CHAPTER: IV

INTERNATIONAL LAW AND THE EQUITABLE SHARING OF RIVER WATERS AMONG RIPARIAN STATES
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Water is an essential natural resource and since the beginning of this century several long standing conflicts have emerged over equitable water distribution among states sharing international rivers.

Historically, decisions relating to use of water resources have been made independently of most other land use management decisions. Law provides a perfect machinery for the peaceful resolution of disputes, offering accommodation of correlative rights of each country. The evolution of International River Laws has taken many centuries and the process still continues. A number of principles and treaties for management, sharing, utilization and conservation of international water resources have been codified during the past two centuries.

International Water Law which forms part of international law itself, has emerged from various sources, such as Article 38 of the statutes of the international conventions, international custom; the general principles of law, and the decisions of International tribunals including arbitral awards. To these source should be added the law making activities of international bodies and the resolutions and recommendations of inter-governmental organisations.²

Numerous rivers cross several state boundaries and it is necessary to distribute the water of those rivers among the various state which they cross. Water rights depend on, and vary with, a country’s system of law. The development of water resources in any country or state must involve relevant legislation and subsequent institutions to control that development.\(^3\)

The riparian right system has developed from early times. Basically, a right to use water comes from the occupation of land bordering a water course, such land being termed riparian land. A customary law may be applied in this condition.

Broadly speaking, a riparian owner has claim to the benefit of the natural flow of the watercourse bordering his land. The state should take water from its immediate upstream neighbour and fellow riparian owner without a material change in its quality and quantity and pass it on to its downstream neighbours in a similar state. It is entitled to the use of the water, which flows past its riparian land for its ordinary use. It is generally accepted as being for the purpose of domestic use.\(^4\) In case of conflict over the distribution and use of river water flowing through more than one potential unit, the criteria of prior use, of historic rights and relative requirements have been advanced as equitable standards. They have been invoked in various controversies between sharing states.\(^5\)

During the mid 19th century, arbitration of international dispute was not common. However, by late 19th century, it was becoming increasingly common but was done on an ad-hoc basis. In International Law, a distinction is normally drawn between national and international rivers. A river, which passes through or along the territory of two or more states is described as international river and is governed by the rules of the international river law. A river, which flows entirely within the territory of a sin-


\(^4\) Dante A. Coponera, *op.cit.*, pp.175-176.

gle state is described as a national river.6

1. WATER TREATIES ON EUROPEAN CONTINENT

Europe was the first continent which witnessed sharp differences over the sharing of waters of international rivers as the thrust for harnessing water for industrial and economic development in the 19th century gained momentum. In most cases these disagreements were solved through negotiations. The agreement between Turkey and Austria in 1619 over Danube River and between Germany and France in 1697 over Rhine were among the early landmarks in the making of modern International Law on navigation.7 Much later, in the 19th century two commissions were setup—the European Commission on the Danube and the Central Commission on the Rhine—to regulate navigation on these two rivers.8 The Rhine and Danube Commission were primarily administrative bodies related with navigation issues.

In 1916, Holland, affronted with the final act of the Congress of Vienna, strived in the name of its sovereignty to render delusory the rights of the riparians of the Rhine. Between 1816 and 1956, Germany concluded approximately twenty water treaties with its neighbours.9 The principle that was recognized in all these treaties was that no state may take measures on its own territory concerning an international water course which will affect the flow of water in the territory of another state to the disadvantage of the latter. This rule has come to be recognized in International Law.10 For instance, Article 21 of the treaty between Germany and Czecho-

10. Quoted in Berber, op. cit.
slovakia regarding frontier waters stated that if an installation is likely to cause any considerable or permanent change in the flow of a frontier water course or stream intersected by the frontier, each of the two states shall take account of the legitimate claims of the intersected parties in the other state. Similar provisions are to be found in the treaties between Germany and France, and the Grand duchy of Luxembourg, relating the Upper Rhine and the Moselle respectively. Similar principles came into the Berne Convention of October 4, 1913, between France and Switzerland. Article 4 provides that the dam to be constructed would operate in accordance with "a set of rules agreed between the two governments with a view to avoiding any risk of floods and any damage to the plant upstream, and so far as possible, mitigating down stream the detriment which may result from the changes in the water flow." The principle of limited territorial sovereignty is to be found in the convention between France and Italy of December 17, 1914. In Articles 1, and 3 of that treaty, both parties declare that they will avoid using or allowing the exploitation of the Raya river and its tributaries in the sections only under their jurisdiction unless prior concurrence in given. From the foregoing analysis of some of the European water treaties are important principle becomes apparent i.e, each state possesses rights of sovereignty. However this right is limited by a second consideration which is the duty not to injure the rights of the co-riparian state.

