



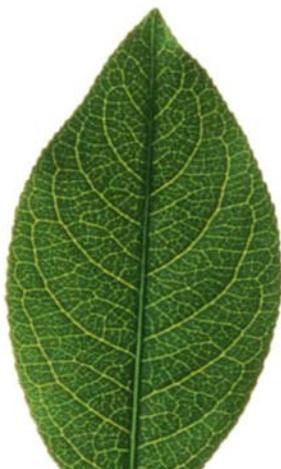
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STEPHEN C. MCCAFFREY, CHRISTINA LEB, RILEY T. DENOON, EDS.,
RESEARCH HANDBOOK ON INTERNATIONAL WATER LAW
(EDWARD ELGAR 2019)

Reviewed by : Roopa Madhav, PhD Scholar, SOAS University of London

BOOK REVIEW



VOLUME
15%

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Stephen C. McCaffrey, Christina Leb, Riley T. Denoon, Eds., *Research Handbook on International Water Law* (Edward Elgar 2019)

Transboundary water cooperation is set to determine the future of water resources globally. Climate variability, increased demand, over-exploitation, pollution, seasonal changes remain ever present as challenges to effective water resource management. But the extension of river basins and aquifers across human boundaries of nation states pose a challenge to regional stability, in the absence enforceable legal principles that determine the cooperative model to be adopted between nations. The international water law arena is a complex arena of customary law, conventions, treaties, court rulings but at its very core is a set of regional cooperation agreements, both bilateral and multilateral, that survive despite ongoing regional tensions.

This book is a timely addition to the discourse on transboundary water management and is an excellent collection of interrelated papers written by academics and practitioners exploring and analysing international water law from diverse perspectives. In the range of topics that this compilation covers, it is a definitive guide to the rapidly growing areas of concern of international water resource allocation, water management and dispute resolution. It is difficult to do justice to all the 29 chapters, carefully curated and compiled by the editors, but a few sections stand out both in terms of content and the novelty it offers for future thinking in the arena of international water law.

Part I compiles a series of articles that map the history and evolution of International Water Law. Rieu Clarke explores in some depth the evolution and expansion of the watercourses treaties.¹ Dellapenna and Tanzi capture the significant contribution of international legal expert bodies in the evolution of international water law, the global water treaties and their interrelationship.² As Dellapenna significantly notes,

[t]he Berlin Rules does not merely review the transboundary issues that formed the body of the Helsinki Rules and the Watercourses Convention, but went beyond to survey the emergent body of international environmental law, international human rights law, and international humanitarian law to assess the extent to which those rules have become customary international law and the extent to which those rules have become customary international law and the extent to which those rules apply to all waters and not just to transboundary waters.³

This interrelationship is critical for the evolution of the law, both internationally and in the domestic arena. The other contribution in this section by Larson and Tarlock outline in some depth the United States federal relation with regard to water distribution, while also providing a brief snapshot of federal relations with regard to water in other countries, particularly Australia and China.⁴ Taken as a whole, some aspects in this section may appear to overlap in terms of content but it is worthwhile to revisit them as the perspective and approaches taken by each author is new and refreshing.

The core traditional areas of international water law, the human right to water and dispute settlement, are at Parts IV and V respectively. The human rights framework provides the broad aspirational goals and guidance to states in setting standards for local water governance. Winkler provides an excellent overview of the evolution of the rights framework to water, explaining the normative content and linking it to other related rights such as the human right to sanitation.⁵ Russell examines the human right to water in a transboundary context highlighting the need to focus on and protect individual rights in the management of transboundary watercourses.⁶ This section would have benefitted from an examination of the domestic application of the human right to water and its contribution to taking forward the international rights discourse within the national context.

1 Alistair Rieu-Clarke, From Treaty Practice to the UN Watercourses Convention, Chapter 1, 11-25.

2 Joseph W Dellapenna, The Work of International Legal Expert Bodies, Chapter 2, 26- 43; Atilla Tanzi, The Global Water Treaties and Their Relationship, Chapter 3, pp 44-58.

3 Dellapenna (n 2) 43.

4 Rhett Larson and A Dan Tarlock, Inter-jurisdictional Water Allocation in Federal Systems: Lessons for International Water Law, Chapter 4, 59-81.

