

Effectiveness of the International Conventions and Treaties in Protecting International Straits and Watercourses

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Abstract

This study aims to highlight the effectiveness of international conventions and treaties in protecting international straits and watercourses, as these water bodies serve as vital connecting points between countries. Disputes often arise regarding the allocation of resources, environmental protection, and navigation, leading to the establishment of international agreements to resolve these issues. **Methodology:** The study employed a descriptive approach to describe the concepts related to shared straits and watercourses between nations. Additionally, an analytical method was used to interpret and analyze the texts and international agreements related to these straits and watercourses, in order to assess their effectiveness in providing the necessary protection for shared resources. **Results:** The study revealed that, despite the existence of agreements and treaties concerning the protection of straits and watercourses, they are not effective in addressing the geographical challenges faced by some countries. This is due to the outdated nature of these agreements or the lack of effective mechanisms to resolve disputes between nations. Therefore, there is a need to amend the current agreements to ensure their ability to address present-day challenges. **Conclusion:** The study concluded by emphasizing the importance of international conventions and treaties in protecting straits and watercourses. However, the current agreements have not fully achieved effective protection. In other words, they have often failed to ensure the actual protection of international straits and watercourses. This indicates the need for changes and updates to make these conventions and treaties more effective in addressing current challenges.

Keywords: effectiveness, international, conventions, treaties, straits, watercourses, protection.

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1. Introduction

Most of the global population lives in close proximity to one of the international drainage systems. These drainage systems are usually shared between two or more nations⁽¹⁾. More than 145 countries have regions that are located on the borders of international water basins⁽²⁾. Therefore, nations around the world share water sources. Water in this case is a resource that is essential due to its impact on survival of life. Despite this, there is a rise in the global water crisis which requires immediate attention to address this challenge. One of the emerging trends in addressing this issue is development of a global water agenda which is taking place within various forms of international forums⁽³⁾. This has been taking place for years on end as governments of the world, experts, as well as NGOs seek solutions to the water crisis. This has resulted in the development of various forms of transboundary water policies. These policies are used to bring about improvement in the degree of confidence in the security interest and peace at both the regional and global interest⁽⁴⁾.

Therefore, the international arrangements governing transboundary water systems have received a considerable amount of priority with the intent of ensuring security. One of the ways that this has taken place is via bringing to an end disputes on the use of the water and access⁽⁵⁾. International conventions and treaties meant to protect international straits and watercourses are an example of these international arrangements⁽⁶⁾. In this case, straits and watercourses are examples of transboundary water systems that serve as essential global water resources. One good reason for this is the high amount of trade and

(1) Seokwoo Lee, and Warwick Gullett. *Asia-Pacific and the Implementation of the Law of the Sea: Regional Legislative and Policy Approaches to the Law of the Sea Convention* (Boston: BRILL, 2016), 72.

(2) Ibid., 72.

(3) FAO. *International Watercourses/River Basins including Law, Negotiation, Conflict Resolution and Simulation Training Exercises* (Rome: FAO, 2011) 7.

(4) Ibid., 8

(5) Ministry of Natural Resources and Environment. *International Environmental Law: Multilateral Environmental Agreements* (Hanoi: Ministry of Natural Resources, 2017). and Enviro Environment, Environment, 2017, 11.

(6) Lee and Gullett., 1

energy production that is enabled by these systems. That is, these water systems facilitate the occurrence of sea traffic allowing for water vessels to move from the East to the West and vice versa. Accordingly, this has further allowed for societies of the world to successfully interact resulting in the promotion of economic and cultural integration as products and services move from one point to another.

Addressing issues relating to transboundary water systems continues to be significant because of the high dependence on the water. That is, an estimated 40% of the global population relies on international water as a source of freshwater and transportation⁽⁷⁾. This has led to the global water protection to emerge as even more so multi-faceted and multi-layered. For this reason, there is a rising gap between safe and quality water and the associated decline in supply⁽⁸⁾. In addition, there is irregular distribution of water resources which has emerged as a form of disruptive to the global wellbeing.

Accordingly, there has been increased acceptance for the development and enforcement of effective legal agreements. Such agreements are essential because of their role towards enabling improvement of peace and security within a region and around the world⁽⁹⁾. That is, these agreements are meant to reduce tension over water and thus prevent occurrence of political instability. In this case, the existence of these agreements in the form of conventions and treaties can serve to reduce the severity as well as frequency of water disputes. However, the reality of the situation is development and implementation of these conventions and treaties remains a challenge. For this reason, there is need to ensure that the basin wide legal policies that are developed are effective enough to ensure protection of the transboundary water systems of straits and watercourses around the world⁽¹⁰⁾. Accordingly, the purpose of this research paper is to investigate the effectiveness of

(7) FAO, 2.

(8) Ibid., 3.

(9) S. M. A. Salman. *Notification Concerning Planned Measures on Shared Watercourses: Synergies between the Watercourses Convention and the World Bank Policies and Practice* (Boston: BRILL, 2019) 62.

(10) A. Rieu-Clarke, A. Allan, and S. Hendry. *Routledge Handbook of Water Law and Policy* (New York, NY: Taylor & Francis, 2017) 124.

developed international conventions and treaties in their role towards protection of international straits and watercourses.