2. THE AMERICAN CONTINENT

The American Continent too witnessed sharp disagreement over the sharing of river waters in the 18th and 19th centuries. The treaties signed on the European Continent at times provided the basis for cooperative action

with regard to the allocation of river waters. However in some cases the situation demanded a completely new set of ideas and rules which had to take into account the particularities of a specific situation.

For instance, the Jay treaty of 1794, concluded between Great Britain and the United States in connection with navigation of boundary waters is an important landmark in the evolution of international rules regarding water rights. It was mutually agreed, that “both parties living on both side of the boundary should be free at all times to pass and repass by land or inland navigation into the respective territory of each country; to navigative all the lakes, rivers, and water thereof, and freely to carry on trade and commerce with each other.” A return to the north American scene shows united attempts to develop machinery for the settlements of boundary water problems.

Another milestone in the evolution of International River Law is the treaty of Washington signed between United States and Mexico in 1906. In 1894 a dispute started as a result of the change in the course of the Rio-Grande in the United States to the detriment of Mexico's interest in the river. The Mexican Government protested against the injury caused to its existing interest claiming that, the principles of International Law would form a sufficient basis for the rights of the Mexican inhabitants of the bank of the Rio-Grande. During the late 19th century and the early 20th century demands upon the waters of the Rio-Grande were increasing and friction between the United State and Mexico over the control of the river waters gathered momentum.

Negotiations between US and Mexico ultimately culminated the treaty of water. The United States renounced de-facto, if not dejure the principle

17. United States Treaty Series, No. 455.
of absolute sovereignty.¹⁸ The convention of May 21, 1906 provided that
Mexico would receive a limited quantity of water from the Rio-Grande.
Article 4 of this treaty makes it clear, however that the supply of water to
Mexico "should not be construed as recognition by the United States of
any claim on the part of Mexico to the said waters".¹⁹

The US shares water and shares longer boundaries related to water
with Canadian. The two were at loggerheads for some time over the issue
of water rights. In most cases, the United State, being the riparian state,
defended its case by invoking the principle of absolute territorial sover­
eignty, although Canada as the lower riparian state, upheld the principal of
territorial integrity, whereby restriction are placed on another states right
to change the natural flow of international waterway without perior
occurence. As a matter of fact, Canada explained the United States atti­
tude as contrary to International Law.²⁰ An important boundary waters treaty
was signed between them in 1889. The treaty defines boundary water in its
preliminary Article as:

"The waters from main shore to main shore of the
lakes and rivers and connecting waterways, or the
portion thereof along which the international
boundary between the United States and the Do­
momination of Canada passes including all bays, arms
and inlets thereof, but not including tributary wa­
ter which in their natural channels would flow into
such lakes, rivers and waterways, or waters of rivers
flowing across the boundary."²¹

¹⁹. Samir N. Saliba, op. cit., p.52.
Relations, Papers Relating to the Work of the International Joint Commis­sion (Ottawa: 1929), pp.8-9 and
see also Burpee, A Successful Experiment in Internationa! Relations, Papers relating to Work of the
An International Joint Commission (IJC) was set up in 1909 under the provisions of this treaty to resolve disputes relating to both boundary and transboundary waters. The boundary water treaty and IJC dealt the matter on diversion of flows for irrigation purposes and power generation as well as, reduction of municipal and industrial waste discharge, sharing water costs and benefits concerning the water issues.\(^22\)

