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Joint Management of Transboundary Natural Resources under the Provisions of International Law

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Abstract:

Cooperation between states is necessitated by good neighborliness in international relations and is one of the objectives of the United Nations, as affirmed in Paragraph 3 of Article 1 of the UN Charter. This principle is further reinforced by the Convention on the Law of the Non-Navigational Uses of International Watercourses, specifically Article 8.

Based on this article, the obligation of riparian states to cooperate is a requirement of the principle of equitable and reasonable utilization and participation. This is because establishing a system that provides optimal benefits for all states sharing a single river necessitates cooperation based on good faith and continuous communication among the concerned states.

Keywords: International Law, Shared Resources, Notification, Information Exchange, International Cooperation.

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Introduction :

Shared natural resources are those that form a natural unit (biological or geophysical) but are located within the territories or jurisdictions of two or more states and are subject to their sovereignty. Due to their international nature, these resources require close cooperation among states. It is crucial that shared natural resources form an indivisible geophysical unit, with internal connections that cannot be altered or severed by national borders, which is one of their distinguishing characteristics.

This concept is evident in international documents of varying levels and natures, though such documents are relatively few. The 1973 Charter of Economic Rights and Duties of States is one of the few UN resolutions addressing shared natural resources. Article 3 of this resolution establishes rules for the exploitation of resources by two or more states, emphasizing cooperation based on a system of information and prior consultation to achieve optimal use without harming the legitimate interests of others. However, this resolution does not specify the shared resources in question.

Other international documents include the Draft Code of Conduct on Environmental Protection for the shared use of natural resources by two or more states, adopted by the United Nations Environment Programme in 1970, the United Nations Convention on the Law of the Sea, the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention), the ASEAN Agreement on the Conservation of Nature and Natural Resources, and the United Nations Convention to Combat Desertification. Additionally, the Convention on the Law of the Non-Navigational Uses of International Watercourses, adopted by the UN General Assembly on May 21, 1997, and entered into force on August 17, 2014, is significant.

The concept of shared natural resources plays a crucial role in establishing fundamental standards for managing these resources among countries sharing the same watercourse. However, defining this concept is not particularly challenging, as it hinges on the "sharing" of the natural resource among two or more states. This criterion is also used in international law and jurisprudence to define international rivers or watercourses.

Thus, an international watercourse is any watercourse that crosses the territories of multiple states, confirming that international rivers are quintessential shared natural resources. It is no coincidence that international regulations governing watercourses adopt the same principles established by international law for managing and conserving shared natural resources.

Given the shortcomings of international law in regulating international waters within a unified and binding legal framework to address related disputes, international conventions on dispute resolution have filled this gap. Additionally, projects and recommendations have emerged to regulate and settle such disputes, with the 1997 Convention on the Non-Navigational Uses of International Watercourses serving as a key example. This convention reflects the international community’s commitment to establishing legal rules for regulating the use of international watercourses.

Current uses of these watercourses clearly reflect their evolution. Traditionally, international law viewed them as navigable rivers, but modern perspectives and their tributaries consider them as a geographical unit under the term "international drainage basin." The term "watercourse system" was later formalized by the International Law Commission in its 1997 draft on the non-navigational uses of international watercourses, which was adopted by the

convention. The optimal use of legal sovereignty concepts gave rise to the idea of shared waters, referring to international watercourses of interest to multiple states.

According to Paragraph 1 of Article 2 of the 1997 Convention, an international watercourse is defined as "a system of surface waters and groundwaters that, by virtue of their physical relationship, constitute a unitary whole and normally flow into a common terminus." This concept is based on the hydrological reality of an international watercourse, which comprises a network of hydrological elements through which water flows above and below the earth's surface.

It is worth noting that the term "international watercourse" in the 1997 Convention is not synonymous with "international river," as the former is broader, encompassing groundwater, which constitutes most freshwater and often interacts with surface water. The nature of international watercourses creates unique interstate relations, and disputes over them can escalate into large-scale military conflicts.

The problem lies in the use of watercourse waters by multiple states, particularly when there are no agreements or understandings on water allocation. This can lead to expected boundary disputes among states sharing the same watercourse or riparian states.

This research paper aims to highlight the joint management of transboundary natural resources by examining the extent to which such management contributes to delineating state sovereignty under international law provisions. To address this issue, we adopt a descriptive approach, evident in both sections, by defining the regular exchange of data and information and notification as mechanisms for organizing the joint management of transboundary natural resources, particularly water resources. The analytical approach is used to assess the effectiveness of international law legislation in applying these mechanisms, ranging from reluctance to seriousness.

