

HYDRODIPLOMACY IN WESTERN EUROPE

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The last half of the 20th century was characterized by significant changes in the planning, design, and management of water resources all over the planet. Mounting concerns about the environmental impacts of human activities, potential climatic shifts, expanding populations and demands as well as new knowledge are all expressions of the pressing need to develop also alternative institutional schemes for managing in an integrated manner scarce natural resources. At the same time, with the end of the Cold War and the rise of environmental awareness, attention in the field of environmental security has been shifting to regional conflicts, ethnic “wars”, and to the ramifications of water scarcities and environmental degradation.

There is no need to repeat the context of competing and conflicting demands all over the planet. What is particularly noticeable in many examples of transboundary water dependencies is that countries can come close to severe conflicts over water schemes as e.g. between Hungary and Slovakia regarding the Gabčíkovo/Nagymaros dams, around the Jordan and the Litani in the Middle East, the Ganges in the Indian subcontinent, in the Balkans, the Iberian Peninsula and so on. Increasing utilization of surface and underground water resources has raised awareness of their finite nature. Only continuous communication between the states concerned can be the central mechanism to peaceful solutions of festering disputes over shared waters.

Water conflicts in particular, are caused by many factors, including ideological disputes, religious beliefs, historical animosities, arguments over borders, or economic competition. Indeed, in many regions, water is part of multiple factors contributing to regional conflicts. The centrality of water for both survival and socio-economic development implies also that changes in the natural water cycle have serious political consequences. Furthermore, the transboundary quality of rivers plays a crucial role as a potential catalyst for inter-state conflict.

Experts disagree about how much water is available in given regions. However, awareness is growing that nations must cooperatively manage, engineer, and conserve available water resources. No region of the world with shared international water is exempt from water-related controversies, though the most serious problems occur in water-scarce regions. Without cooperative management a zero-sum competition will emerge over water. Seasonal and regional water shortages may exacerbate social tensions and precipitate violence. Sharing and cooperation can provide benefits that exceed those achieved by attempts to maximize individual and national self-interest. Ideally, such cooperation requires new forms of “diplomacy”, alternative institutional arrangements, larger financial resources, and effective adjudication or conflict management mechanisms.

The geopolitical nature of water rests on a combination of geography and technology and results not only in variegated historical and cultural paths for various nations, but also in intricate ecological adaptations and capabilities marking manifestations of power

and command over resources. The depletion of national water resources, recurring droughts, and expanding socio-economic demands have fueled confrontations and have forced international exchanges and cooperation. Since the 805 AD deed of Charlemagne to a monastery for the navigation of the Rhine, more than 3800 unilateral, bilateral, or multilateral declarations or conventions on water have been identified. Currently, there are 261 major international basins covering about 40 per cent of the global population. Europe has 71 international river basins covering 54 per cent of the Continent's area. Given recent political developments and the continuous creation of new states the number of international river basins is expected to increase.

Recent history, rapid socio-economic changes, socio-political upheavals and the transitions necessitated by the turbulent decades of the 80s and 90s underscore the increasing emphasis on the variety of environmental challenges, the search for sustainable development, the promotion of integrated planning and management, and the attempt to combine structural and non-structural solutions to persistent water resources problems, and transnational interdependencies. In this setting of increasing complexity, interdependence and vulnerability, there is an urgent need for intergovernmental integration (through coordination, cooperation and consolidation) of: a) hydrological interdependencies in terms of both uses (rural, urban, industrial, recreational, etc.) and water regimes (i.e., surface and ground water, quality and quantity); b) political interdependencies both in terms of horizontal coordination in space and vertical cooperation between levels of government units; c) transboundary interdependencies, representing both social and hydrological trans-state interdependencies; and d) exogenous interdependencies, most notable the potentially dramatic impacts and consequences of climatic shifts and emerging hydrological alterations.

