

A Bridge over Troubled Waters – Reviving the Role of International Water Law in the Resolution of Transboundary Freshwater Disputes

There is no single natural resource on which the world depends more than freshwater. Unfortunately, it is rapidly becoming a scarce resource due to depletion, population growth, unequal distribution, and inefficient use. As States strive to take advantage of shared freshwater resources, they often disregard or harm the interests of other States and disputes arise as a result. Predictions that such disputes may lead to ‘water wars’ in the future have led to a vast body of research on tools and techniques to *manage* shared freshwater resources, however relatively little attention has been paid to the need for effective ways to *resolve* transboundary freshwater disputes (TFDs) peacefully if and when they arise. History suggests that States usually attempt to resolve TFDs by way of negotiation or third party non-binding processes such as mediation or conciliation. However, as illustrated by the ongoing disputes over the Nile River in Africa and the Amu Darya and Syr Darya Rivers in Central Asia, such mechanisms are not always effective or efficient and may lead to deadlock. At the same time, arbitration and judicial settlement on the basis of international law have been infrequently used in the resolution of TFDs.

The proposed paper will argue that one of the main obstacles to the peaceful resolution of TFDs is the inadequacy of international water law, which is often viewed by States as ambiguous and difficult to apply in practice, and may lead to deadlock in negotiations as well as deter States from referring TFDs to third-party resolution. This, in turn, limits the peaceful settlement options available to States faced with TFDs and increases the risk of escalation into violent conflict. The paper will first examine the core principles of international water law, how they have been interpreted and applied by international courts and tribunals, and the extent to which they have been accepted in State practice. It will then suggest two tools for further developing these principles by borrowing concepts from other legal fields and domestic judicial practice. The first tool is a conceptual framework based on the notion of ‘regional common concern’, which has been used in the context of environmental protection. The second tool is a practical formula based on the concept of ‘equitable apportionment’, which has been applied by the United States Supreme Court and other domestic courts. The paper will develop and apply these tools in the context of TFDs in order to broaden the dispute resolution toolbox available to States and reinforce the role of international water law in their resolution.