

STATE RESPONSIBILITY OF INTERNATIONAL WATER SHARING: A CRITICAL ANALYSIS OF TRANS BOUNDARY ENVIRONMENTAL LIABILITY

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Abstract

Fresh water is critical and imperative for human life and to the supportability of Earth. Till date there is no known substitute for freshwater to be utilized by people for their reality. With water, people have profound ties whether it is concerning nature, soil, wellbeing, strict holiness, efficiency obviously or for some other reasons. Strolling down the world of fond memories one can understand that prior water had no cost barring the separating charges, cost for refining and afterward at last utilizing it. However, with the entry of the last half ten years, water has progressively procured a cost as a ware on the lookout and is being dependent upon worldwide exchange. The author in this paper is focusing on the need for collective effort to be made by all the states of International community in preservation, restoration and implementation of different international laws in the municipal laws of respective states. The author focuses on the Westphalian theory which adversely hampers the concept of shared water resources between the Upper riparian and lower riparian states. The research includes the five prominent pillars of water sharing principles to be observed by the states. The author also observes the positive initiatives taken by the international community which leads to the development of international laws relating to water. The author takes a positive approach to focus on the development of laws by judicial decisions given by different dispute settlement bodies for the protection, preservation & restoration of water. The author summarizes the paper with some suggestions which can be given for the improvement and implementation of international laws in the municipal laws of respective states.

Keywords: Shared resources, preservation, restoration, Westphalian, Riparian States, international laws

INTRODUCTION

“Water is the driving force of all nature”

-Leonardo Da Vinci¹

Fresh water is very important and vital for human existence and to the sustainability of Earth. Till date there is no known substitute for freshwater to be used by humans. With water humans have emotional ties whether it is with respect to nature, soil, health, religious sanctity, productivity of course or for any other reasons. Walking down the memory lane one can realize that earlier water has not had a price excluding the extracting charges cost for purifying and then ultimately using it. But with the passage of

¹ MICHAEL KIDD, LORETTA FERIS, TUMAI MUROMBO AND ALEJANDRO IZA, WATER AND THE LAW, 13 THE IUCN ACADEMY OF ENVIRONMENTAL LAW SERIES (2014). These words have been said by the great artist and scientist Leonardo Da Vinci(1452-1519).

the last half decade water increasingly acquired a price as a commodity in the market and is being subject to international trade.²

Water is transferred across the national boundaries in three different forms:

1. Naturally or artificially in rivers, streams or aquifers:
2. By bulk transfer through pipelines, tankers or by any other means or transfer; and
3. By incorporating water into different products like packages of drinking water agricultural produce or any other item.³

Rivers as a source of freshwater flows between countries as international rivers, shared lakes or shared ground water aquifers. Now that natural flow of water is diverted from its natural state for its own domestic purposes. With respect to the use of water countries have concluded more than 2000 international water agreements addressing boundary and navigational issues and in late twentieth century issues relating to allocation and management. Apart from this some agreements addressed pollution control and environment protection.⁴

“In the desert of life, the wise person travels in caravan while the fool prefers to travel alone”

-Arab Proverb

Since water is one of the most essential parts of life it can give life and at the same time it can destroy lives. If we investigate the world map, we will find that almost every country shares one or more freshwater system with their neighboring states. So, in one way or the other there are interdependencies of one state to another forming different links amongst themselves. So, there can be classification of states on basis of the location of water i.e., upper riparian states and lower riparian states. So, the use of the Trans boundary water resources by one state affects another state as well. The upper riparian states are supposed to use these water resources very wisely and judiciously. It is advisable to use water resources as per the requirement of the existing demands as the use of water can affect territory of a state, their existing as well their future rights. Now if we are talking about shared responsibility of water resources then it is necessary to explain the term cooperation amongst the states. It is a process by which states comes together and agree on certain objectives advantageous to the member states. They implement their actions in such a manner to coordinate with the required norms to fulfill the objectives agreed on. So, this is not one way process rather it involves the contribution and coordination of all the nations to protect environmental damages and equitable use of water.⁵ Thus cooperation led to benefits to many countries and the legal principles helps to navigate different challenges of trans boundary water resources. With the passage of time for the benefit of other countries and preservation of water resources the riparian states bound themselves with different treaties for the utilization, protection and development of the shared waters. Earlier the treaty was made only on the subject matter of surface water resources but with the knowledge people came to know about groundwater so they started negotiating with the utilization of groundwater as well. This actually included in drawing a demarcation of a political line on the lakes or any other water resources to regulate the rights attached with water like right to passage in territorial water of another country or navigational rights, etc. Increment in the industrial and agricultural uses of water by different countries which had negative impacts on the quality and quantity of water led the countries to come together and make serious agreements with respect to equitable use of water. They started to work in this issue in a coordinated and cooperative manner to save the environmental aspects as well as

