

BIGMUN 2023:
GA: Legal

Research Report:

The Legal Framework of Transboundary Waterbodies:



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Introduction:

Transboundary Water bodies are water bodies that have borders shared by 2 or more countries. Not regulating the legal framework behind this can cause civil unrest and spark conflict between the nations involved. To deal with climate change and the demands of a growing population, we need a supranational, integrated approach to transboundary water resource management, balancing the needs of people and the environment¹.

Definition of Key Terms:

Water-Basin: the basin of a waterbody is the land that surrounds it and the streams that flow into it; could also be defined as an area of land that is deeper than the surrounding land, meaning water flows through it; usually deep enough for boats

Transboundary: waterbodies where the shores are shared between two or more distinct countries.

Ecosystem: in short, an ecosystem is a biological community with interacting organisms; an interconnected system

Background Information:

Approximately, transboundary waters account for about 60% of the world's freshwater flows. 153 countries have at least one boundary shared for the 286 freshwater transboundary rivers and lake basins, and 592 transboundary aquifers system. However, most countries within that range do not have a legal framework designed to cooperate and share their supplies together. Out of the 153, only 32 have a legal framework that covers 90% of their transboundary water supplies¹,

Not sharing the supplies that a water source can provide, along with exploiting the source by polluting it, can jeopardize the local ecosystem across borders. For example, a dam built by another country upstream of a river could severely block the water's pathway for it to end up downstream where it can be used by another country. Moreover, coastal activities done upstream which have a polluting effect, can be harmful for a neighbouring country that is downstream, as it means the water source has been infiltrated with toxins and may no longer be useful².

Globally, there are some 263 transboundary lakes and river basins covering nearly one half of the Earth's land surface and accounting for an estimated 60 per cent of global freshwater flow. According to the UN, over 90% of the world's population live in country that share water basins, of which approximately 2 billion people world-wide depend upon the groundwater for their uses – meaning if the water has been contaminated it won't be useful for many people².

The emphasis on transboundary waters is because individual states that have shared water-basins have an interdependency upon each-other: especially in modern times, as access to freshwater supplies globally face increasing challenges including skyrocketing demand, climate change, over and inefficient use of water resources and pollution¹.

- 1) *Transboundary waters: UN-water*. UN. (n.d.). Retrieved January 17, 2023, from <https://www.unwater.org/water-facts/transboundary-waters#:~:text=Transboundary%20waters%20are%20the%20aquifers,social%20unrest%20and%20spark%20conflict>.
- 2) *Water treaties - a question of rights*. China Water Risk. (2018, August 31). Retrieved January 17, 2023, from <https://www.chinawaterrisk.org/resources/analysis-reviews/water-treaties-a-question-of-rights/>

Most surprisingly, that despite the extent of shared water resources, most nations still do not have a major understanding of a legal framework in which the water may be utilised under. This lack of legally binding treaties means that most nations do explicit access to the water between shared borders. There are existing treaties in form today, yet those treaties aim to take the form of bilateral or multilateral agreements amongst states².

Major Countries and Organizations Involved:

South & South-East Asian Countries (India, Pakistan, Bangladesh, China, etc.):

South-East Asian countries sharing water-basins are majorly involved within this issue, as 27% of the freshwater river-basins around the world are situated within these lands. Rivers of which, the Ganges River-basins are amongst the ones where the water-resources are shared amongst 3 of these countries, namely India, China and Bangladesh².

Especially Bangladesh, as over 90% of the river-basins within its borders are of shared transboundary water-sources of which it shares with India².

UN Water:

UN Water is a UN based organizations along with its partners in the fight for water and sanitation issues. UN-Water is an organization that is largely treated as a coordination team, in which its role is to ensure all the members and partners deliver their response as one in response to water-related challenges. The UN-Water governance is managed by the Senior-Programme Managers (SPMs) which make sure to provide the representation of UN Water at committees and such³.

This group aims to provide research and facts to report the overall progress of the goal of transboundary waters being met – in particular how the legal framework has affected the use water-resources between nations with transboundary water-basins³.

Previous Attempts to solve the Issue and relevant UN approaches:

UN Convention on the Non-Navigational Uses of International Watercourses

The UN Convention was aimed at solving the issue between distinct countries and their uses of transboundary water resources. In 1997, it is largely based off of the Helsinki Rules, treating them as a base framework for the legal obligations. It provides the principles and rules for at least 2 premises regarding the international transboundary water-sources: the principles of equitable and reasonable shared watercourses and the obligation to do no harm to the ecosystems via the transboundary water-sources⁴.

The UN reports however, that in part because of its provenance, the Convention is widely viewed as a codification of customary international law with respect to at least three of the obligations it embodies, namely:

- equitable and reasonable utilization
- prevention of significant harm
- prior notification of planned measures.

These and other provisions of the convention have, as the UN indicates, influenced the negotiation of treaties concerning international watercourses⁴.

3) *About UN-Water: UN-Water*. UN. (n.d.). Retrieved January 17, 2023, from <https://www.unwater.org/about-un-water>

4) *Introduction*. UNECE. (n.d.). Retrieved January 17, 2023, from <https://unece.org/environment-policy/water/about-the-convention/introduction>

Berlin Rules 2004:

In 2004, the Berlin Rules on Water-Resources was adopted over the Helsinki Rules, due to the lack of scope and junctions placed on international drainage basins and aquifers connected to them. It was adopted as international law to customarily apply in modern times to freshwater resources⁵.

The document essentially prescribed that nations take appropriate steps to manage their water-resources to minimize environmental harm, along with that they must regulate the water within their bounds and especially the water within transboundary water-sources. Nations must not take action that results in a shortage of life-sustaining water, unless in war time. Poisoning water necessary for survival is in all cases forbidden⁵.

5) Wikimedia Foundation. (2020, October 14). *Berlin rules on Water Resources*. Wikipedia. Retrieved January 17, 2023, from https://en.wikipedia.org/wiki/Berlin_Rules_on_Water_Resources#:~:text=It%20requires%20that%20nations%20sharing,within%20its%20jurisdiction%20for%20security.

Possible Solutions:

Some Possible solutions to this problem is to have a legal framework that is maintained and regulated by organizations responsible for all issues water-related: this is because having a common non-political organization involved with maintaining a set of

regulations, to keep up on progress with keeping the transboundary water-sources used within reason.

Also, it would be beneficial for countries and states that violate their right to the shared-water sources or pollute them by contamination to have to pay in form of tax to the bordered nations within the water-sources basins. This tax would be maintained by an organization that keeps the peace and regulates these rules, meaning no country is abusing their shared-water resources.

Bibliography:

- 1) *Transboundary waters: UN-water*. UN. (n.d.). Retrieved January 17, 2023, from <https://www.unwater.org/water-facts/transboundary-waters#:~:text=Transboundary%20waters%20are%20the%20aquifers,social%20unrest%20and%20spark%20conflict>.
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- 3) *About UN-Water: UN-Water*. UN. (n.d.). Retrieved January 17, 2023, from <https://www.unwater.org/about-un-water>
- 4) *Introduction*. UNECE. (n.d.). Retrieved January 17, 2023, from <https://unece.org/environment-policy/water/about-the-convention/introduction>
- 5) Wikimedia Foundation. (2020, October 14). *Berlin rules on Water Resources*. Wikipedia. Retrieved January 17, 2023, from https://en.wikipedia.org/wiki/Berlin_Rules_on_Water_Resources#:~:text=It%20requires%20that%20nations%20sharing,within%20its%20jurisdiction%20for%20security.