

# Legal Status of Use International Rivers

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## Abstract

Owing to the multiplicity of freshwater uses, the global population increase and scientific and technical development, water has become a limited and difficult resource to obtain. Therefore, the international community, through general international law, has taken an interest in international watercourses to address the legal challenges and difficulties related to their equitable and reasonable use, without prejudice to coastal States. The 1997 United Nations Convention on the Non-Navigational Uses of International Watercourses was drafted with the aim of consolidating the principles of the use of international watercourses.

**Keywords:** International Watercourses, Coastal States, General International Law.

Water is vital to the lives of societies, where its existence is linked to the existence and lack of water, because of the multiplicity and diversity of water use. To increase the world's population and industrial and technological progress, water has become a scarce or inaccessible resource, especially in drought-stricken societies. There was little importance to the uses and methods of exploitation of international rivers in the past, as individuals' needs were limited, such as drinking, irrigation, primary transport, food security, and industrial and technological development in its inception did not have a negative impact requiring special international regulation. After World War I, the geographical map of nations changed, transforming many national rivers into international rivers after the fragmentation of the natural unity of many national territories. An example is what happened on the Tigris and Euphrates rivers, where they were originally national rivers of the Ottoman Empire. After

Iraq's independence, the Tigris and Euphrates rivers became international rivers.

## Study Problem.

The problem of research is to find a solution to the legal and practical challenges associated with the equitable and reasonable use of international rivers, while ensuring that none of the riparian States is seriously harmed. This involves dealing with States' sovereign rights over their water resources, balancing the competing interests of different States, and establishing mechanisms for cooperation and conflict resolution.

## Study Objectives.

The aim of the research is to provide an overview of the legal principles and frameworks governing the use of international rivers for non-navigational purposes. It also explains the difference between national and international rivers, defining the legal rights and obligations of riparian states, discussing the basic principles of

equitable and reasonable use and preventing harm. The research also seeks to highlight the importance of international treaties and conventions, such as the 1997 United Nations Convention on the Law of Non-navigational Uses of International Watercourses, in addition to clarifying how these principles are applied in practice through examples of treaties and conventions between States involved in collapse.

### Study Methodology.

To study and examine the principles and rules governing the uses of international rivers, we have taken the analytical approach to analyse the legal texts contained in international treaties and conventions dealing with international watercourses.

### Concept of the International River.

There has been no distinction between the concept of the national river and the international river. After the development of the international community, the industrial revolution and the increasing use of rivers, international jurisprudence has begun to distinguish between national rivers and international rivers. I consider the national river to be the river that lies and flows within the territory of a country from its source to its estuary, with all its tributaries (Ali Jaloub Attia, 2024). National rivers are called because, like all other elements of the Territory, they are subject to the State's full territorial sovereignty. It is clear that national rivers are subject to national law in all matters relating to the regulation and application of their use, and do not raise any international legal issues, since only the State has the right to regulate the use of its water for various purposes and uses, such as agriculture, industry and maritime affairs, such as the Thames in the United Kingdom and the Seine in France (Ameel Jabbar Ashour, 2020).

International rivers are rivers that separate or pass the territory of two or more States. Each State that crosses the river has the right to exercise sovereignty over this part of the river. Among them is the joint utilization of the

river's agricultural, industrial and seafarers, Examples of international rivers include the Euphrates River, the Nile River, the Rhine River and the Danube River (Hala Abdul Karim Ahmed & Yousra Odeh Alwan, 2024).

The International River was known at the Vienna Conference in 1815 as "the seaworthy river that separates or penetrates into the criminality of several States." The jurist (George Sell) considers that the river's navigability criterion is inadequate for an international description and that it passed through the territory of more than one State, because it requires the importance of the river to the international community in terms of navigation to internationalize it (Suhail Hussein Al Fatlawi & Ghalib Awad Hamada, 2008). The Barcelona Convention is defined 1921 article 1 of which stipulates the rivers to which the international system applies. "Navigable watercourses that separate or operate between different States" In addition to watercourses overseen by international commissions, these are open to the free navigation of all States signatories to the Convention. This Convention has expanded the concept of the international river and has made it encompass all its surface and underground waters, including its tributaries and branches, and has maintained the navigation standard for identifying and defining international rivers (Salman Shamran Al-Issawi, 2016).