2. International Straits and Watercourses and Their Role

International straits and watercourses refer to narrow waterways that connect two large water bodies. In most instances, these waterways represent the only way of moving from a given water body to another⁽¹¹⁾. A historical analysis indicates that these waterways have always been significant to the people. However, their significance varies as some are deemed to be more significant than others. Those which are perceived in this manner are those waterways that serve as the only linkage between the oceans and interior water bodies. It is this level of significance of these waterways that has resulted in them becoming centers of conflict among different states and parties.

Accordingly, the characteristics of international straits and watercourses make their management a challenge. For instance, an analysis of these waterways demonstrates implementation of water projects tends to take place unilaterally. The first point is on the water within the territory of the riparian. This is usually done with the intention of avoiding occurrence of political intricacies of these shared resources⁽¹²⁾. However, at some point one of the riparians in most instances the regional power tends to implement a project that impacts at least one of its neighbors. A reason for this might to continue meeting current uses in the face of the reducing relative water availability. A case example of this is India's decision for diversion of the Ganges river in order to ensure protection of the port of Calcutta⁽¹³⁾. At the same time, this might also be done with the intention of meeting new needs that reflect new agriculture based policies. Therefore, such projects which impact one neighbor have the potential to result in conflict and thus a flash point for increased tension and regional instability without a well-developed conflict resolution mechanism.

Example of shared waterways is straits such as the Strait of

(11) Salman, 56.

(12) Salman, 85.

(13) Ibid., 123.

Gibraltar, the Strait of Hormuz, and the Strait of Malacca⁽¹⁴⁾. The Strait of Gibraltar is a narrow watercourse that acts as a link between the Mediterranean Sea and the Atlantic Ocean. This strait further serves as a form of separation between Spain that is in Europe and Morocco that is in Africa. This strait is claimed by three nations, UK, Spain, and Morocco⁽¹⁵⁾. This strait is further essential because it is a vital bird area. This is because millions of seabirds make use of this strait to move between Mediterranean Sea and the Atlantic Ocean. It is also the home to resident killer. Other living things that utilize this strait are the whale pods which are said to be in danger as a result of becoming exposed to long-term effects of sea pollution. One of the key reasons for this rise in pollution is the increasing industrialization in the neighboring regions. For instance, the Algeciras has undergone a considerable amount of industrialization resulting in it becoming the home of many polluting firms. These firms carry out the pollution by channeling their trash and other forms of wastes into this waterway. To also add, this area also fulfills the role of a busy location for ship fuelling as well as oil tankers. Accordingly, this has increased the risk of collusion among the vessels and occurrence of oil spills. Over the years, there have been various reports of oil spills and the resultant negative effects to the marine life. To capture this issue it is estimated that 106,000 ships pass through this particular waterway annually and have been major contributors to the pollution that is taking place and thus the reduction of quality of water⁽¹⁶⁾. Recent analysis carried out on the quality of water of Algeciras reveals, the level of benzene are 22 times higher in comparison to the acceptable limit⁽¹⁷⁾. This is a critical point of concern given the detrimental impact of benzene that includes the acidification of water thus having a negative impact on marine life. For instance, the benzene has led to the stranding of sea turtles in this waterway.

Besides resulting in increased levels of pollution of the Algeciras, the large number of ships and water vessels that navigate on this

(14) O. McIntyre, *The Law of Non-navigational Uses of International Watercourses* (New York, NY: Routledge, 2016) 78.

(15) McIntyre, 86.

(16) McIntyre, 93.

(17) Ibid., 95.

waterway impede the movement of sea vertebrates. For example, there is a high number of ships navigating along the longitudinal axis and moving from the Mediterranean to the Atlantic Ocean⁽¹⁸⁾. At the same time, narrow nature of the strait has also made it to become an ideal location for fishing based activities. Thus, this has resulted in the attraction of increased illegal fishing resulting in sea turtles and many rare fishes becoming fished.

The Strait of Hormuz is found in the Arabian Gulf and is perceived to be a significant waterway. This is because; this strait has economic and political significance because it serves as a source of regional conflict including political rivalry among the world's superpowers. One of the superpowers that is party to the conflict is the US. Approximately 1.4 million barrels oil destined to the US passes through this strait per day. Accordingly, this strait acts as a strategic position within the international trade. In this case, some of the levels of conflict that have taken place in relation to this strait are such as aircraft downing, tanker wars, ship seizures, increased tension between the US and Iran, and increased threats of closure. However, collusion is yet to take place as a consequence of the strait's two lanes. For the two lanes, one is inbound while the other is outbound encompassing a 2 mile separation⁽¹⁹⁾. Conflict continues in relation to this strait as interested parties aim to demonstrate their force in its control.

Pollution emerges as a critical issue in relation to the Strait of Hormuz⁽²⁰⁾. This is illustrated by the increased amount of environmental degradation that has taken place within the strait and the resultant impact. This strait has been exposed to the highest levels of environmental degradation than any other in the world. For instance, it is reported that the amount of levels of salinity and fluctuations of temperature continues to rise to levels yet to be experienced before. This has had the negative impact of reduction in the number of unique marine and coastal ecosystems as well as expulsion of original species. The ongoing human activities have been a major contributor to these effects

(18) Ann G. Lopez Martín. *International Straits: Concept, Classification and Rules of Passage*. (Madrid: Springer Science & Business Media, 2010) 43.

(19) Lopez Martín, 43.

(20) Ibid., 65.

as they foster the increased levels of pollution⁽²¹⁾. These activities are shown by occurrence of waste deposits by ships, oil tankers, oil and gas exploration, oil spillage, and oil tanker explosions.