² LAURENCE BOISSON DE CHAZOURNES AND MARA TIGNINO, INTERNATIONAL WATER LAW 27 (VOLUME II 2015).

³ ID 63

⁴ ID 64

⁵ CHRISTIANA LEB, COOPERATION IN THE LAW OF TRANSBOUNDARY WATER RESOURCES 1 (1ST PUBLICATION 2013)

controlled use of water by different states. This led to the emergence of a general international principle of equitable and reasonable utilization of water and not to harm the water resources to other states.⁶

If we take into consideration International conventions then an important convention that comes into play is the 1997 United Nations Convention on the Law of Non-Navigational Uses of International Watercourses which sets forth a comprehensive legal framework for international rivers and their associated water basins.⁷ It provides certain principles which guides the States to use the international water resources in an 'equitable and reasonable manner'⁸ and states 'must take appropriate preventive measures to protect the watercourse states from any sort of significant harm'.⁹ Until 1950s there were very few international laws particularly on the subject of international watercourses along with few declarations or resolutions specific to different region but were not able to achieve the objectives of water sharing.¹⁰ Different principles exit with regard to the use of water under International law say for e.g. doctrine of absolute sovereignty, doctrine of absolute use, etc.

International legal instruments focus on cooperation of states with respect to trans boundary water resources and if we look into the ratio of the focus on cooperation and equitable use the 1997 UN Watercourses Convention reflects that there is 56% mentioning of cooperation and only half of it to equitable use.

Apart from this other international instrument connote the equitable use of water resources among different states. 1966 Helsinki Rules is worth mentioning here as it bears an extreme importance under international law. It incorporates equitable use of water and it strictly instructs the nations to refrain themselves from inflicting any kind of significant harm to other states for their own nation's development. Thus, trans boundary environmental water harm is strictly prohibited under these international instruments.

Scope of Project- This project includes in its chapters the different theories governing the shared practices of water resources amongst different states. These theories imply the practices adopted in theory and in practice. It also includes the different stumbling blocks coming in the way of equitable use of water resources with special references to few cases.

This project includes the international instruments governing the shared practice of water resources along with some customary rules and cases held by arbitration. These international instruments beautifully enshrine the equitable use of water among the lower and upper riparian states. Nation's development is very important but the environmental concern must be kept at prime level.

This project also includes the different important cases which helped in the formation of international law with respect to water sharing at international level. The researcher has also included few recent cases of significant importance.

Sovereignty over shared water resources

Every state possesses sovereignty over its territory concerning the geographic delimitation of its international boundary including the surface area and the air space over its territory. When it comes to sovereignty over the territorial boundary it includes the exploration and exploitation of the natural resources without any intervention by the other sovereign states. So, one can say that a state possess right to exploit, right to

⁶ This is mentioned in one of the provisions mentioned in Part II of the 1997 UN Watercourses Convention (United Nations Convention on the Law of Non-navigational Uses of International Watercourses) which was signed at New York on 21 May 1997 although this is not yet in force.

⁷ Convention on the Law of Non-Navigational Uses of International Watercourses, May 21, 1997, U.N.Doc.A/51/869, available at <http://www.org/law/ilc/texts/nonnav.html>.

⁸ Id, Referring particularly to Article V of the Convention of 1997.

⁹ Id, This provision is reflected in Article VII of the Convention of 1997.