THE FIRST TOPIC : . Regular Exchange of Environmental Data and Information

An expert on international watercourses described this rule as strategic and likely to grow through feedback mechanisms [1].

The rule of data and information exchange serves as a valuable shield. For a watercourse state to determine whether a planned project by another state will cause significant harm or ensure equitable and reasonable use, it must obtain relevant data and information from the state planning the project. Two types of data and information are distinguished:

A. Generally Available Data and Information

It is evident that every state in an international watercourse has the right to access all available information related to the watercourse's characteristics to engage in meaningful consultations and negotiations. This is driven by the principle of cooperation for the benefit of freshwater use, not competition[2] .

B. Data and Information Not Generally Available

There is no obligation for a watercourse state to provide unnecessary information or incur disproportionate costs. Security considerations must also be taken into account, as data and

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information serve a dual purpose: ensuring rational water resource management and providing a sound basis for resolving disputes[3]

FIRST REQUIREMENT Obligatory Nature of Environmental Information Exchange under Customary International Law and Principles

Various rapporteurs of the International Law Commission, through careful study of international practices, concluded that states aim to exchange information[4] **.**

However, they also noted that this principle does not create absolute obligations without an explicit agreement. Information exchange is often managed by joint commissions formed by watercourse states to collect and disseminate relevant information[5] **.**

The 1997 Convention on the Non-Navigational Uses of International Watercourses emphasized the principle of information exchange. Paragraph 1 of Article 9 states that watercourse states shall regularly exchange generally available data and information about the watercourse's condition, particularly hydrological data. This regular exchange is a key aspect of cooperation among riparian states to achieve optimal river water utilization. Article 8 further stipulates that watercourse states exchange data and information on the watercourse's condition, including hydrological, meteorological, hydrogeological, and ecological data, as well as related forecasts[6] **.**

Article 9/1 is a specific application of the general obligation to cooperate outlined in Article 8, based on sovereign equality, territorial integrity, and mutual benefit to achieve optimal utilization and protection of the watercourse. This demonstrates the simplicity and effectiveness of the system outlined in Article 9. The article lists aspects of exchange, though not exhaustively, due to the diversity of watercourses. The inclusion of ecological data highlights the importance of cooperation in environmental protection[7].

There is also a need to exchange data related to meteorological or climatic conditions. Notably, Article 9 emphasizes regular exchange to enable equitable and reasonable utilization, implying that irregular or untimely information loses its value over time. Article 9/2 states that if a watercourse state requests data or information not generally available, the requested state should make every effort to comply, but may condition compliance on the requesting state covering reasonable costs[8] **.**

This paragraph allows flexibility in whether the requesting state must cover costs, as indicated by the phrase "may condition." Unlike Article 9/1, which only requires providing reasonably available data, Article 9/2 addresses non-readily available data, requiring the requested state to make every effort to provide it. Watercourse states also exchange data related to preventing and mitigating harmful conditions, including human activities or natural events like floods that pose risks.

Article 9 represents a specific application of the general cooperation obligation, imposing only standard obligations that are inherently consistent. Thus, watercourse states are only required to provide naturally available information, either pre-collected or easily obtainable. Otherwise, the requesting state must bear the reasonable costs of data collection and processing.

Article 9 effectively addresses issues related to the current uses of international watercourse waters.

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SECOND REQUIREMENT: International Practice of Environmental Information Exchange

International practice is rich with contractual arrangements confirming the duty of watercourse states to exchange data and information. This cooperation is evident in numerous international agreements and declarations, including:

- The 1960 Indus Waters Treaty between India and Pakistan, where Article 6 stipulates that the two states exchange information on water flow and usage in rivers and streams on a regular, daily basis, with monthly submissions to the other party[9] .
- The 1973 Ottawa Agreement between Canada and the United States, which mandates both parties to exchange information on the quality of water in their shared Great Lakes network.
- The 1982 agreement between Austria and Czechoslovakia on the construction of a nuclear reactor, which included a system for information exchange and prior consultation to prevent impacts on groundwater near shared international borders[10] .
- The 1982 United Nations Convention on the Law of the Sea, Article 200, which calls for states to cooperate directly or through competent international organizations to promote studies, undertake scientific research programs, and encourage the exchange of data and information on marine environmental pollution.