1.1 Role of Straits and Watercourses

The role of international straits and watercourses includes serving as boundaries. That these waterways separate human communities and territories. This takes place in three different ways. The first is separation by following a shore of an IWC state⁽²²⁾. The second way is separation by cutting across waters. The final way is separation by use of the waterway as a reference for the drawing of land boundaries.

A historical analysis of this role reveals that the oldest category of boundary creation takes place via shore boundaries. This entails separation of two adjacent states whether opposing or contiguous⁽²³⁾. This can take two main forms. The first form entails each of the states fixing its own boundary on its shore resulting in the watercourse forming a no man's land or condominium of the involved states. The second form is the states coming to an agreement to place the boundary on the shore of one of them or a riparian.

Another form of boundary formation can be done in situations involving upper and lower riparian that share a waterway that transverses as opposed to separating the territories. This is known as a successive watercourse. Accordingly, the emerging boundary is one which will entail a straight line that is a connection of terminal points of the relevant land boundaries.

There are also boundaries that are developed on the basis of ordinary land boundaries acting as reference points. A case of this is provided by an old agreement between France and Great Britain in relation to their respective possession of the West Coast of Africa during their

(21) Food and Agriculture Organization of the United Nations. *Sources of International Water Law*. (Rome: Food and Agriculture Organization, 1998) 98.

(22) Hugo Caminos, and Vincent P. Cogliati-Bantz. *The legal regime of straits: Contemporary challenges and solutions* (Cambridge: Cambridge University Press, 2014) 12.

(23) Food and Agriculture Organization of the United Nations, 56.

occupation of the region. In this case, the developed boundary was one which ran parallel to the River Gambia a distance of 10km⁽²⁴⁾.

Another essential role of straits and watercourses is navigation and thus facilitating of economic activities. In this role, straits and watercourses enable the movement of goods and people from one point to another and thus transportation. For instance, the straits of Malacca and Singapore are perceived as strategic sea lines of communication that drive global trade. This is because these straits form the shortest route that connects oil supplies that move from the Middle East and the East Asian economies such as Japan, China, and South Korea⁽²⁵⁾. That is this waterway accommodates a large volume of navigational traffic resulting in the transportation of barrels of oil that span in millions.

Other roles played by straits and watercourses are non-navigational economic activities. One of these activities is fishing. That is, straits and watercourses have been instrumental in advancing the fishing industry of many nations. That is, these waterways can serve as breeding grounds for a lot of commercially essential fishes as well as prawns, and crabs. Accordingly, this industry contributes largely to the national economy of states. This is evidenced in terms of income, employment, and even foreign exchange. A case example of this is provided by the fisheries industries in countries that border the Strait of Malacca⁽²⁶⁾. In particular, the Indonesian provinces of Riau, Aceh, and North Sumatra which border this strait have a strong dependence on it for their fisheries industries. The amount of fishing that takes place along the strait is quite high by occupants of these provinces. In fact, the number has risen so high that there have been concerns relating to overfishing and the depletion of resources. Despite this, the industry continues to be a main economic activity for the population along the strait.

Another essential activity is production of energy. In this case, the water in the straits and watercourses is used by nations to power

(24) Food and Agriculture Organization of the United Nations, 59.

(25) Lee and Gullett, 14.

(26) Lawrence A. Kogan. "What Goes around Comes around: How UNCLOS Ratification Will Herald Europe's Precautionary Principle as US Law." *Santa Clara Journal of International Law* 7, no. 1 (2009), 34.

their cities. This is by using these resources to facilitate production of electricity. Straits and watercourses are also used for irrigation⁽²⁷⁾. This is an essential use for nations that are dry and therefore only have the straits and watercourses as sources of water. These nations are able to tap into the water in these waterways use it for irrigation and thus drive growth of crops enhancing their level of food security.

The straits and watercourses also play the economic role of tourism. This comes about because of existence of a coastal environment and rise of the eco-tourism industry⁽²⁸⁾. That is, the coastal beaches and islands that are located along straits and watercourses tend to have some considerable beauty. This is evidenced by the existence of coral reefs that teem with marine life and vast mangrove forests, pristine white sandy beaches, and other forms of natural attractions. Tourists visit these areas to enjoy the beaches. Others visit the regions to enjoy the marine life including researchers that study some of the unique marine life.

Straits are known to act as rich sources of oil and gas and thus their mining from this waterway. A case of this is provided by the Northwestern corner of the Strait of Malacca that has been found to be rich in oil and gas reserves. The oil was first discovered in 1885 and its exploitation began even before the formation of Indonesia⁽²⁹⁾. Oil and gas mining activities account for a substantial percentage of the national income of Indonesia.

3. International Conventions and Treaties in Context

The UNO has been the main authority facilitating the development and implementation of policies that promote peace, cooperation, and legal utilization of international water resources at the individual as well as common wellbeing of all⁽³⁰⁾. Thus, some of the policies that have been developed in this respect have taken the form of international conventions and treaties. These conventions and treaties provide a call for international regimes to work towards the safeguarding of sea beds,

(27) Caminos, and Cogliati-Bantz, 78.

(28) FAO, 89.

(29) Caminos, and Cogliati-Bantz, 82.

(30) UN. *Second Assessment of Transboundary Rivers, Lakes and Groundwaters* (New York, NY: UN, 2011) 65.

ocean floor, and the general marine environment that goes beyond the clearly defined state jurisdiction.