In the judgment of the Permanent Court of International Justice (1929) in the Oder River case, the Court defined the International River as "the navigable course that connects several States to the sea" and required the Court in the waterway to become an international river to be navigable and connected to the sea ( Saeed Salem Jouili, 1998). The 1966 Helsinki Rules emphasized that, unless exceptions provided for in binding conventions or customs between basin States, the general rules on the use of the waters of an international water basin are fully applicable. From this point of view, it is clear that it is important for riparian States to reach bilateral or collective conventions to regulate the

use of such shared water resources, provided that such conventions are in conformity with the fundamental principles of general international law and do not conflict with them (Wed Fathi Abdul Jalil, 2022).

The 1997 United Nations Convention on the Non-navigational Uses of International Watercourses defines an international watercourse as "The surface and underground water system, which by virtue of its natural relationship with each other constitutes both one and the flow towards one point of access" Through this concept, an international watercourse is based on hydrological and geographic realities and serves as a network of hydrological elements through which both above and below the Earth's surface and through which rivers, lakes, aquifers, ice bodies, reservoirs and canals are formed ( Flame Sabri Diwan Al-Tai,2011).

### **Legal System of International Rivers.**

International jurisprudence has codified the use of international waters to reach understandings on the development of rules for the use and exploitation of international rivers. Water has become a major focus of international and domestic conferences and symposiums, with two international trends regarding the existence of international legal norms governing international rivers, most upstream States support international rivers, such as Turkey, Romania, Brazil, India and Ethiopia (Mohamed Mustafa Younis, 1995). These countries deny the existence of a general international rule governing international rivers outside bilateral treaties, because of their concern for the free management of waters flowing through their territories. The second trend is: It is the prevailing and established international view, recognizing the existence of legal norms of international rivers derived from official sources of international law, such as international treaties, international custom, and general principles of international law, international jurisprudence and international jurisprudence.

This view is supported by Article 38 of the Statute of the International Court of Justice, which is an integral part of the Charter of the United Nations (Hadi Naim Al-Maliki, 2023).

Through this, we will know the sources of international law concerned with the exploitation of international watercourses:

A. Treaties: The United Nations Treaties on the Non-Navigational Uses of International Watercourses is the Convention on the Non-Navigational Uses of International Watercourses and the General Street Convention, where it concerns all the worlds freshwater, as a reference international legal source (Mohammed Hussein Rasheed Mohammed, 2000). In 1963, more than 250 treaties on international water uses were published under the title "Legislative texts and provisions of treaties on the non-navigational uses of international rivers by the United Nations". More than 50 treaties were published in 1974. These treaties and legislation were regarded as a reference in international water disputes. One of the most important principles of these conventions is the recognition by upstream States of the rights of riparian States, not to harm the riparian States and to prevent the change of the international riverbed. The approval of basin countries before the establishment of projects must be obtained on the international river, and the distribution of water rations is fair, and when there is damage to one of the parties, he must be paid compensation, the establishment of committees by the basin countries for consultation and cooperation. (Hala Abdul Karim Ahmed & Yousra Odeh Alwan, 2024).

B. International Custom: is an effective tool in regulating and dividing water rations between States that share a single watercourse thanks to its evolving and flexible nature, international custom can adapt to changing international events, making it an essential basis in the management of shared water resources. International customary rules play a significant role in the formulation of systems for the use of common international watercourses. These rules demonstrate to riparian States the right of

sovereignty over the parts of international rivers within their territory and have the right to use their waters provided that such use is equitable and reasonable (Sobhi Khader Al-Ashawi, 2018). Article IV of the Helsinki 1966 Rules stipulates that all watercourse basin States have the right within their territory to a fair and reasonable share for the purposes of utilizing the waters of the international watercourse basin. In article V, paragraph 1, of the United Nations Convention on the Non-Navigational Uses of Watercourses of 1997, watercourse States must each within their territories use an international watercourse in an equitable and reasonable manner (Ithmar Thamer Gamel, 2021).