Legal studies also affirm the regular exchange of data and information among riparian states. The 1966 Helsinki Rules, Article 29/1, recommend that basin states provide available and reasonable information regarding the waters within their territories, their use, and related activities to prevent disputes[11].

Recommendation 2995 of the 1972 UN General Assembly urged states to provide technical data and information related to planned activities within their territories to avoid significant harm to neighboring states' ecosystems, emphasizing cooperation and good neighborliness. It also clarified that this duty should not be used to delay or obstruct another state's development plans [12] .

The regular exchange of environmental data and information typically occurs through:

A. Bilateral Exchange

Involves exchanging information on water flow measurements, extraction, and reservoir use bilaterally, as exemplified by the 1960 Indus Waters Treaty[13].

B. Joint Research

Many agreements call for joint research to determine a river's hydrological characteristics and development potential, such as the 1994 agreement between the United States and Mexico, Articles 6 and 7.

C. Joint Bodies

Data collection and exchange are often delegated to joint bodies, such as the Niger Basin Authority established on November 21, 1986, tasked with collecting, concentrating, monitoring,

exploiting, disseminating, and exchanging technical data before member states undertake projects or research.

D. Monitoring Stations

Riparian states often establish monitoring stations to facilitate regular data collection, as seen in Protocol No. 1 of the 1946 Iraq-Turkey Treaty on the Tigris and Euphrates, where Article 2 allows Iraqi technical experts to enter Turkish territory for data collection and monitoring[14] .

However, certain data and information are exempt from regular exchange if they concern national defense or security. Article 31 of the 1997 Convention states: "Nothing in these articles obliges a watercourse state to provide data or information vital to its national defense or security. Nevertheless, that state shall cooperate in good faith with other watercourse states to provide as much information as possible under the circumstances." Schwebel's report notes that such information is typically shared with states maintaining close relations with the providing state, and there is no prohibition on exchanging confidential information[15] .

Third REQUIREMENT: Shortcomings of International Law in Applying Information Exchange and Joint Management

Joint management through shared institutions or bodies is a significant form of international cooperation among riparian states. It aims to implement approved plans, promote watercourse utilization, and ensure rational protection and control, as affirmed by Article 24 of the 1997 Convention: "Watercourse states shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism." Management specifically includes:

A. Planning sustainable development and implementing approved plans.

B. Promoting rational utilization, protection, and control of the watercourse.

Article 24/1 indicates that watercourse states engage in consultations on river management, which may result in a joint mechanism. The article leaves the choice of mechanism (e.g., committee or organization) to the concerned states. Paragraph 2(a) focuses on sustainable development and protection, ensuring benefits for the populations of watercourse states. Paragraph 2(b) emphasizes organized and planned development and protection by riparian states.

This article establishes joint management among riparian states, allowing them to choose the mechanism that best serves their interests.

Firstly: **Internationalization of the Joint River Management Rule**

Joint management among riparian states has become widespread, as evidenced by international practice through agreements such as the November 5, 1959, agreement between Egypt and Sudan on the utilization of Nile waters. Article 4 states: "To achieve technical cooperation between the two republics' governments, conduct necessary research and studies for river control projects and increasing its yield, and continue hydrological observations in its upper reaches, the two republics agree to establish a permanent technical body with equal representation from Sudan and the United Arab Republic following the signing of the agreement"[16] .

The 1923 Geneva Treaty mandated basin states to negotiate agreements to regulate the exploitation of international waters[17] .

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The 1933 Declaration of American States included 15 provisions reflecting cooperation among riparian states in the non-navigational use of international waters and the exploitation of water resources for non-industrial and agricultural energy generation[18] .

A 1979 UN study identified 90 bodies concerned with the non-navigational uses of international watercourses[19] . Article 31 of the 1966 Helsinki Rules states that basin states should refer disputes over the use of international river basin waters to a joint agency.

Obligatory Nature of Joint Management and International Law's Leniency :Secondly Article 8, adopted by the International Law Commission, mandates cooperation in the use of international rivers, stating: "Watercourse states shall cooperate on the basis of sovereign equality, territorial integrity, and mutual benefit to achieve optimal utilization and adequate protection." Cooperation is essential for equitable distribution of river uses and benefits, driven by principles of good faith and neighborliness, as reflected in numerous international conventions.