¹⁰ SURYA P. SUBEDI, INTERNATIONAL WATERCOURSES LAW FOR THE 21ST CENTURY, 8-9 (1ST EDN 2005).

explore, right to use natural resources for the national development, right to regulate resource-related foreign investment.¹¹ The right to use one's natural resources was laid down by the General Assembly resolutions 626(VII) of 1952 concerning subject matter on the Right to exploit freely Natural Wealth and Resources.¹²

But disputes regarding sharing of water have faced different stages at international level. Due to these disputes, international instrument with respect to sharing of trans boundary water resources have developed to a great extent. So, to cite some water disputes there are some examples like dispute between California and Arizona that occurred in the year 1935, Netherlands and Belgium in 1937, the US and Canada in the 1944, India and Bangladesh in 1947 which went till 1964, one of the very famous case between Czechoslovakia and Hungary in 1992, and a long list of dispute regarding the shared practices of water resources. Some of these cases were solved by agreements between the concerned parties or some of the disputes were settled by arbitration.¹³ This led to significant development of water sharing amongst different states.

With the passage of time, the water disputes were either settled by the parties voluntarily or they adopted some common principles governing water sharing on the basis of cooperation, sovereignty and integrity to community of interests, equitable sharing, good faith and not causing significant harm to others. The International Law Association (ILA) and the UN by accepting the Helsinki Rules on the Uses of International Waters of International Rivers 1966 and the 1997 UN Convention further explained the principle of water sharing amongst the states.¹⁴

So, the trend of water sharing is based on the following five pillars of international water sharing-

1. The doctrine of territorial sovereignty versus territorial integrity¹⁵

As rightly pointed by Steinberger, "sovereignty is the most glittering and controversial notion in the history, doctrine and practice of public international law."¹⁶ Practically on the basis of the doctrine of sovereignty the upper riparian states have always claimed over the water resources flowing in their territories ultimately depriving the lower riparian states from claiming any right over those water resources. One of the very old cases illustrating this doctrine is Mexico v. the US in the year 1985. In this case the farmers of US diverted the water of Rio Grande and making a remark on this the then US Attorney General Judson Harmon said "The fundamental principle of international law is absolute sovereignty of every nation as against all others, within its own territory." This remark was made on the basis of pronouncement of judgment made by Marshall CJ, in a leading case *Schooner Exchange v. McFaddon*¹⁷.

Harmon reiterated that with respect to the existing rules or principles there's no obligation of the upper riparian states towards lower riparian states. So, they can use and divert the water without any right to water to the lower riparian states. This became famous as Harmon doctrine and in brief the Harmon doctrine deprives the lower riparian states from claiming water from the upper riparian states. But this doctrine faced a lot of criticism although supported by a lot of riparian states by many nations and scholars. This doctrine was rejected by majority of states because it defeated the principles of justice

¹¹N.SHRIJVER, SOVEREIGNTY OVER NATURAL RESOURCES: BALANCING RIGHTS AND DUTIES 258-260 (1ST EDN 1997).

¹² GA RESOLUTION 626 on *THE RIGHT TO EXPLOIT FREELY NATURAL WEALTH AND RESOURCES*, 21December 1952, <http://www.un-documents.net/a7-2361.pdf> (4 November 2017 3:00 P.M.)

¹³P.ISHWARA BHATT, INTER-STATE & INTERNATIONAL WATER DISPUTES, 122 (1ST EDN, 2013)

¹⁴*Id*

¹⁵ This comes under inequitable water apportionment frameworks.

¹⁶ *Id*

¹⁷ *Id* 123

and right to have water and thus was dangerous to the amiable relations between the different states. Under International law every nation has the right to water and due to which this doctrine was vehemently opposed. Subsequently US itself discarded this notion of theory in dispute with Canada over Columbia River and this dispute led to signing of treaty between the states Relating to Cooperative Development of the Water Resources of the Columbian River Basin 1961.¹⁸

Now coming to Principle of absolute territorial integrity, it is exactly opposite to territorial sovereignty which says that the lower riparian states have absolute right over the water resource that is flowing to their territory naturally and the upper riparian cannot interfere in the flowing of such water. So, this brings the upper riparian states under an obligation to take care about the quality of water flowing from their territory, the quantity of water, etc. but if we look into the practical aspects of this doctrine then it's all a myth. It is far from practice and it's practically impossible for any upper riparian to control the effects of the kind of activities going on for the national development or any agricultural processes. Neither of the two doctrines has been adopted by any state under the international obligation. To support this view the Rio Grande and the Trail Smelter Arbitration are very good examples.

In *France v. Spain*¹⁹ popularly known as Lake Lanoux Arbitration it was reiterated that although sovereignty is essential for a nation's development but a state should exploit its resource to the extent that is not harmful to the other states. As there's always a correlative duty on the part of a state to prevent trans boundary harm. Thus, by adopting the middle way both the upper as well lower riparian states enjoy certain international rights along with certain duties.