C. General Principles of Law: a set of norms on which the law is based and recognized by States' national legal system and is a form of legal justice accepted by States in the international community many of the principles enshrined in the Charter of the United Nations are the principle of equal use of water, the principle of fair and reasonable distribution of water and the principle of not harming others (Subhi Ahmed Zuhair Al-Adali, 2007).

D. Judgements: is a set of norms on which the law is based and recognized by States' national legal system and is a form of legal justice accepted by States in the international community. Many of the principles enshrined in the Charter of the United Nations are the principle of equal use of water, the principle of equitable and reasonable distribution of water and the principle of inadmissibility of harm to others.

E. International jurisprudence: International law is originally an industry of jurisprudence, since those who have established its primary foundations are jurists. Therefore, naturally, the opinions of leading scholars have special value in the past; the opinions of leading scholars of various nations have been the first evidence of the availability of international law. In the field of studying the regulation of international river water uses, there have been important theories of determining States'

sovereign boundaries in the use of international watercourses and play an important role in defining international legal norms on water use (Ameel Jabbar Ashour, 2020). These theories include:

1. Absolute regional sovereignty theory: The first person to show this theory is the American Harumun. In an 1895 advisory opinion on the dispute between the United States of America and Mexico over a river (Rio Grande). It was guaranteed that a State would have the absolute right to evaluate such water utilization projects as it considered to be in its territory, whatever type of such projects, and their effects and consequences for other or neighbouring States whose territories the basin extends (Abdullah Fahad Alawani Student, 2017). This theory has been criticized and does not resonate widely in international practice, because it will cause harm to the other countries whose territory passes the international river, because the upstream States will not take care of any right of watercourse States. We believe that this theory has failed to regulate the utilization of international river waters, because no State can hold onto it (Akram Mustafa Mr. Ahmed al-Zughbi, 2017).

2. Theory of absolute territorial unity: This theory is contrary to the previous theory because it does not accept river states to use the waters of the international river beyond the rights of other countries that the river passes by. Theory goes that the international riverbed from its source to its mouth is a territorial unity that is not separated by political boundaries. Each State in whose territory the river is running has the full right to keep the river running on its land, and to keep the river's full flow quantitative and quantitative (Abdel-Atti Shtiwe Abdel-Al, 2012). It also criticized this theory, because it takes into account the interest of the countries that are downstream or downstream. They do not lead to harmony between the common interests of riparian States. Once the downriver states refuse, upstream states will be deprived of the touch or change in the nature of the river and

deprived of development and storage projects if they affect the flow level (Ala Hussein Jassem Samarai, 2019). From the foregoing, this theory is inappropriate with the principles of justice and equity in the division of the waters of the international river. Because sometimes downstream countries can abuse this right, If it has no potential and ability to exploit water, This will prevent upstream or middle-stream countries that have the ability to exploit and make perfect use of the river's water (Ali Jabbar Cready Al Qadi, 2013).

3. The theory of restricted or limited territorial sovereignty: The aim of this theory is to regulate the use of interstate rivers in a way that preserves common interests and distributes wealth fairly. This theory imposes duties on States to do no harm to other States that share the use of water resources themselves (Abdel-Atti Shtiwe Abdel-Al, 2012). This theory is important in international law and is supported by international treaties and conventions such as the Stockholm Declaration 1972, the Rio de Janeiro Declaration 1992, the Salzburg Recommendation 1961 and the Helsinki Rules 1966. This theory aims to strike a balance between the interests of different States and to prevent one State from exclusively controlling shared water sources (Saddam al-Fatlawi, 2008).