2.1 Convention Relating to the Development of Hydraulic Power Affecting More than One State and Protocol of Signature, Geneva of 1923

This convention was developed with the intention of promoting international agreements regarding the exploitation of hydraulic power. This convention contains 22 articles that touch on different aspects of development of hydraulic power and its impact on states⁽³¹⁾. Some of the most outstanding articles of this convention and their demonstration of protection of waterways include the following. Article 1 of the convention restates the significance provided to the sovereignty of nations and therefore the rights that belong to them within a limit of international law. Article 2 of the convention affirms the need for needs to comply with any hydraulic power related investigations⁽³²⁾. The investigations should be conducted with the intent of enabling a solution to be reached. Article 12 is also of significance and this calls for dispute resolution among states⁽³³⁾. That is, the article provided an alternative submission to settlement of the dispute in case the involved states could not find an amicable solution. Accordingly, the alternative is submission of the dispute to the League of Nations to serve an advisory role. Another essential article of this convention is 18 which assert its enforcement as taking place following ratification of states⁽³⁴⁾.

2.2 MARPOL

This is an international convention that was developed with the intention of preventing pollution from ships that is brought about by accident or in the course of operations. Adoption of this convention took place as a form of response to the high number of tanker accidents witnessed between 1976 and 1977⁽³⁵⁾. The key provisions of these conventions are contained within its six annexes. Annex I of the

(31) Ministry of Natural Resources and Environment, 45.

(32) Ministry of Natural Resources and Environment, 78.

(33) Ibid., 78.

(34) Ibid., 79.

(35) Ibid., 47.

convention is concerned with prevention of pollution by oil. This annex was added in 1983 and calls for preventing oil related pollution in the seas⁽³⁶⁾. One way of ensuring this was the requirement of new oil tankers having double hulls. Annex II is concerned with regulation relating to the control of pollution as a consequence of noxious liquid. This annex was enforced in 1983 as well. It provides details of the discharge criteria including measures necessary for the control of pollution brought about by noxious liquid that are carried in bulk over the sea. As for annex III, this is concerned with prevention of pollution as a consequence of harmful substances that are packaged forms within the sea. This was enforced in 1992. Thus, this annex encompasses details into the packaging and labeling of goods as well as their storage. Annex IV is one which is concerned with preventing pollution that comes about as a result of sewage that is from ships. This came into enforcement in 2003. The annex prohibits the discharge of sewage into the sea. However, this can be permitted in the event that a ship has in place an effective sewage treatment plan in place. Prevention of pollution by garbage that is from ships is addressed in annex V. This annex was entered into force in 1988. It entails dealing with different types of garbage determining the method of their disposal. For instance, plastics are prohibited from sea disposal. The final annex addresses the key requirements to enable prevention of air pollution that emanates from ships. This is the most recent annex having been enforced in 2005. It sets limits on air pollution by poisonous gases such as nitrogen oxide.

2.3 UNCLOS

This convention was established in 1982 and provides an elaborate framework essential for the extension of the international law that is aimed at the protection of straits and watercourses including other vast water resources around the world⁽³⁷⁾. This convention was developed following a time when states were finding ways of expanding their sense of control of marine waters. Currently, this convention establishes and provides a backup of freedom of navigation rights in straits.

This convention introduced various provisions that cover a number

(36) Ibid..48.

(37) Kogan, 25.

of issues. The most commonly covered in this case are settlement of limits, transit regimes, and navigation. Other essential issues covered by this convention are settlement of disputes, environmental protection, and scientific research⁽³⁸⁾. Accordingly, the components of this convention provide a definition of the responsibilities and rights of nations regarding the use of oceans of the world. Overall, the convention establishes guidelines for the management of marine natural resources, including both water and life.

This convention is divided into seventeen parts each covering different aspects of protection of waterways. One of the significant parts is three which provides key provisions for the use of straits for international navigation. Article 34 provides insight into the legal status of the water forming straits that are applied for international navigation⁽³⁹⁾. Accordingly, the legal status is the regime of passage through the strait is one which is expected not to have an impact on international navigation. That is, this should not affect the status of the waters that form these straits or any exercise by the state that borders the straits and their sense of sovereignty. Article 38 that is in this given part of the convention provides guidelines relating to the right of transit passage⁽⁴⁰⁾. Thus, ships and aircrafts have the right to enjoy the transit passage. However, this right can be impeded in the case where the strait is part of the formation of an island of a nation and its mainland. Further, this right is impeded in the case whereby there is existence of seaward of the Island a type of route that goes through a high sea. This also applies in the case whereby the route goes through an exclusive economic zone. In article 39 there is an outline of the duties of ships and aircrafts in the course of utilizing the transit passage⁽⁴¹⁾. In this case, these transport vessels are cautioned to proceed without delay when passing through or over the strait. They should refrain from causing any form of threat including the use of force thus attacking the sovereignty as well as territorial integrity of states that border the strait.

Another essential part of this convention is part twelve which

(38) Kogan, 56.

(39) Ibid, 74.

(40) Ibid., 78.

(41) Ibid., 89.

illustrates the provisions for protection of the marine environment. The general obligation that is provided by states in this case is in relation to ensuring protection of the marine environment. At the same time, this part of the convention provides states with sovereignty towards exploitation of their natural resources. However, this exploitation must take place in accordance to their duty to safeguard natural resources. Article 195 provides guidelines relating to the transfer of damage or hazards⁽⁴²⁾. As per the article states are tasks with the responsibility of preventing, reducing, and controlling pollution within a marine environment. This is to be achieved by these states not transferring directly or indirectly hazardous materials into the marine environment.