2. Principle of community of interests²⁰

This principle also discards the notion of autonomy of states and focuses on the interdependence of states. It confers that states cannot exonerate themselves from the liability of membership in the circle of riparian states as they connected with the water system flowing through their boundaries naturally. So, in short, the notion of the doctrine of interest inculcates the mandate of the cooperative approach so that the competing interests of the society under international law do not hinder the way of another.²¹

This principle believes in the joint ownership of a natural resource which confers several rights including power production, fishing, domestic purpose, irrigation, navigation and many more. Every state should use its resources wisely and judiciously so that it does not deprives the rights and advantages of other states. This doctrine is based on the rationality of the optimum use of international water resources.²² The principle of community of interests is evident in many treaties and agreements. Stating some of the examples are-

- i) Agreement on Niger River Commission, 1964- this was an agreement between nine states to share the river water of Niger held at Niamey from 24th to 26 October 1963 regarding the navigation and economic co-operation between the member states. Naming those states are Benin, Burkina Faso, Cameroon, Chad, Cote d'Ivoire, Guinea, Mali, Niger and Nigeria.²³

¹⁸ Id

¹⁹ (1957) 24 ILR 101, <http://www.lfip.org/laws666/lakelanoux.htm> (6 November, 2017 5:00 P.M.)

²⁰ And this comes under the head of equitable apportionment frameworks.

²¹ Supra note 5, 52-53

²² Supra note 13, 127

²³ Agreement on Niger River Commission 1964, <https://treaties.un.org/doc/Publication/UNTS/Volume%20587/volume-587-I-8507-English.pdf>, (6 November, 2017 7:00 P.M)

- ii) Agreement for the establishment of Lake Chad Basin Commission, 1964- A commission was established under this agreement to recognize the common interests of Cameroon, Chad, Niger and Nigeria and to mandate the distribution of water between them²⁴.
- iii) The Agreement for the establishment of Organisation for the Development of Senegal River, 1975- This agreement was signed to govern the use and protection of Senegal river between Mali, Mauritania and Senegal in consonance to the interest of the community²⁵. *Territorial Jurisdiction of the International Commission of River Oder* (U.K. v. Poland)²⁶ is very important case to cite here as in this case the observation that was made was totally based on the community of interests. It stated that there is common legal right over any navigable river and there is equality of rights of all the riparian states over the water course.²⁷
- But this theory of community of interests is only in theory not in practice as there is absence of political unity of the river basin practically. This principle can only be successful in an integrated society in a very ideal situation which is practically not possible to achieve.²⁸

3. Principle of Equitable Utilisation

This is also known as limited territorial sovereignty and it has gained a lot of importance under international law. This principle can also be found in the 1997 UN Watercourse convention. While reconciling the disputes with respect to the non-navigational use of International Water the two very important doctrines that are kept in mind are the doctrine of equitable utilization and principle of non-significant harm.²⁹ Under Articles 5-7 of the 1997 Convention the abovementioned principles are the basis of those provisions.³⁰ The principle of equity is a settled notion under international law which is recognized by the Civilised Nations. This is based on Utilitarian theory conferring maximum benefit to maximum number along with significantly less harm. Under this doctrine of equitable utilization every state whether it is lower or upper riparian state, gets equitable use of water. But the problem arises where it comes to determine the share of the state and hence the balancing of competing interest is taken into consideration. The two prominent international instruments Helsinki Rules and 1997 UN Watercourse Convention enshrines very elaborative factors which help in determining the sharing of water use by the states.

4. Principles of good faith and cooperation: general duty to cooperate

For the attainment of the goal of equitable use and sharing of water states must follow the principle of good faith and cooperation amongst the states. And for that a state should be transparent with its reports and notification regarding the use of water which maintains the amicable relations between the riparian states and it removes all kind of doubt against other.

