

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Importance of Water Diplomacy in Current Era: With Special Reference to South Asian Countries

SAYALI M.P. CHANDEKAR¹

ABSTRACT

Food, Clothing and Shelter, nature has given some basic needs to human for survival. One of the needs which is paramount to humans is water. Flowing water in form of river, lake crosses boarder of one state to another. When water crosses one country and enter the into the territory of another then inadvertently it leads to disputes. Every nation ends up claiming ownership over the water. For resolving the disputes, nations use successful machinery of international law i.e., diplomacy. Diplomacy is an art and skill of managing the international relations through peaceful way like negotiation, discussion, mediation. Water diplomacy is an innovative approach and instrument to resolve water issues at transboundary scale when conflict arise in sharing water resources. It may contribute to solve variety of water conflict like fresh water, industrialisation, irrigation, transboundary water management etc., The United Nations in 1997 introduce convention to resolve water problem. The paper will discuss the same. The great part of the earth i.e., South Asia facing same issue since an age, the researcher will highlight the same. As of now water comes under international law and international diplomacy is playing vital role here, this paper discusses the review of water diplomacy further, this paper pointed out the situation of water conflict in South Asian countries like, India, China, Pakistan, Nepal and Bangladesh.

Keywords: *Water Diplomacy, Transboundary water management, Public International Law, International Watercourse Convention 1997, South Asian Countries,*

A drop of water, if it could write out its own history, would explain the universe to us.”

– **Lucy Larcom**²

I. INTRODUCTION

International river and their basin are prime factor of economic and political development of the countries since long. The river of China, India, America, France and many more countries always played important role in their respective states. Creation of new state also led to new boundaries across the river basin. River across the boundaries and enter the territory of others.

¹ Author is a Phd Scholar at Department of Law, Savitribai Phule Pune University, India.

² **lucy larcom** , *Water Quotes Honoring the Flow of Life*, (Mar.29, 5:00 AM), <https://everydaypower.com/water-quotes/>

When rivers cross the border it creates many barriers like, economic, political, irrigation, psychological and many more. To resolve these barriers diplomacy plays a vital role. The diplomacy comes under purview of public international law and developed under its sources. Diplomacy is not a hidden concept it is an ongoing path. It is developed with the changing world. When we look into history, we see that it is developed in Greek countries, then evolved in world wars and after adoption of United Nations, one legal document adopted on diplomacy i.e., Vienna Convention on Diplomatic Relations 1961. World has changed and concept of diplomacy has also changed, instead of orthodox practice we can see diplomacy in various sectors like, cyber or digital, science diplomacy, citizen diplomacy, cultural diplomacy, water diplomacy and many more.

Water is a politically challenged issue in South Asia. The region is facing water shortage, agricultural difficulties, slow industrialisation growth. Combine these factors with impact of climate change reduces the amount of water in many basins and changing water flow. Freshwater is very precious and whose importance never be underestimated. Under such circumstances there is a need of developing political relations among the nations also sign bilateral multilateral treaties so that, these issues will resolve peacefully. There are some treaties have signed between these countries and trying to resolve conflicts amicably but there is more need to take forward step to achieve peace over water scarcity. This paper discussed the overall scenario of water problems in the region. Also discussed the transboundary water management issues and greatest tool of international law i.e., diplomacy. Further, paper focused on water issue in South Asian countries and also discussed the treaties which are signed by nations. The United Nations achieve great victory in 1997 after introducing Watercourse Convention. Hence, this paper also discussed the international legal regime in water sector.

II. WATER SCARCITY

Climate and global change effects on global economy and social security. Due to climate change we are facing water scarcity. It affects 700 million people in 43 countries worldwide. Till 2025 many countries will face absolute water scarcity³. Water is polluted in many areas and states are struggling to get fresh water for survival.