4. Theory of common interest: One of the latest theories in the field of the use of international rivers for non-navigational purposes, It focuses on the idea that a watercourse from its source to its estuary is common to all States in whose territory it passes, and therefore their rights are equal and complementary. This theory goes beyond political boundaries and imposes restrictions on states' freedom to act in parts under their sovereignty without the consent of other states (Said Salem Joele, 1998). The participating States must jointly manage and develop the watercourse and share the benefits derived therefrom. This theory is reflected in many international conventions between the States of the international watercourse, thus enhancing

cooperation between these States and contributing to the development of international water use laws (Mohammed Hussein Rasheed Mohammed, 2000). From our previous review of doctrinal theories we find that the theory of mutual interest is the best theory among theories and we note the great development that has taken place in the doctrine to come up with this theory, It is best because it has avoided criticism of previous theories and guarantees the rights of all States involved in the international riverbed and equally, This theory is also consistent with the principles of international law, which require good faith and good-neighbourliness in relations between States (Hadi Naim Al-Maliki, 2023).

#### 7. Principle of Equitable & Reasonable Use.

The principle of equitable and reasonable use of water means that each State has the right to an appropriate, equitable and reasonable share of shared water resources. This principle requires that water resources and their benefits be shared among all States concerned in a manner that takes into account interests on the basis of justice, equity and reasonableness (Ali Jabbar Cready Al Qadi, 2013). Water ", while preserving it for the benefit of present and future generations, is concerned with ensuring equitable distribution of water among all riparian States, preserving water resources for the benefit of present and future generations and avoiding conflicts between riparian States over water use (Sobhi Khader Al-Ashaw, 2018). The 1997 Convention on the Law of the Non-navigational Uses of Watercourses defines this principle in its article V, which provides that watercourse States shall benefit from an international course in their territories in an equitable and reasonable manner (Wed Fathi Abdul Jalil, 2022). This use includes the development of the watercourse for maximum benefit and taking into account the interests of other affected States, to ensure adequate protection of the course. The 1992 Helsinki Convention on the Protection and Use of Transboundary Waters and International Lakes addressed the concept of equitable and reasonable use water ", stating that Parties should

take all necessary measures to ensure the reasonable and equitable use of transboundary waters, and that the principle of equitable and reasonable use of water could be defined as, "the use of river water by riparian States would be most beneficial without causing harm to the rest of the States" (Suhail Hussein Al Fatlawi & Ghalib Awad Hamada, 2008). The legal basis for the principle of equitable and reasonable use of shared international river waters is the principle of good faith, good-neighbourliness and equality among States:

A. The principle of good-neighbourliness and good-neighbourliness: the principle of goodwill is one of the principles associated with the principle of good-neighbourliness. It assists the State in controlling its conduct in its relationship with others and is consistent with the principles of international law. On the basis of this principle, States are committed to respecting treaties and legal principles prevailing in the international community, in an atmosphere of impartiality, justice and reasonable disposition (Mohamed Mustafa Younis, 1995). States that are complicit in their relations to manage shared water resources need the principle of good-neighbourliness. In 1973, the Advisory Legal Commission for Africa and Asia developed a set of ten articles on the rules of international river law; Article 4 of the Helsinki Rules stipulates that each State must act in good faith in the exercise of its rights in an international watercourse in accordance with the principle of good-neighbourliness (Ali Jaloub Attia, 2024).

B. Principle of equality: based on the sovereign equality of riverine States which means that riverine States have equal or interrelated rights with regard to the use of a watercourse and this principle is embodied in the principle of limited territorial sovereignty, which generally means that States have the sovereign right to use water freely within their territories (Akram Mustafa Mr. Ahmed al-Zughbi, 2017). In accordance with this principle, States have the right to use watercourses within their territories but are limited by the duty not to harm other

States and to have equitable and equitable equality. Taking into account several considerations in determining conflicting interests, taking into account each State's water needs, especially for basic needs such as drinking, irrigation and economic development needs (Said Salem Joele, 1998).