The principle of good faith and cooperation has been evidently utilized by the tribunal deciding the *Lake Lanoux Arbitration*³¹. Briefing the facts of the case, the French government initiated with certain work using lake water without any prior intimation to any interested party or without coming to an agreement with respect to the use of lake water regarding those work. The country whose interest was being defeated was Spain

²⁴ Agreement for the establishment of Lake Chad Basin Commission, 1964 <http://extwprlegs1.fao.org/docs/pdf/mul16002.pdf>, (6 November 2017 7:30 P.M)

²⁵ The Agreement for the establishment of Organisation for the Development of Senegal River, 1975, http://pdf.usaid.gov/pdf_docs/Pnaam781.pdf, (6 November, 2017 8:00 P.M)

²⁶ 1929 PCIJ No.23

²⁷ Permanent Court of International Justice, 17th ordinary session, http://www.worldcourts.com/pcij/eng/decisions/1929.09.10_river_oder.htm, (6 November 2017, 9:00 P.M.)

²⁸ Supra note 13, 127

²⁹ Supra note 10, 24

³⁰ 1997 UN Watercourse Convention, http://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf, (6 November 2017 10:00 P.M.)

³¹ (1957) 24 ILR 101, <http://www.ifip.org/laws666/lakelanoux.htm> (6 November, 2017 1:00 A.M.)

who invoked the principle of good faith and cooperation. In order to avoid any adverse impact on the use of lake water by Spain, Spain approached an Arbitral Tribunal to stop the progress of the work until France and Spain comes to an agreement regarding the lake water. The Tribunal criticized the initiative taken by the French government and awarded that the upper riparian states are under international obligations to take care about the various interests of the lower riparian states and to reconcile their interests with their own.³²

Article 8 of the UN Convention sets certain objectives for which cooperation amongst states is required to be taken care of.

5. Principle of prevention of significant harm to other states³³

This principle is based on a maxim *sic utere ut alienum non laedas*. Every state is under an international obligation not to cause any significant harm to another state

After the Trail Smelter Arbitration³⁴, this principle is often cited as an inseparable part of Customary International Law. The tribunal awarded Canada to pay compensation to US for the trans boundary harm caused by its smelter. So, it ruled that “...no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein....”³⁵

Now the question arises that what constitutes significant harm as mentioned by the principle? Since it is practically next to impossible to lay down any uniform standards to determine the significant it might create conflicts amongst the states. This doctrine does not convey that all the harmful activities is to be stopped rather certain other measures should be kept to deal with the same. Thus, the Helsinki Rules and UN Convention lay down the same criteria i.e., to mitigate the loss arising out of any developmental activities and to provide compensation for the loss occurred.³⁶

Apart from this there are other theories with respect to the shared practice of water resources like equitable apportionment theory.

Equitable Apportionment theory- this theory basically connotes that any drainage basin of inter-state watercourse as one unit to be utilized by another states irrespective of its political and demographic differences. Equitable apportionment signifies the equality of rights of the states to use the international waters. But at the same time equality of rights does not mean division of water equally among the states. Thus, it is a utilitarian theory whereby the use of water by the states depends on the socio-economic factors of the states. To elaborate this, the use of water must be consistent with necessity of other states sharing such water. Now here equitable use of water means that the water must be utilized taking into consideration the necessity of other states and to use the same judiciously in order to save water resources for future generations. Determining the share of water of each state is dependent on various other factors and circumstances. So, this is very complicated to determine the share of the respective contending states.³⁷

Thus, these theories indicate the existence of practices by the states concerning water sharing and some of these theories are proposed by philosophers to assert proper distribution of international watercourses. Every theory indicates and asserts some or the other obligation with respect to water sharing by the upper riparian states for the lower riparian states.

International Instruments developing International Water Law.

³² Id

³³ This is a duty of upper riparian states which is to be kept in mind while doing activities for their national development i.e. to do non-significant harm to the lower riparian states. It means that the exploitation must be such that it does not pose any significant trans boundary harm to the lower riparian states.

³⁴ *United States v. Canada* (the Trail Smelter Case) 3 RIAA 1905 (1941)1965

³⁵ Id

³⁶ Supra note 13 , 132

³⁷ THEORIES ON SHARING OF INTERNATIONAL AND INTER-STATE WATER RESOURCES, <http://14.139.60.114:8080/jspui/bitstream/123456789/678/10/Theories%20on%20Sharing%20of%20International%20and%20Inter-State%20Water%20Resources.pdf>, (7 NOVEMBER 2017, 7:00 PM).