III. PEACE AND WATER

We live on water planet. It is a great nature source of living being. As we live on water planet it

³ Juan Carlos Sanchez & Joshua Roberts, *Transboundary Water Governance*, IUCN Environment Policy and Law, (Apr.1,2021, 12:00 Noon), <https://portals.iucn.org/library/sites/library/files/documents/IUCN-EPLP-no.075.pdf>.

is necessary to avoid land-dwelling creatures otherwise, we could live on ocean planet.

The left-over running water is not easily available to all, now it comes under transboundary issue. Every state of the world uses water as a weapon. In current era we could call water's anonym as peace. Peace do not mean absence of conflict it must be absence of violence which help to unfold conflict in constructive ways. Peace exists where people act non- violently and resolve the issues constructively.

When we hear about war, we imagine that something which is very far. And when we sensed it, we can see many consequences like loss of lives, families and everything which we belong. It is important to maintain world peace.

Water connects territories, every state tries to enjoy running and pure water for survival. When river crosses a territory of one state and connects another then conflict arise. Such conflict may solve through successful machinery of International Law i.e., diplomacy.

Diplomacy is nothing but an art to conduct dialogue between the states. It may be in form of negotiation, discussion or mediation. This successful branch plays vital role to maintain peace worldwide since long.

IV. WATER AND DIPLOMACY

Water diplomacy is a branch of diplomacy, which is practice of using water as a tool for conducting international relations. It can be bilateral or multilateral which involves two or more states. It increases engagements and cooperation between the countries. Such type of diplomacy has ultimate goal to ensure state co-operation, stability and peace. Water diplomacy uses water resource to contribute the broader goals of peace and stability through diplomatic activities like co-operation. It is a bridge to maintain balance of State's national interest. It runs through dialogues, negotiation and reconciliation of disputed issues among riparian states. Water diplomacy's aim to conclude water agreements within the strategy and plans of foreign policies with national security interest. One of the remarkable examples is International law Committee which work more than 30 years, helps to bring United nations Water Convention 1997⁴. So, the water diplomacy is much needed path which deals complexity question of water management. It always gives a ray of hope for gaining success in water negotiation and discussion.

⁴ DR. MAGDY HENFY, *Water Diplomacy: A Tool for enhancing water Peace and Sustainability in the Arab region*, WFP. PFW., Nov. 2011, at 24,25.

Due to highest pollution and rising of daily needs, India and China have rising water need. The Himalaya are at the source of 19 rivers, some river crosses border of India and joins China. With rising need of water, India and China are investing in big projects to get enough energy and agricultural requirements. Chinese economic strength sanctioned the state to build dams on these rivers⁵. The diplomats of respective countries are playing greater role to avoid conflict and resolve water dispute in constructive manner.

V. TRANSBOUNDARY WATER MANAGEMENT

Transboundary water includes rivers basins and lakes which are shared by two or more states in the world. Water crosses boundaries and flow between many countries throughout the world. To manage water-stress many states pursue transboundary water management to avoid water conflict. Events like industrial pollution, infrastructure projects, extreme flood draught events encourage nations to co-operate and share information related to water management. This promotes international trade, climate change adaptation, economic growth, food security, improved governance and regional integration. Sharing information and managing watershed promotes healthy transboundary managements. There is one example, Mekong is one of the major projects in South Asia runs through China, Myanmar, Laos, Thailand, Cambodia and Vietnam. It is source of irrigation, fishery and navigation for riparian states. Constructions of dams over there by China cause an alarm for other states. The absence of any international treaty between these countries, China can use its power and could control the flow of Mekong. Hence, to control water dispute there is need of transboundary water managements through the agreement, treaties, negotiation and discussion.

There is a hope to overcome water conflict and get peaceful access of fresh water to every nation. Since 1948, there are 37 instances of water conflict. Approximately 295 international water agreements were negotiated and signed in the same period which includes UNECE water convention. Initially said convention was only available to pan-Europe but since 2003 it is available globally. However, around two-thirds of the world's transboundary rivers do not have a cooperative management framework⁶.

