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Principles of International Water Law

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ABSTRACT

This research primarily delves into the principles of international water law and the discourse regarding the same. There are certain treaties which the countries sign in order for peaceful harmony in their respective nations and the world at large. However, since the treaties are not binding upon the countries until they become the signatories, the states have the privilege to refuse to become a part of such co-operative arrangements. Therefore, the study analyses the principles of international water law in the scenario of transboundary water course. In order to conclude with a practical, current scenario, the study analyses and discusses upon the Ganges dispute, the primary principle violated of which is "principle of no significant harm."

Keywords: Water, principle, transboundary.

I. INTRODUCTION

The subject of water, which is essential and vital for the survival of all living beings, has long been a topic of intense discourse and negotiation between countries. This is owing to the fact that water is naturally pervasive, and its management and distribution provide substantial issues. International water law derives from environmental law in the international context. While it is widely assumed that the lack and mismanagement of treaties are the primary causes of this problem, as will be discussed in the upcoming paper, it is actually the states' "political willingness" that plays a critical role in achieving institutionalized cooperation regarding the utilization and preservation of water resources across international basins.³ The term "political willingness" refers to a variety of elements, including the voting process, active engagement by the government, and the functions and powers of key agencies and subsidiary organizations.

Several treaties have been established to address the issues and disputes associated with transboundary water management. However, it is crucial to emphasize that these accords do not necessarily bind countries unless they voluntarily sign them. This indicates that nations maintain the right to refuse to participate in such cooperative agreements, which complicates the situation. As a result, there is a need to design and execute a consistent and globally accepted

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³ Schroeder-Wildberg, E. (2002) 'The 1997 International Watercourses Convention- Background and Negotiations.' Germany: Technical University of Berlin.

legal framework capable of successfully governing transboundary water management and resolving international conflicts.

Nonetheless, encouraging international cooperation and collaboration is critical for reducing disputes and promoting sustainable and integrated water resource management. Nations may cooperate together to regulate the world's water and prevent water disputes by accepting transboundary cooperation principles. We can ensure fair and efficient water use by working together and taking shared responsibility, which will benefit both current and future generations.⁴

The concept of international water law, also known as the law of transboundary water resources, is a system of laws and regulations that regulate how nations share and manage their water resources. It tries to encourage collaboration and avert disputes between states that share water resources. The concept of equal usage with a reasonable mindset is an important part of international water law, stating that all nations have a right to use common water resources, but only in a fair and acceptable manner.

(A) Institutions and conventions:

For achieving sustainable water resources management, Chapter 18 of the Agenda 21, adopted by more than 178 Governments during the UN Conference on Environment and Development (UNCED) in 1992, suggested integrated water resources management (IWRM) and transboundary cooperation and cooperative management of the shared water resources (Articles 18.3, 18.4, 18.6–18.22, 18.10, 18.27 and 18.40). Agenda 21 stresses the need for transboundary water cooperation and agreements among the riparian countries for ensuring integrated management of the shared water resources (UNCED, 1992; Rahaman and Varis, 2008).

The Johannesburg Plan of Implementation, adopted in The World Summit on Sustainable Development (2002), also recognised integrated management of shared water resources through transboundary cooperation involving the riparian states as one of the key components for achieving sustainable development (WSSD, 2002).

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⁴ Varis O, 'Integrated water resources management: evolution, prospects and future challenges' (2004) 1(1) Sustainability: Science, Practice and Policy, 15.

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These organizations are formed to guarantee that countries collaborate and manage their common water resources in a fair and sustainable manner. The basic goal of international water law organizations is to encourage peaceful cooperation, avoid conflicts, and offer a framework for resolving disputes over water distribution, pollution, and other water-related concerns.

These organizations are often made up of international agreements, treaties, and conventions that establish nations' rights and duties surrounding water resources. They provide a legal framework in which nations may negotiate and create regulations for the fair and sustainable use of water. These institutions also encourage the sharing of information, data, and knowledge across nations, allowing them to make more informed choices and establish successful water management policies.