-Leonardo da

Vinci³⁸**ILA: 1966 Helsinki Rules**

The adoption of 1966 Helsinki rules on the Uses of the Waters of International Rivers was one of the most important landmarks in the development of Water Law at International stage. Under this rule, article 1 talk about the water management of international drainage and basins applicable to all waters as per the requirement. Dealing particularly about the shared responsibility the rule includes the respective provision under Chapter III of the Helsinki rules. Chapter III deals with the internationally shared waters and it also enshrines different rules with respect to the participation, cooperation and equitable utilization. And under Article 16 of the Rule, it says preferences amongst uses and the obligation of basin states to 'refrain from and prevent acts or omissions within their territory that cause significant harm to another basin state having due regard for the right of each basin State to make equitable and reasonable use of waters'.³⁹

Under Chapter XIII provides for legal remedies in case there is any trans boundary harm to another state by the conduct of one state. This instrument incorporates the different principles like cooperation, equitable use of water resources, taking into consideration the interests of other states. It puts an obligation on the upper riparian states to take care about the activities which can do significant harm to the lower riparian states.

ILC: 1997 Watercourses convention

This instrument is also known as Law of Non-navigational Uses of International Watercourses. It comprises of an introductory section and five operational parts. Part II deals with general principles of the states. Dealing with the relevant provisions with the Convention, Article 5 of the Convention incorporates the principle of equitable use and cooperation amongst states. The states should equitably utilize the water resources in the most reasonable manner with optimal and sustainable utilization of watercourses and its advantages. Equitable utilization must be read in consonance with Article 7 of the Convention. The states are supposed to take all appropriate measures to prevent the factors causing significant harm to other states. And in case any significant harm is caused to any country, the state causing such harm is under an obligation to redress such harm and take all possible measures to mitigate the harm so caused.⁴⁰

Under Article 9 the states are required to cooperate and on a regular basis the member states should exchange of data and information with regard to the use of water resources. The Indus Water Treaty is very example for this. As per the provisions of the Article VI, the member states of the treaty are under an obligation to exchange data with respect to the gauge and discharge to the tributaries to the Indus River including daily extraction and water released from reservoirs, every month.⁴¹

ICJ Judgments developing shared use of water resources**Case concerning the Gabčíkovo-Nagymaros Project**

This is a case of violation of right to water under international law. Danube River formed a border between the two countries, Hungary, and Czechoslovakia and with respect to the construction of dams and locks on this river the two states signed a treaty in 1977 to cooperate in such construction. Due to some political and economic transformations the construction works proceeded very slowly in the year 1978. While the work was going on the citizens of Hungary started revolting against the construction work on the river Danube. So, in 1989 claiming changed circumstances and impossibility of work Hungary stopped the construction work. By the time Czechoslovakia got separated into two nations

³⁸ Supra note 5, 197

³⁹ PHILIPPE SANDS AND JACQUILINE PEEL et al, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW, 308 (3RD EDN 2013)

⁴⁰ Id 311

⁴¹ Supra note 5, 117

i.e., Slovakia and Czech Republic and Slovakia assumed the liabilities under the 1977 treaty as the hydraulic system was within the territory of Slovakia. With the breach of treaty obligations by the Hungarian government there was continuous failure of negotiations between the two nations. In return to this breach the Slovakia government devised Variant C which dammed the water of Danube River and used 80-90% of the river water. After all this this matter came up in front of ICJ in the year 1994 and was finally decided in 1997. The court pronounced that the unilateral action by Slovakia by putting variant C into operation and taking control of shared resource was a violation of an international obligation. And the court rejected the reasons given by Hungary and ordered the two countries to re-negotiate on the remaining project.

Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)

In this case, Uruguay started construction of pulp mills on the river Uruguay without any prior consent obtained from Argentina whose interest was affecting. So, in 2006 Argentina filed legal proceedings against Uruguay for breaching treaty provisions between them. The treaty provisions required prior notification and consent to be taken before any construction on the river that could affect the river water adversely. And for that they filed suit for immediate injunction against the construction. In protest to this construction the citizens of Argentina blocked the roads. Due to this blockade Uruguay also sought relief from this blockade. The ICJ rejected both the requests i.e., the request for preliminary injunction against the construction and the blockade. On 20 April 2010, the Court concluded that “while Uruguay breached its international procedural obligations to notify and consult with Argentina before authorizing and commencing construction on the pulp mills, the Court's declaration of Uruguay's breach constituted a sufficient remedy for Argentina's claim”⁴².