The Columbia River, which originates in Canada and which flows into the United States, has been the scene of large scale of hydroelectric generation and irrigation development. The International Joint Commission established an International Columbia River Engineering Board which made extensive technical studies and on the basis of this was able to draw up plans for the development of the river on a cooperative basis. The commission also, at the request of the two governments, submitted a report relating to the principles to be applied in determining the allocations of benefit and the distribution of costs which would result from co-operative development of the Columbia basin. The Columbia River treaty is an example of an effective use of the federal approach in context of International basin development and settlement of water dispute. Under the federal approach crucial and divisive problems can be solved with mutually satisfactory results.\(^23\)

3. AFRO-ASIAN CONTINENT

International water treaties in the Afro-Asian continent are of relatively recent origin and the earliest treaty that was concluded in this part of the world was signed in 1929 between Egypt and the United Kingdom. This treaty was in connection with the diversion of the waters of the Nile River in equal proportion. The British Government suggested that it should be


based on following considerations: the legal principle is that the waters of Nile river, the combined flow of white and blue Nile and their branches should be accepted as a single unit, planned for the use of people inhabiting their banks according to their needs and capacity to benefit from the Nile.  

In November 1956 an agreement was signed between United Arab Republic and Sudan in the context of the Nile river waters. The main intention of this treaty was that water must be used according to actual need and for the purpose of development. The treaty assigned an estimated 555,000 MCM of waters per year to Egypt and 18,500 MCM to Sudan. The treaty also provides for the creation of a Permanent Joint Technical Commission for the planning of Nile river as single hydrological unit to be developed on the basis of mutual benefit for all riparian states. At present, the 1959 Nile agreement will continue to be the principal regulatory instrument for managing waters of Nile river.

(i) THE INDUS RIVER BASIN AGREEMENT

In 1939 a controversy arose between the province of Sind and province of Punjab as a result of the diversions of the Indus River. Sir Bengal Rao headed a commission which was established to look into the and to make recommendation towards its settlement.

Just after the partition of India, a conflict arose between India and Pakistan regarding the water allocation of Indus Basin. A treaty was concluded between these two counties on May 4, 1948 for the utilization of waters of Indus basin. This treaty which was signed with the aid and advice of the International Bank of Reconstruction and Development laid down the following rules:

The Western rivers Indus, Jhelum and Chenab and its waters are exclusively useful for the development Pakistani territory, except the Jhelum's

flow in Kashmir which is significant for the development of Kashmir.

In the case of the eastern rivers Rabi Beas, and Sutlej India would utilize their waters except for a specified transition period during which India would partially supply waters to Pakistan. Each country would construct the works located on its own territories which are planned for the development of supplies.26

The cost of such works would be born by the country to be benefited thereby. An appropriate procedure would be established for adjusting or arbitrating dispute related to allocation of cost under this principle.27 Permanent Indus Commissin was set up to settle the dispute over water as the provisions of the treaty.

(ii) THE GANGES WATER AGREEMENT

The Ganges Water Agreement was signed on November 5, 1977 over the sharing of Ganges waters at Farakka. Its aim was also to find a long term solution for augmentation of the dry season flows of Ganges. Bangladesh and India visualized divergent solution as to how to increase the dry season flow of Ganges River. The proposal of India was a transfer of water from the Brahmaputra River in Assam through a long canal passing through Bangladesh. On the other hand Bangladesh proposed storage dams in the upper reaches of the Ganges River in Nepal and India that would store wet season flow for release during the low flow period. Bangladesh was unwilling to permit the country's second major river to fall under the physical control of India, which the diversion structures at Jhogighopa and the outfall at Farakka would involve. Officially, Bangladesh has rejected the link canal proposal as technically and economically unfeasible and ecologically ruinous. The Ganges water agreement of 1977, nevertheless, has provided a solid foundation for a durable settlement to be reached. Pending a perma-

27. Quoted in Berber, op.cit., p.106.
4. INTERNATIONAL WATER TREATIES IN WEST ASIA

Treaties regarding international rivers in West Asia have been patterned on the lines of American and European water treaties. The earliest treaty on West Asian water resources was concluded in December 1920 between France and Britain involving the Tigris, Euphrates, Jordan and the Yarmuk rivers. The treaty the practice where the vested as well as reserved rights of riparian states were protected. Under Article 3 of the treaty two contracting parties would agree to nominate a commission to examine a plan of irrigation organized by the government of the French mandatory, territory the execution of which would be of a nature to diminish in any considerable degree of the Tigris and Euphrates water at the point where they enter the British mandate in Mesopotamia. Article 8 of the same treaty further has become essential for the agreement that a second commission was to be appointed to invigilate in common the employment, for the irrigation purposes and the production of hydroelectric power, of the waters of the upper Jordan and the Yarmuk and its tributaries, after satisfaction of the needs of the territory under the French mandatory power.