However, the International Law Commission's draft prioritizes equitable and reasonable utilization over the principle of not causing significant harm, which contrasts with customary international law. This bias favors upstream states' interests over downstream states' rights.

THE SECOND TOPIC : Notification

Notification complements the natural exchange of information and data, giving clear meaning to the concept of equitable use regarding issues related to new uses and planned projects[20] . Watercourse states planning projects using international watercourse waters must notify other watercourse states of the proposed project. This obligation stems from the aforementioned principles and is supported by state practice, as recognized by the Institute of International Law and the International Law Commission[21] .

A notable international example is the Senegal River, where the OMVS organization was established by Mali, Mauritania, and Senegal under the March 11, 1972, treaty. McCaffrey noted this as a unique administrative arrangement[22] .

The Special Rapporteur emphasized proposed notification articles, drawn from various legal systems and international studies, reinforced by international judicial precedents, particularly the Lake Lanoux case. Numerous international agreements recognize notification procedures as effective, requiring information provision for planned projects[23] .

Part III of the 1997 Convention, titled "Planned Measures," is well-detailed, according to most government representatives in the sixth session. Some International Law Commission members noted that the burden of notification falls entirely on the state planning new use, advocating for a link between the general cooperation obligation and the procedural technicality of Article 12. Notification is not merely a cooperation obligation but requires necessary actions.

The challenge lies in the fact that notification is only mandatory if the planned measures could have a significant adverse effect on other watercourse states.

The question arises about the types of projects requiring notification. The World Bank's policy identifies projects inherently requiring notification, such as:

A. Hydropower, irrigation, flood control, navigation, drainage, sewage, industrial, or similar projects involving watercourse use or pollution.

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However, the World Bank's policy exempts certain cases from notification, including:

- Projects involving additions or modifications through rehabilitation, construction, or other means for ongoing projects that, in the Bank's estimation, meet the following criteria:

A.1. They do not adversely alter the quality or quantity of water flows to other riparian states.

A.2. They are not adversely affected by other riparian states' water use.

- Water resource surveys and feasibility studies related to watercourses, provided the beneficiary states include an examination of potential riparian issues within their jurisdiction.[24]

- **FIRST REQUIREMENT: Regulation of Notification under the 1997 Convention**

Notification has specific conditions regarding timing, content, deadlines, and subsequent steps, aiming not only to inform relevant states for preventive measures but also to allow them to object, paving the way for negotiations that may lead to project modification, cancellation, or alternatives involving other basin states.

Firstly: **Timing of Notification**

Notification must occur early, during the planning stage or before actions that could affect other states' waters, not merely before completion, to be meaningful. Article 12 of the 1997 Convention states: "Before a watercourse state implements or permits the implementation of planned measures that may have a significant adverse effect on other watercourse states, it shall provide those states with timely notification…"[25]

Secondly: Content of Notification

Article 12 specifies: "The notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, to enable the notified states to evaluate the possible effects of the planned measures." Thus, notification must be written and include technical data enabling the notified states to assess the project's potential harm. Notified states may request additional data and information, as per Article 14, which requires the notifying state to cooperate by providing necessary and available data for accurate assessment. Measures cannot be implemented without the notified state's consent, as non-compliance may mislead other states, as exemplified by Turkey's misleading information to Iraq about the Keban Dam, claiming a storage capacity of 9.3 billion cubic meters while planning for 30 billion[26] **.**

Thirdly: Response Period

Article 13/1 of the 1997 Convention sets a six-month period for the notified state to study and evaluate the planned measures' potential effects and communicate its findings[27] **.** This period allows the notified state sufficient time to assess the project's impact and inform the notifying state of its decision. If six months is insufficient, the period may be extended for another six months upon the notified state's request.

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Fourthly: Obligations of the Notifying State During the Response Period

The notifying state may not begin project implementation during the response period unless the notified states consent. However, this does not allow notified states to obstruct implementation by delaying their response, as legal scholars consider the six-month period sufficient for study and evaluation. If objections arise, the concerned states must consult and negotiate, as per Article 17 of the 1997 Convention[28] .

After the period expires without objections, the notifying state may proceed with implementation. If a state persists in not notifying others despite its obligation, for political, diplomatic, or other reasons, the Helsinki Rules state that any changes to the drainage basin system will not receive the usual priority when determining equitable and reasonable water shares[29] .