Part 15 of this convention is equally essential within the context of this research as it contains information relating to dispute settlement⁽⁴³⁾. This paper has established that significant straits and watercourses are potential sources of conflict among nations that share them. This part provides guidelines on the management of this kind of dispute. Accordingly, the article emphasis on states having the responsibility to settle disputes with each other when it comes to the application of this convention and utilize peaceful methods to do so. In the case whereby the disputing states are not able to settle the dispute the convention provides a procedure to follow.

2.4 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Helsinki of 1992

The convention is divided into three parts. Some of the most significant articles relating to the protection of waterways include the following. Article 2 provides general provisions of the convention⁽⁴⁴⁾. The article asserts the responsibilities of the parties towards prevention, control, and reduction of potential transboundary impact. This prevention is in relation to incidences such as pollution of waters, rational water management, the use of transboundary water in an equitable and reasonable manner, conservation, and restoration of ecosystems.⁽⁴⁵⁾

(42) Kogan, 56.

(43) Ministry of Natural Resources and Environment, 49.

(44) Ministry of Natural Resources and Environment, 72.

(45) Ministry of Natural Resources and Environment, 73.

Article 3 provides some form of action that the parties subject to the convention can take place⁽⁴⁶⁾. Particularly, the article provides guidance on protection, control, and reduction of transboundary impact. This all meant to prevent the impact of pollution. Some of the ways that are suggested include protection of transboundary water from point sources through prior licensing of waste water discharge by competent authorities. Another way is development of stricter regulations that can include prohibition in some individual cases which is to be imposed in the event that the quality of receiving water requires. Other essential methods is biological treatments are applied to municipal water, use of technology towards water treatment, and developing limits for waste water discharge.

Article 4 of the convention provides provisions for monitoring of the transboundary water. Another essential article is 5 that provides guidelines on R&D⁽⁴⁷⁾. This calls for increased cooperation among the parties regarding R&D of effective techniques for prevention, control, and reduction of transboundary impact. Some of the research programmes to be considered in this case are such as methods necessary for the assessment of toxic and hazardous substances emanating from pollution. Another programme that the article calls for is in relation to improvement of knowledge on the occurrence, distribution, and environmental impact of pollutants as well as the involved processes. There should be increased research into environmentally sound method of disposal of hazardous substances.

Article 9 of this convention is yet equally significant and it provides guidelines for bilateral and multilateral cooperation among riparian parties⁽⁴⁸⁾. In this case, these states are provided with the option of developing joint bodies. These joint bodies have the following essential responsibilities. Firstly, the joint bodies will carry out elaboration of joint monitoring programmes regarding the quantity and quality of water. Secondly, the bodies will collect, compile, and evaluate data for the sake of using it to identify the sources of pollution that will likely

(46) Ibid., 73.

(47) Ibid., 74.

(48) Ibid., 75.

result in transboundary impact. Another responsibility of these bodies is to elaborate the limits of emission. Further, the joint bodies will play the role of a forum of exchange on current and planned uses of water as well as related installations.

2.5 The Convention on the Law of the Non-Navigational Uses of International Watercourse of 1997

This convention was adopted by the UN General Assembly following negotiation in the sixth Committee of the General Assembly. It was based on Articles that have been adopted by ILC after two decades of work on this project. This is a general framework agreement that comprises thirty seven articles, which are further divided into seven parts. However, the most essential and procedural provisions of this convention are contained within part II, III, and IV⁽⁴⁹⁾. Another equally essential section is Article 33 of the convention that regulates dispute settlement⁽⁵⁰⁾.

Articles 3 and 4 of this convention demonstrate the relationship of agreements relating to watercourses⁽⁵¹⁾. Article 3 of the convention is an encouragement to states that share watercourses to enter into agreements on the use of the watercourses⁽⁵²⁾. This includes agreements relating to states not negatively impacting the use of the watercourse by other states. According, to this Article, states may enter into negotiation with each other in good faith with the intention of entering into a watercourse agreement.

Article 4 of this convention deals with the rights of riparian states in regard to participation in particular agreements applying to an entire international watercourse as well as those that apply to a part of the watercourse, project, or program use⁽⁵³⁾. Therefore, in case an agreement is applicable to an entire international watercourse, all states on this

(49) UN, 79.

(50) UN, 86.

(51) D. A. Rothwell, G. O. Elferink, K. N. Scott, and T. Stephens. *The Oxford Handbook of the Law of the Sea* (Oxford: Oxford University Press, 2015) 112.

(52) Rieu-Clarke, Allan, and Hendry, 113.

(53) Slavko Bogdanović. *The International Law Association Helsinki Rules: Contribution to International Water Law* (Boston: BRILL, 2019) 78.

watercourse have the right to participate in the negotiation and thus become party to the resultant agreement. However, for agreement that are only part of the watercourse or a given project, the riparian state whose usage of the watercourse may be impacted following implementation of a prospective agreement can participate in consultations relating to it. This should take place in good faith with the perception of the state becoming a party thereto and to the extent to which it will be affected.

4. General Principles of the International Conventions and Treaties

There are a number of principles that the international conventions and treaties for protection of international straits and watercourses are based. These principles provide guidance on nature of the specific requirements that need to be adopted into the international conventions and treaties. That is, the main aspects of these requirements fall within these general principles.