Dispute over Silala (Chile v. Bolivia): A New Trans boundary Fresh Water Dispute before the International Court of Justice


On 6 June 2016, concerning the watercourse named Silala/Siloli, Chile submitted its dispute to the International Court of Justice. With respect to Silala/Siloli watercourse Bolivia has asserted that the concerned watercourse is not international and exclusively belongs to her since 1997. Chile in its application to International Court of Justice requested to declare the Silala River in fact and in law international watercourse which is governed by the customary international law. This particular case is very important as its decision will be a landmark decision under international law as this is the first case demanding a watercourse to be declared as international water and, if the Court finds that the Silala/Siloli is indeed an international watercourse, it will have a unique opportunity to clarify states' substantive and procedural obligations with respect to its use.⁴³

CONCLUSION

International water sharing has always been evidently important since long time but it reached at its peak when the demand and requirement for water was increased to fulfill the needs of the population. So, the principles mentioned in the Chapter II like prior consent theory, equitable use and cooperation, non-significant harm to other states, adhering to the sustainable development, etc have been very helpful in developing the international law on watercourses. Apart from this every international instrument proposed for settlement of disputes by peaceful means and restraining themselves to use any force in case of any dispute.

⁴² PANOS MERKOURIS, THE HAGUE JUSTICE PORTAL, <http://www.haguejusticeportal.net/index.php?id=11878>, (6 NOVEMBER, 2017 8:00 PM)

⁴³ TAMER MASHIEL, A NEW TRANSBOUNDARY FRESH WATER DISPUTE BEFORE THE INTERNATIONAL COURT OF JUSTICE, DATED 26 JULY 2016, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2856721, (7 NOVEMBER, 2017, 7:00 PM)



This whole set of principles and rules governing international law seems perfect to regulate international water resources but they are totally different when it comes to the practicality of these theories it faces a lot of problems in its implementation. The theory is totally different from practice because there is lack of political willingness amongst different states and it includes both lower and upper riparian states. The principles enshrined in the international instrument relating to equitable use and cooperation of states along with the non-significant harm to other states is totally uncertain and varies from state to state. Say for example if the principle of non-significant harm to other states if strictly adhered to will give a veto power to the lower riparian states to object almost every program for national development by the upper riparian states.

Failure to adopt one of the most important instruments relating to water sharing, the Convention of 1997 on the Law of the Non-Navigational Uses of International Watercourses is due to political unwillingness to cooperate with the mentioned principles. This provides sufficient evidence to prove that these principles exist in theory and not in practice, although many scholars assert that these principles are a part of customary international law, thus is binding but there are still differences among the states about its application and its binding effect. But different states are coming together binding themselves through bilateral or multilateral treaties with respect to the judicious use of water. Limited sovereignty prevails when it comes to water sharing, any state cannot use its resource in such a manner that it is detrimental to other states. Trans boundary harm led to conflicts and conflicts lead to another treaty. Now treaties also contain provisions for settlement of disputes by peaceful means.

The cases mentioned in the Chapter III reflect the dynamic nature of the laws of international law. It keeps on changing along with the facts and circumstances of each case. The new case *Chile v. Bolivia*⁴⁴ is another trend changing case which bears extreme importance in the world of international water law. This is the only case till date which demands for the declaration of a water body to be international watercourse. The decision of the International Court of Justice with respect to this case will be a landmark decision as the declaration of the water of Silala as international water will affect the interests of many surrounding states along with Chile. Chile will be granted a right to water under this decision if the court declares the water to be international. So, every step taken by the International Court of Justice with regard to the water sharing had a great impact in the development of international water law.

The doctrine of territorial sovereignty had been separated from its meaning in *stricto sensu* when it comes to water sharing and trans boundary harm. So, the shared practice of water resources has always been controversial as it differs from state to state. But a golden thread runs along this whole practice to use the water resources equitably irrespective of sovereignty of states as the upper riparian states bear an international obligation to frame their national policy for its development in such a way that it does not affect the lower riparian states significantly.

Nations should take a step ahead to extend their helping hands to other states for water sharing. The different developing status of states reflects the need of water uses but that should be done keeping in mind the necessity of other states as well. The upper riparian states hold the responsibility to prevent any significant harm in the course of their development as there is the existence of water under the international water law.

⁴⁴ Supra note 43