In 1921, the Treaty of Friendship was concluded between Persia and Russia. The two countries stated that "they shall have equal rights of usage over the Atrak River and other frontier rivers and Waterways". An important West Asian treaty was signed between the United Kingdom and France on February 3, 1922 in connection with the utilization of the Yarmuk waters proportionately. This treaty recommended that the "inhabitants of Syria and Lebanon shall have the same fishing and navigation rights on

Lake Huleh and Tiberias and the river Jordan as the people of Palestine.\(^{31}\)

The Final Protocol of the Franco-Turkish delimitation commission, May 3, 1930, recommended that: "whereas its neighbourhood on the Tigris imposes on the riparians specific obligations, it becomes necessary to establish rules in connection with the rights of each sovereign state in its context with the other". All questions, for example-navigation, fishing, industrial and agricultural utilization of the waters, and the policing of the river shall, be solved on the lines of complete equality.\(^{32}\) Internationally the general rule for boundary river is that the boundary follows the thalweg. It is considered to assure access to navigation to both countries. In the case of the Shatt, however, Iraq can make a compelling appeal to equitable considerations of the sort often in deciding marine boundaries.\(^{33}\)

On March 29, 1946 the Treaty of Friendship and Good Neighbourly Relation was concluded between Iraq and Turkey. It declared that both countries have importance of conservation works on the Tigris and Euphrates with its branches, in order to insure the flow of the two rivers with a view to avoid the danger of floods during the annual periods of high water.\(^{34}\) The treaty has significance for cooperation on the part of both countries on matters in the light of the exchange of information on the water-flow records and other data of the two rivers. Turkey moreover, agreed to grant the Iraq to right to construct dams and other similar works on sites which are located in Turkish territory with the stipulation that Iraq will defray the cost of the constructions. Article 4 of the treaty stated that the above mentioned works shall be the subject of a separate agreement in respect of its site, cost operation and maintenance, and its use by Turkey for purposes of irrigation and power production. Under Article 5, Turkey agreed to keep Iraq informed of plans for the construction of conservation works on either of the two rivers or tributaries. On June 4, 1953, Syria and Jor-

\(^{31}\) Ibid., p.60.
\(^{33}\) Naff and Maston, op.cit., p.178.
Dan signed a treaty concerning the joint development and utilization of the Yarmuk river. On July 6, 1987 an agreement was signed on economic cooperation between Turkey and Syria. Turkey was in favour of ad-hoc bilateral joint ventures in water and energy development and was prepared to cooperate on data management.

It is obvious that International water treaties in West Asia are few and even the ones that have been signed are of a general nature. Many questions still remain unanswered and there seems to be very little effort to deal with contentious issues. Do upstream state within which a river originates, have priority over downstream states? Do population growth and other needs in one riparian state give it priority over another? Should a riparian state be demanded to consume water in more economical ways? Should it be demanded if one riparian state to use only certain sources of waters and leave specific sources for supplying the needs of other? These and related questions are as yet unanswered in the region and there is very little by way of international water treaties to serve as a guide. The lack of political understanding and intense competition for regional influence is an important factor hindering the evolution of mutually acceptable water treaties in the region. Coupled with this is fact that the subject of water raises unique emotions. The result is that each country prefers to go it alone and all pragmatic solution have been sacrificed at the altar of populist and sometimes grandiose schemes. It is only in the 1990’s that the states in the region have shown some degree of willingness to eschew unilateral action and work out solution on a cooperative basis in the light of existing international laws and conventions.

**CONCLUSION**

International Law in connection with the sharing of river water resources is still in a status quo stage and a full fledged international legal regime pertaining to this can develop only with the cooperation of all riparian states. The development of water resources on a regional basis must involve relevant legislation and subsequent institu-

tions to control that development. In international law, a distinction is drawn between national or international rivers. If a river, touches through or along the territory of two or more states it is known as international river and is governed by the rules of the international river Law. If a runs completely with in the territory of a single state then it is a known as a national river.