At the global level, there are three primary instruments on Transboundary Water Bodies. The

same are as follows:

1. Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992)
2. Convention on the Law of the Nonnavigational Uses of International Watercourses (1997)
3. Draft articles on the law of transboundary aquifers (ILC 2008, UNGA Resolutions 2008 & 2013)

International water law organizations also play an important role in tackling climate change and rising water shortages. They encourage the use of new technology and best practices for water conservation, efficiency, and management. These agencies also urge governments to work together on research and development activities to discover long-term solutions to water-related problems. International water law institutions help to safeguard water resources for current and upcoming generations by encouraging state cooperation and coordination.

II. ISSUES IN INTERNATIONAL WATER LAW

International water law is a complicated and contentious subject that addresses a wide variety of topics and challenges. One of the most important concerns in this subject is the management and distribution of transboundary water resources. Many of the world's main rivers and lakes cross state borders, necessitating international cooperation and negotiations on how to utilize and share these resources. However, this process is frequently hampered by competing interests and goals, such as economic development, food security, and environmental conservation.

Another important topic in international water law is the “equitable and sustainable” use of water resources. The idea of equitable usage states that water should be shared equally among all users, taking into account the requirements of both upstream and downstream countries. However, this can be difficult to implement in practice, particularly in areas where water shortage is a major concern. Furthermore, safeguarding the sustainability of water supplies is critical for current and future generations. This involves controlling water quality, reducing pollution, and mitigating the impact of climate change on water supply.

Conflicts over water resources also provide a significant challenge to international water law. Disputes can emerge between nations that share a water source, as well as between various sectors of the same country, such as agriculture and industry. These disagreements can have major implications, such as political unrest, economic losses, and environmental destruction. As a result, efficient methods and institutions are required to settle these conflicts and foster

collaboration.

Water governance is strongly related to international water law. Effective governance structures and policies are required for the sustainable and equitable organisation of water resources. However, many poor nations lack the means and expertise to adequately manage their water resources, resulting in problems including water shortages, pollution, and inadequate infrastructure. International collaboration and aid can play an important role in improving water governance in these nations.

Another significant difficulty in international water law is the recognition of water as a human right. Clean water is a fundamental right as per the Indian Constitution, yet millions of people worldwide continue to lack these basic essentials. International water law must address concerns of social justice and fairness to ensure that all persons and communities have the right to clean water.

Finally, the question of water and conflict must be addressed in the framework of international water law. Water shortage has been suggested in several places as a possible cause of future inter-nation conflict, particularly in locations where water supplies are already limited. Furthermore, the management of water resources can spark internal disputes inside countries, particularly in areas with opposing interests and uneven access to water.

To summarize, international water law is an important and complicated area with several problems and issues. Effective water resource management and allocation, equitable and sustainable usage, conflict resolution, and human rights protection must all be addressed to guarantee responsible and fair water use on a global scale. To properly manage this valuable and crucial resource for the a good impact on the current and upcoming generations, all countries must collaborate and adhere to the principles of international water law.

III. PRINCIPLES OF INTERNATIONAL WATER LAW

What comes to the rescue to the abovementioned issues are 'Principles of International Water Law.' Water law is a vast topic and therefore, it is crucial in order to understand the water law on an international level, to comprehend the several principles adopted in the subject. The general principles of international law are adopted from Article 38(1) of the 1946 statute of the international court of justice (ICJ). Article 38 appertains to the court being applied to international conventions and customs as evidence and general principles of law recognized by civilized nations. There are certain important principles of international law that ought to be applicable to transboundary water resources. These laws are crucial to be accommodative and not too harsh on a specific country in order for it to be accepted globally.

The core foundations of international water law regulate governments' rights and duties in the use and management of cross-border water resources. These principles establish a framework for resolving conflicts, encouraging collaboration, and guaranteeing the sustainable and equitable use of common water bodies. International water law acknowledges the critical importance of water as a scarce and necessary resource, and it strives to balance the interests of many governments while fostering peace and environmental preservation.

i. Principle of Limited Territorial Sovereignty:

Several essential ideas underpin international water law, guiding governments' dealings with shared water resources. One such premise is the concept of limited geographical sovereignty. This principle addresses territorial integrity, mutual benefit, and sustainable development.

