problems associated with water sharing.

However, because of the competing demands over the scarce available water resources, and the conflicting interests in the different parts of the world, difficulties have been encountered for a long time in reaching an agreement at the global level on international legal norms that could provide a framework for managing international watercourses. Because of these conflicting interests, the work on the codification of the law of international watercourses has not been an easy one. The United Nations International Law Commission which started working on the Convention on the Non-Navigational Uses of International Watercourses in the early seventies took almost three decades to finish its work. The Convention was finally adopted by the United Nations General Assembly in May 1997.

Although the UN Convention is the result of compromises between the various interests, it nevertheless provides a reasonable framework for governing non-navigational uses of international watercourses. Its value-added rests mainly on its codification of customary international law rules of core interest for different groups of states, and its comprehensive approach to the issues pertinent to international watercourses. Such issues include water sharing principles, obligation not to cause harm, environmental obligations, institutional arrangements and cooperation mechanisms, including notification and exchange of information. Another important feature of the Convention is the expanded coverage of the term "watercourse" which is defined as "a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus." Inclusion of groundwater in the definition of "watercourse" is another significant step in the development of the law of international watercourses. This took place despite the opposition of some states, and despite the technical difficulties that characterize groundwater. The relevance and importance of the Convention have already been underscored by the International Court of Justice when it quoted some of its provisions in its decision on the Gabcikovo–Nagymaros case in September 1997, only four months after the adoption of the Convention.

In parallel, the World Bank, being an international financial cooperative institution, proceeded slowly and cautiously on the issue of financing of projects on international watercourses. The policies established by the Bank in this regard did not grow in isolation, but were developed in tandem with the development of the international legal norms in this area. Those policies were influenced by, and had their own influence on, the development of international legal norms in the arena of international watercourses, most notably with respect to notification for planned measures—or projects on such watercourses. It has been a gradual and subtle process of cross-fertilization. Even at the time when transboundary groundwater was not part of the slowly developing field

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of the law of international watercourses, the Bank addressed the issue of groundwater of an \textit{ad hoc} basis, when it came up, rather than avoiding it.

At the regional level, a number of attempts were made for regulating the use of international watercourses. These attempts, however, vary in their scope and depth. The recent adoption of the Protocol on Shared Watercourse Systems in the Southern African Development Community (SADC) Region, beside affirming the need for equitable use of shared watercourses, provides for the establishment of a framework for cooperative management of regional water resources. It also provides for the establishment of national institutions for facilitating regional cooperation in support of the Protocol. On a more general basis, the strategies for managing international waters in Africa center around two themes, both based on, and aiming at, enhancing cooperation. Those strategies are: building capacity at the national level and promoting inter–riparian dialogue, with a view of paving the way for effective management and development of the shared watercourses.

The need for cooperation in the management, utilization and protection of international watercourses has led the Aral Sea Basin States to negotiate interstate water sharing agreements and set up regional institutions. There is, however, still the need for strengthening the existing legal framework and for developing new strategies to address transboundary water–related environment concerns. The objective to be achieved is an integrated management scheme, in particular for managing both water quantity and quality problems, such as the salinity issue. The 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes paves the way for integrating such environmental concerns. The Convention also reflects a number of principles enunciated in the Rio Declaration on Environment and Development. Financial assistance, such as grants from the Global Environment Facility, are needed to support activities which are necessary for designing an appropriate legal framework, and for implementation of such a framework.

The recent trend towards enhanced cooperation on international watercourses is also apparent in the settlement of a number of bilateral disputes, some of which have defied resolution for a long time. The sharing of the waters of the Ganges river between India and Bangladesh has been a difficult issue eluding a viable solution for the last two decades. Direct negotiations in 1996 resulted in the signing of the Ganges Treaty which paved the way for resolution of the dispute. Mediation by a third party which is seen as an honest broker by both disputants, and which can assist in implementing the outcome of the mediation, has been the main reason for the success of the World Bank’s efforts in the Indus Basin dispute between India and Pakistan. Although the Bank played a role in enhancing cooperation over the Aral Sea and the Mekong River Basin, the experience of managing conflict over the Indus Basin has, unfortunately, not been replicated. The decision of Hungary and Slovakia to refer the Gabčíkovo–Nagymaros dispute over the Danube River to the International Court of Justice added another important dimension to dispute settlement mechanisms over international watercourses. For the first time in its history, the International Court of Justice was called upon to decide a dispute over an international watercourse. The decision, no doubt, is a landmark, and could influence the thinking of many disputants over international watercourses when considering means for dispute settlement.

The UN Convention and the various regional and bilateral instruments, with their varying scope and depth, underscore the importance of international legal norms in enhancing cooperation and managing conflict over international watercourses. These instruments also illustrate the recent trend towards more comprehensive strategies for managing and protecting international watercourses—a trend that we hope will continue and expand with the view of addressing the issues of water scarcity and quality for the benefit of the more than two billion people who either depend on, or stand to benefit from, international watercourses throughout the world.

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