The mismatch between political boundaries and natural river basins, becomes, a focal point for the variety of difficulties reported in the literature vis-a-vis joint planning, allocation of costs, advantages of scale, exercise of power and coordination, and the whole range of issues associated with integrated, holistic management. Cooperation and conflict are, then, expressions of the same quest for improving effective planning and management, for promoting new ways for sustainable development, and for accommodating the realities of geography to the complex context of shared water resources. Such international responsibilities tend to fall into three general categories. First, the "downstream responsibilities" of the water of one state which flows into another. Second, the "upstream responsibilities" of states whose activities may extend upstream and affect another state. And, finally, "cross-stream responsibilities" of countries whose common border is formed by a river, or even when they share underground water reserves.

The Balkans provide an interesting backdrop for water interdependencies. For example, in the case of Evros there are no major water supply problems as there are no other water uses besides irrigation. However, in the summer of 1993 Turkey strongly protested diminished water supplies due to hydroelectric power plants in Bulgaria. New tensions are expected to rise in the near future, due to low groundwater levels in the region and sea water intrusion in the coastline as a result of high irrigation demands. Another challenge in the region is the Nestos River between Greece and Bulgaria. Despite earlier agreements, Bulgaria has been withholding supplies for its increased agricultural and industrial needs. From 1975 on the Nestos flow declined from 1500 million CM to 600 million CM resulting to repeated Greek protests. A series of negotiations since 1965 have resulted in a new agreement between the two countries, suffering however from essential weaknesses. According to the agreement, Bulgaria is

obliged to allow downstream 28 percent of the river discharge, without specifying, however, the seasonal variation of this amount of water.

In order to address such water interdependencies, there are currently a variety of multi-institutional approaches. There are principles of conduct from international law, bilateral and multilateral treaties, binding acts of international organizations, rules of customary international law, and, judgments of international courts and tribunals that shape rules and procedures of transboundary water relations. Such principles and rules include sovereignty over natural resources, good neighborliness and international cooperation, the precautionary principle (especially when there is scientific uncertainty), the polluter pays principle, and, the common but differentiated responsibility. Three international legal organizations of high repute have conducted empirical studies of State practices, on the basis of which they have drafted sets of draft rules for the non-navigational uses of international water resources. The Institut de Droit (Institute of International Law, IIL); the International Law Association (ILA) which drafted and approved the 1966 Helsinki Rules on the Uses of International Rivers; and finally, the International Law Commission, an independent United Nations legal organization, was commissioned in 1970 to prepare an authoritative set of rules to be adopted by the United Nations General Assembly. In July, 1994 the ILC completed its draft articles on The Non-Navigational Uses of International Watercourses and recommended that the articles be elaborated into a convention by the UN General Assembly or an international Conference of plenipotentiaries.

It is instructive, to summarize five major legal principles that are shaping and will further affect the "hydrodiplomacy" practice. These are (1) the Principle of international water and the concept of an international "watercourse;" (2) the Principle of reasonable and equitable utilization, a principle that has generated interminable debates and interpretations as to "reasonableness" and "equity;" (3) Obligation not to cause significant harm and the exercise of due diligence in the utilization of an international watercourse; (4) the Principle of notification and negotiations on planned measures; and (5) the Duty to cooperate, including regular exchanges of data.

Thus, existing legal approaches, have now been expanded, especially in Western Europe, to include additional mechanisms for conduct and conflict resolution in transboundary river basins, including "second track" diplomacy (environmental diplomacy or hydrodiplomacy); Alternative Dispute Resolution (ADR) through international bodies or in the spirit of the Rio Agenda 21; increasing input of technical/professional or independent panels of experts or what have been called "epistemic communities;" and, the promotion of systematic utilization of public awareness, participation and mobilization.

In essence, international relations have become so complex that alternative dispute resolution approaches are emerging as important mechanisms in managing or resolving inter-societal conflicts. The search for alternatives to legal institutions to arbitrate disputes has been prompted not only by a saturation of legal mandates, but also by increasing litigation and confrontation. Mediation, as a compromised discussion between disputants aided by a neutral third party whose judgment is respected, has become a viable alternative to adversarial processes. The gamut of adjudication, arbitration, mediation, conciliation and even "principled negotiation", expresses various alternative processes of dispute resolution that have wide applications in transboundary regimes all over Europe. But criticisms have also risen as to whether such process can compensate for inequitable power relations or can provide incentives for compliance or acknowledgement of a third party decision when there is no recourse to legal sanctions.