3.1 Principle of Do No Harm

One of these principles is that of do no harm. This is a principle that emanated from the consideration that neighboring states may not act as they please on their territories. That is, these states cannot use or tolerate the use of their territory to bring about damage to their neighbors⁽⁵⁴⁾. This is a principle that is highly recognized because of its linkage to the concept of abuse of human rights. It originated from the sphere of private law and has come to be recognized as a general principle among civilized nations of the world.

Accordingly, the no harm principle covers the entire range of neighborly relations. This includes issues relating to the environment. Particularly, this law is relevant for two aspects of the law of international waterways. The first is the law on allocation of the use of watercourses and protection of their environment⁽⁵⁵⁾. The second is the law of environmental protection; this principle remains vital and valid.

It is essential to indicate that the application of this principle to

(54) Bogdanović, 67.

(55) Rothwell, Elferink, Scott, and Stephens, 78.

international waterways is quite controversial in nature. That is, while the principle affirms the significance of one state not causing intentional harm to another there is lack of agreement concerning whether the use of a waterway by one state can reduce supply in another state and how this is prohibited by this norm⁽⁵⁶⁾. This means that in the case of occurrence of harm through a pattern of utilization of the water resource that is otherwise equitable then it should not be prohibited. This controversy and lack of the best methods of application of this principle is illustrated by how it is not absolute. Therefore, this requires for states to exercise their best efforts towards prevention of harm. This has the meaning that whether a state has been in compile of this function will depend on this given obligation. This can be taken in part as a function of its ability to do so.

3.2 Principle of Equitable and Reasonable Utilization

Another essential principle is that of equitable and reasonable utilization. This is a principle which today provides guidance to the attribution of shared water resource. The principle has roots within judicial practices of federal states like the US, Switzerland, and Germany⁽⁵⁷⁾. Specifically, the origin of this principle is found in case law relating to water resources allocation in the member units of these countries. Within this given context, the practice of the supreme court of the US has proven to be essential.

This principle is intended for and limited to activities on international watercourses that are other than navigation. The principle came about following limitations of the no harm rule. For instance, the no harm rule was one which did not provide for settlement of controversies following their occurrence. That is, nations could not come to terms regarding issues such as allocation of international watercourses. This principle allows for settlement of such controversies in an equitable manner. This is by providing a complete priority to current activities and preventing development of new or expansion of current uses. To add, given that the

(56) Steven C. McCaffrey. *The Law of International Watercourses* (Oxford: Oxford University Press, 2007) 89.

(57) Anthony Aust. *Handbook of International Law*. 1st ed. (Cambridge: Cambridge University Press, 2010), 87.

main users of international watercourses has usually been lower riparian retention of this given solution would largely advantage these nations and thus disadvantage the upstream states. A case of this is the situation provided by the Nile⁽⁵⁸⁾. In this particular case, the application of the no harm rule as the only choice would have resulted in the protection of the status quo. That is, the existing rights of the lower riparian that are Egypt and to an extent Sudan. On the other hand, this would have denied the upper riparians like the case of Ethiopia any opportunity to expand or develop activities.

This principle further encompasses equitable participation. This emanates in cases whereby a strait of watercourse is utilized so intensively by co-riparian states. This is done in order to ensure that these states are able to take up affirmative action towards the construction and maintenance of other regulations on watercourses. Accordingly, this will make it easier for other riparians to make use of the shared waterways equitably. This is a principle that is well captured and reflected in the principles included in the UN convention.

5. Protection of Straits and Watercourses by International Conventions and Treaties

One of the ways that international conventions and treaties protect straits and watercourses is through controlling the sovereignty of states when it comes to these water resources. Each nation of the world is provided sovereignty when it comes to its natural resources this power of control is meant to be exercised in an environmentally responsible way. In this case, this sovereignty is limited in respect to the duty of a state to prevent environmental damage to areas that are beyond its borders. A case example of this is the UNCLOS that calls for sovereignty over natural resources and the duty to ensure that there is no harm that is beyond national borders.

Further, international conventions and treaties protect straits and watercourses by affirming the role of states towards prevention of transboundary pollution and environmental harm. This is based on the duty of states to not harm their neighbors. In this case, this holds nations

(58) Bogdanović, 103.

responsible for the occurrence of environmental damage to its neighbors that has emanated from its borders. ⁽⁵⁹⁾ Another essential way that international conventions and treaties protect straits and watercourses is through fostering the sustainable use of natural resources. This aspect of the law calls for nations to ensure that they provide due care to the environment including making rational usage of natural resources in their given jurisdiction. In this case, states have the responsibility of safeguarding natural resources of the earth for the benefit of the future generations. This is possible through undertaking careful planning and management of these resources. Safeguarding these natural resources is meant to also ensure the occurrence of long term conservation.

To add, international conventions and treaties provide straits and watercourses with protection by fostering sustainable development. Sustainable development in this case refers to development that is able to meet the needs of the present without causing a compromise to the rights of the future generations in meeting their needs. Sustainable development is based on two essential concepts⁽⁶⁰⁾. The first concept is needs which in this case refers to essential needs of the world's poor which are to be prioritized. The second concept is based on the idea of limitation that is imposed by the state of technology and social organization of the ability of the environment to meet current and future needs.