To maintain peace and avoid conflict, nations have to follow United Nations standards, which requires cooperation between countries with good legal and institutional framework and also

⁵ TRIPATHI BALAJI, *Why India needs a plan to counter china's water hegemony*, YKA, (Mar.30, 2021, 10:00 AM), <https://www.youthkiawaaz.com/2020/10/countering-chinas-water-hegemony-water-diplomacy-initiative/>.

⁶ United Nations, *UN Water*, (Mar. 30, 2021, 11:00 AM), <https://www.unwater.org/water-facts/transboundary-waters/>.

combine approach to planning and sharing both the costs and benefits of water managements.⁷

VI. WATER DIPLOMACY IN SOUTH-ASIA

Water sustains life. But for survival, one of the largest parts of earth South Asia facing complex issues like, rising demand of water due to high population, imperative development, water mismanaging, scarcity, uneven distribution, environmental flaws and climate change. Water supply is seasonal from rains but it also causes floods and draughts. Thus, there is fresh water crisis in south Asia.

When treaty obligations exist data sharing practice is very limited and it creates massive task to cross challenges.

Generally, the South Asian countries follows customary international law as mentioned in Article 38 of International Court Justice. On this basis these countries apply and follows the principles based on 1997 Watercourse Convention and establish a regional mechanism for water sharing.

The paper will discuss legal regimes of water sharing in some countries like India -Pakistan, India Bangladesh and India Nepal

(A) India-Pakistan

India and Pakistan both were part of British India. British India compel both the regions to compromise water-sharing regime and concerns the six river basin those are Indus, Jhelum, Chenab, Sutlej, Beas and Ravi, which originate in the Himalayas and pass through India and State of Jammu and Kashmir and some part in POK (Pak Occupied Kashmir). In 1948 India and Pakistan agreed to pay attention towards water flow and got ready to sign a treaty. In 1960 both the countries had signed Indus Water Treaty. As per treaty Beas, Ravi and Sutlej are to be governed by India and Indus, Jhelum and Chenab are to be taken care by Pakistan. India has 20% right of irrigation, power generation and transportation over Indus as it flows from India. Treaty also sets up the ways through both countries could arbitrate their disputes amicably. On very great extend the water diplomacy between these countries is successful at some extend as they are binding with the treaties, they have to solve issues amicably⁸by peaceful way. The diplomacy runs here at great extends.

⁷ ALBERTA, & "MONTANA. *How Water is Governed: Transboundary water management*, A.W.P., (Dec. 12, 2014, 11:30 AM), <https://albertawater.com/how-is-water-governed/transboundary-water-management>.

⁸ RINCHEN WANGHCHUK, *What is Indus Water Treaty between India and Pakistan and Why its in news*, T.B.I. (Aprl. 2, 2021, 2:00 PM), <https://www.thebetterindia.com/142689/indus-water-treaty-kishanganga-india-pakistan/>.

(B) India and Bangladesh

Government of India and Bangladesh had signed water treaty - Ganges Water Treaty 1996 to share water surface at Farakka Barrage near their mutual border. This bilateral treaty established 30-years water-sharing arrangement and recognised Bangladesh's rights as a lower-level riparian. This treaty guided by the principles fair, equity and reasonableness and no harm to either party.

(C) India – Nepal

The least developed country in South Asia is Nepal, had signed three Water treaties with India 1954, 1959 and 1996. 1954 agreement were revised in 1996 on Kosi river project was for the purpose of flood control, irrigation and power generation. Further, the Gandak river treaty between Nepal and India. This treaty provides riparian rights to Nepal and keep ownership with India. In 1996, the most important treaty was signed i.e., Mahakali treaty. This treaty incorporates the principle of equitable and reasonable without prejudice to the existing use of parties.