The principle of “limited territorial sovereignty” is a basic idea in international water law that controls governments' rights and duties with respect to bodies of water that extend beyond their territorial boundaries. This principle emphasizes that, while governments have sovereignty over the waterways inside their borders, their power is restricted when it comes to seas shared or linked with other countries. It provides a framework for collaboration and equitable use of water resources, thus ensuring that states do not exercise unrestricted control over international waters.

In international water law, the notion of limited territorial sovereignty is critical for encouraging collaboration and averting confrontations between governments over shared water resources. It recognizes that governments have exclusive rights to the waterways inside their territorial limits, but also admits that many water bodies, like as rivers, lakes, and oceans, are linked and cross-national borders. This principle underlines the need of governments exercising their sovereignty while considering the interests of other countries that share the same water resources.

This concept guides governments in balancing their rights and duties regarding international waterways. It encourages governments to work together to manage and use common water resources rather than taking unilateral steps that might undermine other states' interests. This concept also establishes a legal framework for resolving disputes and encouraging the sustainable development of water resources, ensuring that governments collaborate to ensure fair and efficient use of international waterways while respecting the rights of all concerned parties. By acknowledging the constraints of territorial sovereignty in the context of international waterways, this concept creates a culture of collaboration and mutual respect among nations, eventually helping to the peaceful and sustainable management of water

resources on a global scale.

ii. Principle of Equitable and Reasonable Utilization:

This principle deals with sovereign equality. It falls within the “theory of limited territorial sovereignty”. It entitles each basin state to a specific amount of water, resulting in a reasonable and equitable distribution of water resources for beneficial uses within its own area.⁵

It is based on sharing the sovereignty and equality of rights, but this does not always imply an equal share of waterways. The goal is to maximize the use of water resources while also protecting them adequately. The notion of equitable and reasonable usage stresses the fair and reasonable distribution of water among riparian governments. This principle considers considerations such as each state's demands, the social and economic advantages of water resources, and potential environmental repercussions.

The factors to determine the equal and just share reasonably, the following has to be thoroughly taken into consideration:

1. Geographical boundaries of the river basin.
2. Hydrology of the river basin
3. The population relies on water.
4. Economic and social demands.
5. Current use of water
6. Climate and ecological factors to a natural character
7. Possibility of other resources being available
8. Potential needs in future

iii. Principle of not to cause significant harm:

This is one of the most important principles of international water law. This is also a part of the theory of limited territorial sovereignty.⁶ While understanding what harm would mean in the context of transboundary water course, there is still ambiguity in comprehending what “Significant” means. The countries must take due diligence which means, an obligation of conduct and not of result that no harm is caused intentionally or by neglect.

The term "significant" implies that no state in an international drainage basin should be allowed

⁵ Art 5 of UN watercourses convention, 1997

⁶ Eckstein G. (2002) “Development of international water law and the UN watercourse convention”, *Hydropolitics in the Developing World: A Southern African Perspective*, 81.

to use the watercourses on its territory in a way that would cause significant harm to other basin states or their environment, including harm to human health and safety; this must be carefully considered. The usage of the waters for beneficial purposes or by living animals in the water channels should not be hampered.

This principle encourages governments to take steps to prevent or mitigate any major harm that might result from the use or management of shared water resources. It acknowledges the interconnectivity of water systems and the potential transboundary implications of certain operations. States are obligated to cooperate and exchange information to ensure that their actions do not cause harm to other riparian states or the environment.

This principle is worldwide recognized by international water as well as environmental law.⁷ It is incorporated in almost every international treaty pertaining to water law.

iv. Principles of Notification, Consultation and Negotiation:

This principle is the most controversial principle to exist as most upstream countries often oppose this principle. This concept considers the inherent right to be notified when another state proposes to utilize a water resource that might seriously affect its rights or interests.