International conventions and treaties further protect international straits and watercourses by providing a means of liability and compensation for damage that may take place. In this case, these conventions and treaties provide states with a way of cooperating in the case of occurrence of any environmental damage. Accordingly, the states that carry out the damage are liable and therefore will pay for it. The polluter is supposed to make payments for the full cost of remedying the occurred damage caused to the environment⁽⁶¹⁾. This cost to the pollution needs to be internalized or perhaps reflected in the cost of goods and services that have brought about the environmental damage.

(59) Lopez Martín, 67.

(60) Ibid., 78.

(61) McIntyre, 77.

The international conventions and treaties further provide precautionary approach and thus going on to offer protection to straits and watercourses. In this case, this is all about these legal policies enabling the prevention of damage to the environment, natural resources, and human health. As per the precautionary principle where there are threats that would result in serious damage the absence of full scientific certainty should not be used as a reason for the postponing of developing cost effective measures for prevention of environmental degradation⁽⁶²⁾.

6. Effectiveness of the International Conventions and Treaties in Context

International conventions and treaties towards protection of international straits and watercourses are to an extent effective within this context. This effectiveness is demonstrated in how these conventions and treaties are able to create a positive effect of protection of international straits and watercourses by providing a kind of template. That is, these conventions and treaties provide a template that can be used to facilitate transboundary management of water⁽⁶³⁾.

However, the effectiveness of the discussed international conventions and treaties towards protection of international straits and watercourses comes into questions. That is, while these conventions and treaties have been implemented they have failed in bringing about the needed protection of these waterways. One essential reason that explains this failure is the lack of a genuine significant impact on this aspect of protection⁽⁶⁴⁾. That is, many of these conventions and treaties tend to have a universal participation and compliance. However, when the key requirements of these conventions and treaties are carried out it can be noted with concern that they are shallow and thus the parties subject to these policies do not accomplish much. Therefore, this undermines the degree of effectiveness of the conventions and treaties. This is an issue that continues to be of interest especially because of the methods of determining this sense of effectiveness. There is a debate on this issue

(62) Kogan, 112.

(63) Ibid., 79.

(64) McCaffrey, 62.

with some scholars asserting the need to have some form of concrete and measurable impact of the conventions and treaties in protecting international straits and watercourses. At the same time, some of the scholars measure this effectiveness in terms of attitudes and or ideas. This further complicates the issue because these are abstract traits and therefore difficult to determine.

International conventions and treaties also fail to be effective in protecting international straits and watercourses when states party to them fail to implement the requirements that are outlined in them. That is, parties tend to not comply with the conventions and treaties. One of the key reasons for this lack of compliance is domestic politics. Domestic politics and interest have slowed down implementation of the conventions and treaties. One good example of this is provided by China and India's disregard of the UN watercourse convention⁽⁶⁵⁾. Both of these Asian's giants have developed ambitious hydropower plans which will have devastating effects on other nations in which they share waterways with. Particularly, China and India are yet to ratify the UNCLOS⁽⁶⁶⁾. This greatly undermines the effectiveness of this convention in China and India since their lack of ratification is indicative of the lack of legal liability for these two nations.

Some international conventions and treaties are not effective when it comes to fulfilling their role in protecting international straits and watercourses because mistrust among nations that are party to them. That is, there is a substantial amount of mistrust among nations that share these waterways. For this reason, it cannot be expected that the implementation of these conventions and treaties will result in some sort of miraculous agreement on the use of the transboundary water.

Further, many countries that share these straits and watercourses tend to be actively engaged in disputes with each other. A good case of this is provided by most South Asian states which are engaged in deep dispute concerning cross boundary water⁽⁶⁷⁾. Because of these disputes, many of these nations lack any willingness to commit to the regulations

(65) Lee and Gullett, 14.

(66) Kogan, 134.

(67) Bogdanović, 56.

and measures that are proposed in the conventions and treaties. For instance, there is emphasis on the conventions and treaties that states cannot govern their waterways in a manner that will be harmful to other states. In this case, construction of a run of the river dam by an upstream state which may result in decrease of the flow of the river downstream can be perceived as a violation. However, dispute can cause some states in an effort to punish their rival to carry out this violation.

Overall, the above discussion indicates that while the developed international conventions and treaties contain useful requirements towards the protection of international straits and watercourses, most of them remain only on paper. The reality of the situation is international straits and watercourses continue to face issues of pollution and threat to sustainability. Most of the states party to the conventions and treaties disregard their role as demonstrated by the arguments developed.

7. Conclusion and Recommendations

6.1 Conclusion

This research paper has been essential in illustrating international conventions and treaties and their degree of effectiveness towards protection of international straits and watercourses. As revealed in the discussion that was conducted in this paper there are a number of international conventions and treaties that have been developed within this context. These conventions and treaties were developed in order to address various aspects of dangers that straits and watercourses face.

The paper has shown that international straits and watercourses are significant in many ways that go beyond acting as a link between states and regions. This was demonstrated by the discussion on their role which included navigational and non-navigational. Accordingly, these waterways are essential in fostering economic development in areas where they occur. That is, the straits and watercourses facilitate economic activities such as fishing, tourism, and trade. At the same time, this study was able to show that due to this significance of straits and watercourses occurrence of disputes among states becomes inevitable. That is, each state in the course of purpose of domestic goals will likely

place their focus on its own wellbeing neglecting collective wellbeing of the region where these waterways pass.