However, Article 12's notification obligation includes a significant exception in Article 19, allowing immediate implementation of urgent measures to protect public health or other interests, provided the notifying state promptly informs other watercourse states with relevant data. The term "without delay" is relative and could extend, lacking a clear constraint.

SECOND REQUIREMENT: Obligatory Nature of Notification under International Water Law Sources

International practice shows that riparian states adhere to notifying each other of planned projects that may adversely affect river uses.

Firstly: **International Treaties and Declarations**

Numerous agreements mandate notification for planned projects, including:

- The 1946 Treaty of Friendship and Good Neighborliness between Iraq and Turkey, where Article 5 of the annexed protocol states: "Turkey shall inform Iraq of its plans for conservation works on the Tigris and Euphrates and their tributaries, subjecting these works, as far as possible, to mutual agreement for the benefit of both Iraq and Turkey."
- The 1933 Montevideo Declaration, which requires not only prior notification but also prior consent for modifications to international watercourses for industrial or agricultural purposes that may cause significant harm to other riparian states[30] .
- **Secondly: Legal Studies**

Legal studies confirm the obligation of notification, such as the 1961 Salzburg Resolution on the non-navigational uses of international watercourses. Article 4 states: "No state may undertake constructions or uses of an international watercourse that seriously affect other states' ability to use the same waters unless it ensures their entitled benefits under Article 3 or provides appropriate compensation for losses or damages." Article 5 adds: "Such constructions or uses may not commence without prior notification to the concerned states"[31] .

The 1966 Helsinki Rules, Article 29/3, state that the notifying state must allow the recipient a reasonable period to assess the proposed construction's impact and provide its views. The Helsinki Rules include guidelines such as:

- States planning new activities on an international watercourse must notify other potentially affected states.
- The recipient state must study the project within a reasonable period.
- If the project state sends written notification, the new use will not receive priority[32] .

The International Law Association supplemented the Helsinki Rules in its 1980 Belgrade session, adopting rules on watercourse water levels, including prior notification obligations, negotiation in case of opposition, and resort to peaceful dispute resolution if negotiations fail[33] .

The World Bank operates under the notification principle, requiring states seeking loans for projects on international watercourses to notify other riparian states and provide relevant data. After six months, the Bank decides on funding, evaluating objections' legitimacy, sometimes consulting experts, and independently determining potential harm to other states[34] .

Interest in this issue crystallized in 1987 through Special Rapporteur McCaffrey, who clarified that his third report aimed to establish rules ensuring maximum water resource management and harmonious interstate relations[35] .

Conclusion

In contemporary international law, sovereignty is not only the basis for rights but also a source of responsibility, accountability, and international cooperation. International law not only delineates state territories and jurisdictions but increasingly clarifies the essence of sovereign states' responsibilities at both international and national levels. Thus, sovereignty is not merely an obstacle or static concept but a relative and dynamic one, imposing duties alongside rights.

In a globalized world with growing shared values, this modern understanding of sovereignty can promote sustainability, environmental justice, and human dignity rather than hinder them. States remain a fundamental element in achieving these goals.

Joint management of transboundary water resources is a key aspect of international water law but faces challenges in effectiveness. Beyond threatening state sovereignty in shared basins, it may require internal legal reforms to align with local standards. Transboundary issues also arise from the organization of national and regional governance structures and the rules governing water management and use. Consequently, international water law principles and frameworks suffer from practical ineffectiveness. Key strategies to address this include international agreements among basin states and establishing bodies to enhance local water governance and support joint management. This requires deep political understanding and effective water diplomacy skills.

Despite being part of national security, the best approach to governing transboundary river basins is local governance managed by communities within state borders, as they are most affected by daily issues resulting from absent central government management and regulation. Water resource governance and management can enhance democracy by involving more stakeholders, promoting protection, cooperation, and participation. However, these processes may serve hidden interests through decisions claiming to be participatory but lacking genuine intent, necessitating high transparency in adopted governance models.

Separating the concept of international water resource management from idealistic visions and defining its practical application for effective governance reflecting international water law remains a challenge. It requires more than integrating technical, scientific, financial, and diplomatic water skills. It also demands proving the maturity of international law and its ability to overcome sovereignty-related obstacles in transboundary river basins, reevaluating old contradictions between law and sovereignty, and addressing emerging 21st-century challenges, primarily related to water.

Despite the international community's efforts, policies for effective water governance in managing transboundary river basins progress slowly and face persistent effectiveness obstacles.

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