VII. INTERNATIONAL LEGAL FRAMEWORK

The law international watercourse is evolving subject to public international law. Though the concept is evolving but not as well-established law. Water always played important role in social and economic development of states and it helps to develop International Water Law. In recent world, rules regarding water management have been developed through United Nations, NGO's, International Law Association and many more. The remarkable work done by International Law Commission by adopting the Convention on the Law of the Non-Navigational Uses of International Watercourse in 1997⁹.

(A) United Nations Watercourse Convention 1997

The United Nations Convention 1997 came into force in August 2014 and ratified in 2017. The said convention has binding approach which gives hope to articulate legal principles of transboundary water issue for promoting cooperation and regional agreements.

There are reasons to introduce UN watercourse conventions-

- i. To reduce interstate conflict over gaps and uncertainties between the states
- ii. To increase pressure to on the quality and quantity of the water of the international watercourse. Because preservation of water is great need of all world states.

⁹ Peace palace Library, *Water Law* (Apr. 2, 2021, 11:15AM), <https://www.peacepalacelibrary.nl/research-guides/special-topics/water/#newtitles>.

- iii. There is need to strengthen the international law to promote peace and security
- iv. It is always better to address through written legal document, despite of great numbers of treaties, the one single document always useful for all nation states to promote and protect relations and issues.

The said convention undergone 30years of legal discussion and political negotiation and finally adopted in 1997. More than 100 nations gave favourable vote. The United Nations General Assembly and International Law Commission adopted said legal draft to promote peace and security in transboundary water issues. The said convention is based on customary international law i.e., Article 38 of International Court of Justice which has legal binding force. It has particular principles based on customary rule like principle of equitable and reasonable use, the no significant harm rule as well as collateral obligation which is based on some basic principles like pollution preservation and information exchange.

VIII. INTERNATIONAL COURT OF JUSTICE

After adoption of convention in 1997, the international court of justice expressly referred it in landmark decision of case Gabčíkovo-Nagymaros¹⁰ case between Hungary and Slovakia. Gabčíkovo-Nagymaros is one of the controversies that have surrounded the use of Europe's longest river Danube. The international environment issues especially sustainable development and equitable utilisation of watercourse involved. The ICJ gave landmark decision by referring UN's Watercourse Convention 1997¹¹.

Further, Mahakali Treaty between India Nepal 1996, Ganges Water Treaty between India - Bangladesh, China Mangolian agreement all were signed during negotiation process of the Watercourse conventions 1997, include many of the principles of the draft articles and final convention. In Syria and Lebanon river agreement 2002 also refers to the convention and principles. Hence, such document has binding legal force which is agreed by most of the country, those who signed it are binding to follow the principles so that, water conflict will be solved peaceful way.

¹⁰ ference madai, *The Hungary-Slovakia Danube River dispute: Implications for sustainable development and equitable utilization of natural resources in international law*, Int. J. Global Environmental Issues, Vol. 1, Nos. (Apr.3, 2004, 11:30AM), https://www.researchgate.net/publication/5107419_The_Hungary-Slovakia_Danube_River_dispute_Implications_for_sustainable_development_and_equitable_utilization_of_natural_resources_in_international_law.

¹¹ UN Watercourse Convention, *The UN Watercourse Convention: History and Prospects*, (Apr. 4, 2021, 12Noon), <http://www.unwatercoursesconvention.org/faqs/>.

IX. CONCLUSION

It is predicted that the next world war would be over water dispute. Considering the dynamics of the world it is imperative to make sure issues related to water are solved with constructive ideas rather than with force. To give access of this natural resource to current and future generations, water diplomacy is much needed for solving these challenges. This pathway of diplomacy helps to encourage people whose lives are stuck in the decision-making process and negotiation. Such people need a key element to resolve the dispute so that they can get water which is basic and essential for life without any hurdle. The human race has ample issues to take care of, water should not be an entity to fight over. Hope water diplomacy is practiced by every nation to make the world a better place with ample water supply to everyone.