As the international scene turns to questions of sustainable development, to the restoration and rehabilitation of degraded environments, and to the creation of new cooperative arrangements centering around shared water resources, it becomes apparent that institution building, comprehensive management and alternative dispute resolution efforts will be central quests in the years to come. Diminishing or degraded water resources and their potential impacts on international security, provide unique opportunities for cooperative institutions and for cooperative transnational behavior. The common thread in any discussion of transboundary water conflicts in Europe as well as in the rest of the planet emphasizes how new strategies are needed because water (and for that matter natural) resources problems are becoming both highly complex and globalized. Thus, there is a need for utilizing an environmental approach that requires drastic measures of ecological rehabilitation, innovative institutional mechanisms, and a balance between autonomy and cooperation. Such global approaches entail also improvement of environmental monitoring and information by expanding the factual basis of comprehensive river basin models. In addition, they also imply a framework for negotiations which stresses the importance of comprehensive institutional formats and clarity in national and international decision making processes.

A whole host of various "Declarations," the various "drafts" of international law organizations, the creation of the World Water Council and similar international efforts all aim at expanding the spatial envelope and in accentuating global perspectives. The transition to the 21st century will require also an institutional order of cooperation, of comprehensive management principles, and of sharing of experiences gained in the practice of ecosystemic principles in water resources projects. Paths to effectiveness for some authors imply the boosting of governmental concern; the enhancement of a contractual and bargaining environment, and, finally, the building of national capacity. Others discuss larger educational and epistemological goals in ADR and in the existing legal system including the building of decentralized alliances, provision of prenegotiation assistance to individual countries, new approaches to treaty drafting, expansion of the role for nongovernmental interests, balancing science and politics, or encouraging issues' linkages. The question that should worry us, though, is to what extent sovereign states, multinational corporations, NGOs, or existing international bodies can respond in sharing long acquired power and in implementing action that promotes ecological interdependence and globality of increasing environmental challenges. At the same time, rapid population increases and expansion of economic activities are creating unprecedented situations requiring new economic paradigms of planning and action. The main problem, then, in Europe will be how to achieve integrated planning and management within institutional frameworks which have evolved under different historical and socio-economic conditions and for needs which are incongruous with the present and certainly will differ from projected or desired futures.

Given such considerations and strong socio-political divisions (even centrifugal forces and fragmentations in many nations) there are three responses that we should consider. First improve efforts towards the utilization of "hydrodiplomacy" in terms of understanding alternative dispute resolution and conflict management efforts to transboundary water resources. Second, recognize again the river basin approach as a cooperative mechanism and authority, and as being much more sensitive to ecosystemic interdependencies. And, third, place particular emphasis on integrated water resources management (including the building of more robust water resources institutions).

An interesting recent development for improving knowledge and expanding experience is the 1998 "Convention On Cooperation for the Protection and Sustainable Use of the Waters of the Luso-Spanish River Basins." The Agreement between Portugal and Spain

as partners in the shared river basins of the Iberian Peninsula, is an important (and the latest such document) addressing contemporary ecological, economic social, legal and political questions of transboundary systems. National hydrological Master Plans, Conventions, Treaties, Agreements, the EU just approved Water Framework Directive, and a vast scientific effort to manage in a sustainable manner water resources, all point out to opportunities for more comprehensive management of transboundary water resources. Thus, there should be encouragement for systematic collection of data and analytical studies; training of professionals who will be called upon to negotiate and manage complex resource systems; and, finally, the promotion of meaningful dialogue and negotiations between countries who share common environmental challenges and opportunities.

NOTE

This short paper was originally prepared for International Seminar "Strengthening the OSCE's Role in the Realm of Environment and Security" Organization for Security and Co-operation in Europe, Berlin July 3-4, 2001. It is offered here as background material to the Power Point presentation, entitled "Transboundary Water Conflicts and Hydrodiplomacy". Please refer any further communication and exchange to: evlachos@engr.colostate.edu .