Notification, consultation, and negotiation are key elements in international water law, which is a collection of legal rules and principles governing the management, use, and preservation of international watercourses. These principles establish a framework for governments to work together and resolve problems over shared water resources in a peaceful and fair way.

The principle of notification compels governments to notify each other of any proposed measures that may have a major influence on the quantity or quality of transboundary water resources. This involves the construction of dams, water diversion projects, and other activities that may disrupt the natural flow of water. The goal of notice is to provide transparency and prevent potential harm to neighbouring riparian governments. It also enables the early detection and assessment of possible disputes, allowing for their prompt settlement.

Another essential element in international water law is consultation, which compels governments to participate in communication and information sharing before adopting any action that may have an impact on a shared watercourse. This concept highlights the value of collaboration and mutual understanding in the management of transboundary water resources. States can utilize consultation to address their distinct interests and concerns, find areas of collaboration, and achieve agreements on the sustainable and equitable use of shared water

⁷ Petrella, R. (2001) *The water manifesto: Argument for a world water contract.* London, UK: Zed Books Limited.

resources.

Negotiation is the third key concept in international water law. States must engage in good faith to obtain mutually acceptable agreements on the use and management of transboundary water resources. Negotiation is a flexible and dynamic procedure that enables governments to devise unique and inventive solutions to common water issues. It also allows governments to rectify power imbalances and guarantee that all riparian states participate in decision-making processes.

The principles of notice, consultation, and negotiation are inextricably linked and strengthen one another in the management of transboundary water resources. Notification and consultation lay the groundwork for negotiation, which can result in the formation of successful and durable agreements. These principles also promote justice and fairness by requiring governments to consider all riparian states' interests and needs when managing shared water resources.

In addition to their function in conflict resolution, these principles help to prevent disputes and maintain harmonious ties among riparian governments. These principles promote transparency, conversation, and collaboration, which assist to establish confidence and foster a spirit of goodwill between governments. They also help to build a rules-based system for managing transboundary water resources, which provides a stable and predictable framework for governments to manage their common water resources.

The principle of prior notice and consultation compels governments to inform and confer with one another before engaging in any actions that may have a major impact on common water resources. This fosters openness, conversation, and peaceful dispute resolution. The notification refers to information, statistics, and specifications that are adequate for assessing the project's consequences.

In conclusion, the concepts of notification, consultation, and negotiation are critical components of international water law. They encourage riparian governments to cooperate, be transparent, and understand one another, while also providing proper laws for the sustainable and equitable management of transboundary resources of water. By adhering to these principles, governments may successfully settle problems, avert disputes, and cooperate toward the common goal of ensuring responsible and sustainable sharing of water resources for current and future generations.

v. Principle of Peaceful Resolution of Dispute:

As previously stated in the principle of significant harm, if the harm is caused despite due diligence, the dispute will be settled in accordance with the agreement, or if there is no such

agreement, the states must work together to decide whether the use is equitable and reasonable, as well as how to minimize or lessen the harm and, ultimately, compensate the injured party.

The principle of peaceful dispute settlement in international water law is a basic concept that seeks to foster national concord and collaboration in managing shared water resources. This concept recognizes that conflicts over water can emerge as a result of conflicting interests and limited supply, and it emphasizes the need of resolving these disagreements peacefully rather than using violence or aggressiveness.

In international water law, the idea of peaceful dispute settlement guides governments in resolving conflicts and disagreements over water resources in a non-confrontational way. This concept encourages countries to participate in communication, negotiation, and mediation to reach mutually acceptable solutions that include the interests and requirements of all parties concerned. This concept promotes peaceful settlement, which helps to avoid tensions and disputes from increasing and ensuring that water resources are handled fairly and evenly.

It emphasizes the value of diplomacy and collaboration in resolving water-related disputes. It acknowledges that water is a common resource that cuts beyond national borders, and that disagreements over its distribution and usage may have far-reaching consequences for both upstream and downstream countries. By adhering to this ideal, nations may collaborate to discover long-term and fair solutions that foster peace, stability, and the sustainable management of water. This approach also promotes the use of international legal structures and processes, such as arbitration or adjudication, as a last option when peaceful discussions fail to produce a good outcome.