As for the effectiveness of the international conventions and treaties, the discussion held in this paper indicates that this is something that is yet to be effectively achieved. That is, the established conventions and treaties have failed in most instances in ensuring there is actual protection of international straits and watercourses. Thus, this is indicative of the need to find ways of making changes when it comes to the adoption of the developed conventions and straits. One thing that can be noted about the conventions and treaties that were discussed in this paper is many of them were enforced many years back. Therefore, at the time when they were enforced the situation was quite different with the current happenings. Many changes have taken place since then including change in leadership, structures of government, and some of the straits and watercourses flow differently and national boundaries relating to them have changed. Therefore, it is essential for these changes to be noted down. Aimed with such information, the nations that are party to these conventions and treaties should come together and repeal some of their parts. This is to ensure that they are able to address issues that these nations face in current world.

6.2 Recommendations

As per the discussion that has taken place within this research paper, there are a number of recommendations suggested for states party to the discussed conventions and treaties on how best to improve their sense of effectiveness in protecting straits and watercourses. The first recommendation that is provided by this paper is enhancement of information sharing among states that are party to the international conventions and treaties. This is significant because information serves as a means to success. Thus, the chances of the conventions and treaties succeeding depend on the ability of states gaining information about each other. This can be used to build some form of shared awareness of the significance of protecting international straits and watercourses and therefore willingness of nations reaching a consensus on their role.

Secondly, this paper recommends that states should have in

place forums for negotiations in order to improve the effectiveness of international conventions and treaties in protection of straits and watercourses. Consideration can be given to involving formal institutions such as the UN to facilitate finding solutions to issues that states find with the conventions and treaties. This will result in states reaching a way forward on the best way to proceed following disputes.

Another essential recommendation that this paper provides regarding improvement of the effectiveness of international conventions and treaties in protecting international straits and watercourses is improvement of compliance capacity. Some states are not able to comply with the requirements of conventions and treaties because they lack the bureaucratic as well as technical capacity to do so. Improving this weakness can be done by creation of mechanism to foster international technical assistance within technical assistance. Further, institutional building and transfer of technology can also be used as a method of enabling such improvement.

The next essential recommendation that this paper provides is development of international conventions and treaties that are narrow. This will serve to improve the level of effectiveness of these conventions and treaties towards protection of international straits and watercourses because narrow nature will serve to ensure that the problems to be addressed are well-defined. Therefore, the conventions and treaties are more likely to bring about change when this is done. That is, the narrow conventions and treaties will enable parties to develop a better understanding of the costs benefit trade-off that comes about. This will make possible to become more willing to agree to the far-reaching changes in the behavior as per the influence of the conventions and treaties. Another reason for this is, narrow requirements of the conventions and treaties are easier to implement domestically. This will lead to better state compliance records.

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فعالية الاتفاقيات والمعاهدات الدولية في حماية المضايق والمجري المائية الدولية

الدكتورة / نواف عبدالله الجسمي *

ملخص الدراسة

الأهداف: تهدف هذه الدراسة إلى بيان فعالية الاتفاقيات والمعاهدات الدولية في حماية المضايق والمجري المائية الدولية بعد أن شكلت المضايق والموارد المائية نقاطاً حيوية تربط بين الدول. وبالرجوع إلى بعض المضايق المائية المشتركة بين الدول والتي يمكن أن تؤدي في الكثير من الأحوال إلى نشوء نزاعات وصراعات حول تخصيص الموارد وحماية البيئة والملاحة؛ لذلك ظهرت العديد من الاتفاقيات الدولية لحل هذه الإشكالية التي قد تنشأ بين الدول. **المنهج:** تم الاعتماد في هذه الدراسة على المنهج الوصفي، ومن خلاله تم العمل على وصف أهم المفاهيم المتعلقة بالمضايق والمجري المائية المشتركة بين الدول؛ هذا بالإضافة إلى المنهج التحليلي الذي يتم من خلاله بيان وتفسير وتحليل النصوص والاتفاقيات الدولية التي لها علاقة بالمضايق والمجري المائية لبيان فعاليتها في توفير الحماية اللازمة عن الاشتراك. **النتائج:** يمكن تلخيص أهم النتائج بأنه على الرغم من وجود اتفاقيات ومعاهدات متعلقة بحماية المجري والمضايق المائية إلا أن هذه الاتفاقيات من جانب آخر ليست فعالة في مواجهة الطبيعة الجغرافية لبعض الدول من ناحية اشتراكها في المضايق والممرات المائية؛ إما لعدم هذه الاتفاقيات أو لعدم وجود آليات فعالة لمواجهة وحل المشكلات التي تنشأ بين الدول. لذلك يتعين تعديل الاتفاقيات الحالية لضمان قدرتها على مواجهة التحديات الحالية. **الخاتمة:** اختتمت الدراسة ببيان أهمية الاتفاقيات والمعاهدات الدولية في حماية المضايق والمجري المائية، إلا أنه في الوقت نفسه لم تحقق الاتفاقيات الحالية الحماية الفعالة على أكمل وجه؛ وبعبارة أخرى فقد فشلت في العديد من الأحيان في ضمان الحماية الفعلية للمضايق والمجري المائية الدولية. وبالتالي، فإن هذا يدل على الحاجة إلى إيجاد طرق لإجراء تغييرات عند اعتماد هذه الاتفاقيات والمعاهدات لتكون أكثر فعالية.

الكلمات المفتاحية: الفعالية، الدولية، الاتفاقيات، المعاهدات، المضايق، المجري المائية، الحماية.

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