5 Inga T Winkler, The Human Right to Water, Chapter 14, 242-54.

6 Anna FS Russel, The Human Right to Water in a Transboundary Context, Chapter 15, 255-72.

The next important section dealing with dispute settlement and its compliance along with the section on regional approaches provide an excellent insight into the much fraught arena of water conflicts. Boisson de Chazournes examines the role of the Permanent Court of International Justice as it was an important forum for resolving water disputes, laying out and clarifying important legal principles, particularly with regard to navigation.⁷ Parseglian and Guthrie provide rare insights into the role of scientific and technical experts with a focus on cases involving the prevention of transboundary environmental harm.⁸ They examine (a) how tribunals integrate technical experts into the dispute resolution process; (b) how should parties and counsel work with, and present technical experts in order to effectively make their own case, and (c) given past practice and disagreement regarding the role of experts, point towards how tribunals can be expected to handle scientific and technical aspects of complex cases.

Lammers dwells in some detail on the implementation mechanisms and the working of the committee established under the UNECE Convention on Protection of Transboundary Watercourses and International Lakes.⁹ He notes that in the four years of its existence, 'the Committee has not been able to perform its most important task namely, to consider specific issues of implementation of and compliance with the Convention and to take measures to facilitate and support implementation and compliance and to address cases of non-compliance'.¹⁰ For instance, he notes that

[t]he committee has made use of its mandate to request information on possible difficulties in the implementation of the Convention by Kazakhstan and the Russian Federation as a result of alleged water withdrawals from the Irtysh and Illi River Basin by

non-party China, to which it had been altered to by information received from an NGO in Kazakhstan. ... Although the established implementation and compliance mechanism appears to have been well designed and equipped, its limitations have also become apparent.¹¹

Some of the more interesting contributions illuminate unexplored or underexplored areas in international water law. In an excellent analysis of a much under studied area of water law, Milanes-Murcia examines the tricky domain of internationally shared groundwater resources.¹² Tignino explores issues of water in international humanitarian law,¹³ while Magraw and Padmanabhan examine the complex terrain of water and international trade law.¹⁴ Tanzi and Farnelli, in a brief piece look at the UNECE London Protocol on Water and Health for the implementation of the right to drinking water and sanitation.¹⁵ An interesting aspect highlighted here is that the Protocol was the forerunner to efforts establishing a human right to water. They note that '[d]espite its duty oriented approach, the case has been made that, through detailed due diligence standards, the Protocol significantly contributed to defining the contents of the human right to water'.¹⁶ As the focus shifts from rights to duties, it may be worthwhile to return to this document for more guidance in the future.

The last section dealing with the different regional approaches to transboundary water cooperation is a treasure trove. It is an excellent collection of articles that shed light on little known regional arrangements - beginning with the African region (South, West and the Nile Basin), it moves to Europe, Central Asia, South Asia, China, Russia and ending with Latin America, Canada and the United States. This section

7 Laurence Boisson de Chazournes, *The Permanent Court of International Justice, The International Court of Justice and International Water Law: Versatility in consistency*, Chapter 17, 285-300.

8 Cicely O Parseglian and Benjamin K Guthrie, *The Role of Scientific and Technical Experts*, Chapter 18, 301-18.

9 Johan G Lammers, *The Implementation Mechanism and Committee Established Under the UNECE Convention on the Protection of Transboundary Water Courses and International Lakes*, Chapter 19, 319-40.

10 *ibid* 338.

11 *ibid* 338-9.

12 Maria Milanes-Murcia, *The Application of the General Principles and Key Obligations to Internationally Shared Groundwater*, Chapter 9, 147-65.

13 Maria Tignino, *Water in International Humanitarian Law*, Chapter 13, 224-41.

14 Daniel Magraw and Deepika Padmanabhan, *Water and International Trade Law*, Chapter 12, 205-23.

15 Attila Tanzi and Gian Mania Farnelli, *The UNECE Protocol on Water and Health for the implementation of the right to drinking water and sanitation*, Chapter 16, 273-84.

16 *ibid* 283.

alone is worth its weight in gold, as it provides insights into regional arrangements that remain as a scattered focus in journal articles but is brought together here as a worthy collection. As a quick referencer, it is a useful compilation for students, researchers and practitioners alike.

More particularly, these chapters highlight the cooperative elements of arrangements that riparian states have arrived at but also bring to light areas that need improvement, limitations of existing frameworks and the gradual application of universal principles for sustainable and integrated management of transboundary water courses. While some regional cooperation arrangements are headed in a more positive direction (eg Europe), others point towards a pause (eg Aral Seas Basin), a rejig and a relook at the arrangements being drawn up regionally. This section on regional approaches provides critical insights for future research and contribute to a better understanding of the global frameworks and principles.

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