IV. THE GANGES DISPUTE

The Ganges, most well-known as the Ganga, is one of the most sacred and revered rivers in India. It is not only a source of water for millions of people but also holds immense cultural and religious significance. It is one of the most important rivers, holds immense cultural, economic, and environmental significance for the countries it traverses.

The Ganges dispute is a key topic in international water law. This disagreement centers on the principles and rules controlling the use and allocation of these resources of water from the Ganges River, which runs through several nations. For decades, India and Bangladesh have had a conflict over the Ganges River. The disagreement centers on the distribution of water from the Ganges River and has been a source of continual tension between the two countries. This disagreement highlights the significance of the idea of international water law in settling such conflicts.

The Ganges issue revolves over how to appropriately share and manage the river's water resources among both the countries. The concepts of international water law are used to handle this difficult subject. These principles seek to build a framework for collaboration, negotiation, and fair sharing of water resources while taking into account the requirements and interests of each participating country.

The conflict over the Ganges River dates back to India's split in 1947, when it was partitioned between India and Pakistan. However, with Bangladesh's independence in 1971, the subject of water sharing got more difficult. India, as an upstream nation, has control over the river's flow and has built multiple dams and barrages, drastically reducing the flow of water to Bangladesh. This has had a negative impact on the ecology and the lives of Bangladeshi riverside communities.

Another important feature of the issue is the concept of no substantial harm, which holds that any use of shared water resources shall not result in considerable harm to other countries. In the Ganges issue, India's construction of dams and barrages has caused significant damage to the downstream country of Bangladesh. The reduced flow of water has resulted in water shortage in Bangladesh, hurting agriculture, fisheries, and shipping. This has also resulted in environmental deterioration, loss of biodiversity, and negative consequences for people's health and well-being.

In recent years, India and Bangladesh have made efforts to resolve the Ganges conflict through numerous accords and treaties. The 1996 Ganges Water Sharing Treaty sought to resolve the water sharing issues between India and Bangladesh. However, Bangladesh has strongly opposed the deal, claiming that it is unjust and fails to take into account the requirements of the downstream countries. This emphasizes the importance of taking a more comprehensive and fair strategy to settling the Ganges conflict while keeping international water law norms in mind.⁸

Finally, the Ganges controversy demonstrates the necessity of international water law principles in settling conflicts over shared water resources. It underlines the need of using water resources in a fair and reasonable manner, as well as preventing severe harm to downstream nations. It also emphasizes the significance of international collaboration and communication in developing long-term solutions to water conflicts. As the demand for water resources grows, the notion of international water law will become increasingly important in ensuring peace and

⁸ Khalid, A.R.M. (2004) '*The interlinking of rivers project in India and international water law: An overview*', Chinese Journal of International Law, 3, 557.

cooperation among nations that share transboundary water resources.

The Ganges issue demonstrates the difficulties in enforcing international water regulations. It necessitates careful consideration of a variety of aspects, including the river's biological health, the water needs of diverse sectors such as agriculture, industry, and home usage, and the socioeconomic ramifications for riparian nations. To achieve a fair and lasting settlement that adheres to international water law norms, diplomatic discussions, legal frameworks, and the participation of international organizations are required to resolve this conflict.

V. CONCLUSION

To successfully oversee the use, management, and safeguarding the water bodies in international relations, governments must enter into long-term cooperation agreements. Specific arrangements are required due to the particular peculiarities of each river basin or system, while adhering to broad international legal principles. It cannot handle such a diversified world. Agreements on costs and benefits are sufficient to determine each state's share and duties, but joint institutions are required to resolve complex challenges in shared water management. General principles emphasize the interconnection of nations in optimal global water resource use. Finally, it is demonstrated that the principles of international water law, as generally recognized by current international conventions, accords, and treaties, are extremely important.

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