C. Principle of no harm. "Injury in international law means a violation of a legitimate right or interest of international law. This harm is achieved in the event of a violation by a State of its international obligations of the fundamental rule of international law, which requires respect for the rights of other States and implies international responsibility (Abdullah Fahad Alawani Student, 2017). This means that the equitable use of water in international watercourses must take into account the interests and rights of all riverbank States and States are obliged to pay adequate attention when using waterways in a manner that is not harmful to other States (Hala Abdul Karim Ahmed & Yousra Odeh Alwan, 2024). The principle of the obligation of river States is an obligation to exercise care the Government ' to be commensurate with the magnitude of the subject and the power of the authority exercised by it the obligation of watercourse States is an obligation of conduct and not an obligation of result or purpose, which requires that they have not breached the duty of care required by taking all reasonable measures taken by States to prevent harm, the damage must be significant, so that there is a real deterioration of use and it has detrimental effects on some consequences, such as harm to public health, industry or agriculture, or States' vulnerability to the environment (Saddam al-Fatlawi, 2008).

Tangible damage is damage that is not minor or barely detectable but not necessarily significant. Thus, such damage shall not exceed the simple effects that are compatible with tolerable good-neighbourly relations and which have reached the degree of gravity or danger in the exploitation of rivers' waters for non-navigational purposes only under prior

agreement (Salman Shamran Al-Issawi, 2016). Damage is not only caused directly to the flow of water or use of the water stream, but also by activities that indirectly affect the water course such as deforestation in one country causing floods in another country. Or air pollution as a result of state activities that resulted in pollution in the waters of the river or lake in another country (Flame Sabri Diwan Al-Tai, 2011). The 1997 Convention on the Non-navigational Uses of International Watercourses addressed the principle of damage through article VII, whereby watercourse States, when utilizing an international watercourse within their territories, must take all appropriate measures to prevent the causing of significant harm to other watercourse States (Subhi Ahmed Zuhair Al-Adali, 2007). In the case of clear damage to another watercourse State the State causing such damage through the use of the watercourse, in the absence of an agreement relating to such use, to take all appropriate measures, in accordance with the principle of due diligence as provided for in articles 5 and 6 in consultation with the affected State in order to eliminate or minimize such harm, this State is also supposed to address the issue of compensation where appropriate (Ala Hussein Jassem Samarai, 2019). There are many practical applications that have adopted the principle of "no harm", for example the Hindu River Convention signed between India and Pakistan in 1960, which in article IV, paragraph 10, referred to the obligation of each party to the Convention not to act that would cause damage to the use of the river ( Saeed Salem Jouili, 1998).

## Conclusion

### First: Results:

1. International River Custom: It is a river that separates and crosses the territories of two or more States. Each State exercises sovereignty over the part that passes through its territory and is obliged to take into account other countries, especially the common use of river water such as agricultural and industrial purposes.

2. Rivers are divided into national rivers, which are from their source to their mouth within the territory of a state. International rivers pass the territories of more than one country.

3. The legal regime governing the functioning of international watercourses is what Article 38 of the Statute of the International Court of Justice provides for the sources of international law: international treaties, international custom, general principles of international law, international jurisprudence and international jurisprudence.

4. One of the important principles governing the use of international rivers is the principle of equitable and reasonable use, this principle means that the States of the common river have the right to have access to water in a fair and equitable manner, taking into account the benefit of present and future generations of States participating in the river. This principle is based on the principles of good neighbourliness, goodwill and equality among nations.

5. The principle of non-harm is also intended for States to respect the rights and interests of all States in an international watercourse, and for riverine States to be bound by an obligation to exercise care and not to breach their international obligations and not to cause serious harm to other States.

### Second: Recommendations:

1. We propose that riparian countries engage in dialogue and cooperation to manage shared water resources effectively, by forming structured committees to discuss issues related to international watercourses.

2. Work on the application of the general principles of international water law, for example the 1997 United Nations Convention on the Non-navigational Uses of International Watercourses.

3. Consider climate change and develop general strategies to address drought, increase flood risk or any other challenge.

4. Peaceful settlement of disputes is the peaceful resolution of international watercourses' problems through the International

Court of Justice, negotiation, mediation or arbitration within regional or international conventions.

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