Europe was the first continent which witnessed disagreement over the sharing of river waters. In 17th century dispute arose over navigation rights on Danube and Rhine rivers. This controversy was resolved with the singing of several agreement which have become milestones in the development of international law on navigation.

The American continent to evident sharp disagreement over the sharing of Rio Granda, Colorado, Columbia rivers, waters in the 18th and 19th century. The treaties signed on the European Continent at times provides the basis for cooperative action with regard to the allocation of river waters. However, in some cases the situation demanded a completely new set of ideas and rules which had to take into account the particularities of a specific situation. International water treaties on the Afro-Asian Continent are of relatively recent origin and the earliest treaty that was concluded in this part of the world was signed in 1929 between Egypt and the United Kingdom. The treaty was regarding the diversion of the waters of the Nile in equal proportion. The subsequent 1959 agreement continues to be the principal regulating instrument for managing waters of Nile river.

In 1939 a conflict arose between the province of Sind and province of Punjab as a result of the diversions of the Indus river sir Bengal Rao headed a commission which was established to find a solution. Just after the partition of India, a controversy flared up over the allocation of waters of the Indus Basin Between India and Pakistan. On May 4, 1948 a treaty was signed between these two countries which contemplated that further negotiations should take place in order to settle by agreement and in accordance with international law and equality the problems of Indus Basin. Ganges water agreement was signed on November 5, 1977 over the sharing Ganges Water at Farakka. Its main aim was to find a long term solution for augmentation of the dry seasons flow of water of Ganga.
Treaties related to international rivers in West Asia have been patterned in the light of European and American water treaties. The earliest treaty in this connection was following:

Franco-British convention signed in December 1920 in relation with the Tigris, Euphrates, Jordan and the Yarmuk rivers. Under the convention they reflect the practice where the vested and reserved rights of riparians states were protected. In 1921, the treaty of friendship concluded between Persia and Russia stated that the two countries they shall have equal rights in connection with the sharing of Atrak river and other frontier rivers and waterways. In 1922, the treaty was passed on Yarmuk river, the treaty was concluded between Syria and Lebanese shall have same have same fishing, and navigation rights on Lake Huleh, Lake Tiberias and the river Jordan. In 1930 the final protocol of the France Turkish Delimitation Commission, stated that the neighbouring states should have waters of Tigris for the multipurpose uses. In 1946, the treaty of friendship and Good Neighbourly Relation was signed between Iraq and Turkey. Both countries shall have equal region in connection with the conservation works on the Tigris and Euphrates to regulate the flow of the two rivers and in order to insure the maintenance of a regular water supply during the annual periods of high water.

In 1953 Syria and Jordan concluded a treaty over Yarmuk for its Joint development. The main purpose of this treaty was to establish of a joint Syrian-Jordanian committee to supervise the execution of the plan. In July 1987 on economic agreement was concluded between Turkey and Syria. Turkey was willing to have adhoc bilateral joint ventures in water and energy development and was prepared to cooperate on management. It is a fact that international water treaties in West Asia are few and even the over that have been concluded are of a general nature. In these negotiations which are still continuing some progress has been made regarding sharing of water resources. However, long term cooperative development of international river water resources in West Asia present the greatest challenge to policy makers within and outside the region. In the West Asia region a number of water related economic and strategic issues still remain unresolved.

In 1990's water issue where on the agenda of the multilateral talks which were
concluded began in Madrid in 1991. In connection with the equal water sharing between riparian states.

A comprehensive water development scheme for the region can be successful only if the parties to the conflict are prepared to make essential concessions. This requires the subsuming of narrow national interests of each riparian state to the greater regional interest.

CONCLUSION

International Law in connection with the sharing of river water resources is still in a status quo stage and a full fledged international legal regime pertaining to this can develop only with the cooperation of all riparian states. The development of water resources or a regional basis must involve relevant legislation and subsequent institutions to control that development. In international law, a distinction is drawn between national or international rivers. If a river, touches through or along the territory of two or more states it is known as international river and is governed by the rules of the international river Law. If a runs completely with in the territory of a single state then it is a known as a national river.

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