TRANSBOUNDARY WATER POLITICS:

CONCEPTS, THEORIES AND THE LEGAL FRAMEWORK

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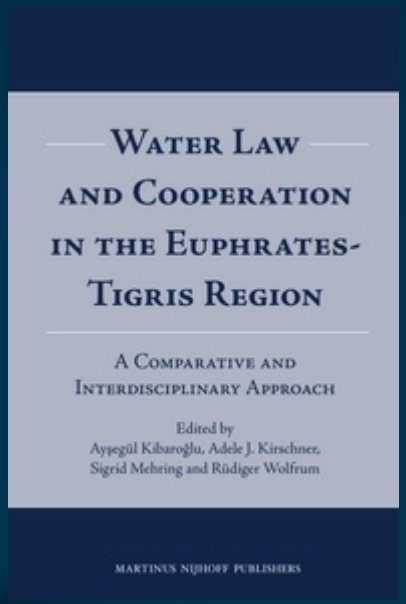
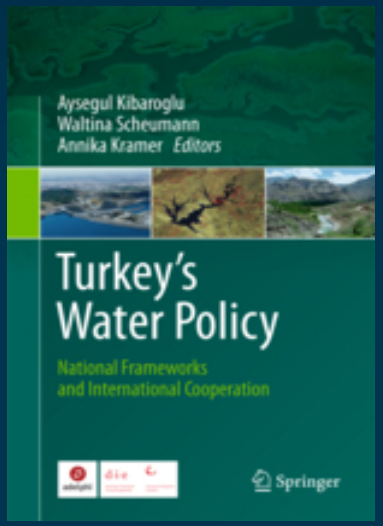




BASIC FEATURES OF FRESHWATER RESOURCES:

- **Extreme Importance:** essential to all life forms
- **Scarcity:** supply, demand and structural
- **Maldistribution:** high seasonal and inter-annual variations in precipitation and river flow
- **Crosses national boundaries:** there are 276 international river basins on earth

Water politics: what kind of water *scarcity* we are talking about

Supply-induced	Demand-induced	Structural
The Earth has 113,000 km3 of water total, but only 2.5% of that is freshwater.	During the past century, the world population has tripled, and water use has increased seven fold	All water management is multi-objective→ conflicting interests
depletion-degradation of resources climate change	*population growth, increase in per capita consumption*	*inequitable distribution*

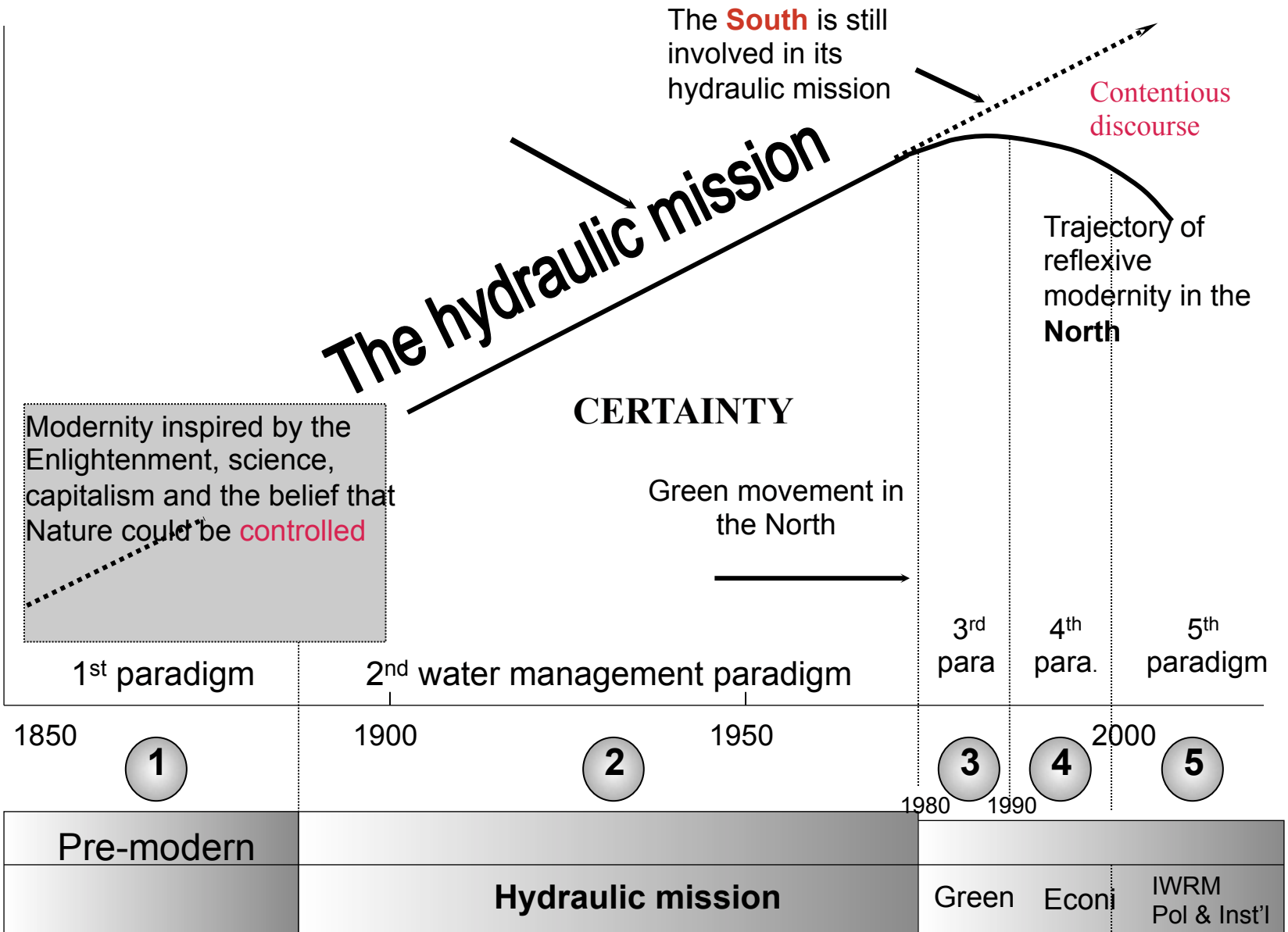
Water politics

Water allocation and management are political processes

The political process requires that the interests of civil society, hierarchy (government), social movements (NGOs) and the private sector should be included in water policy making discourse and practice

Evolving Water Management Paradigms
(Source: *J. A. Allan, King's College-SOAS, UK, 2002*)

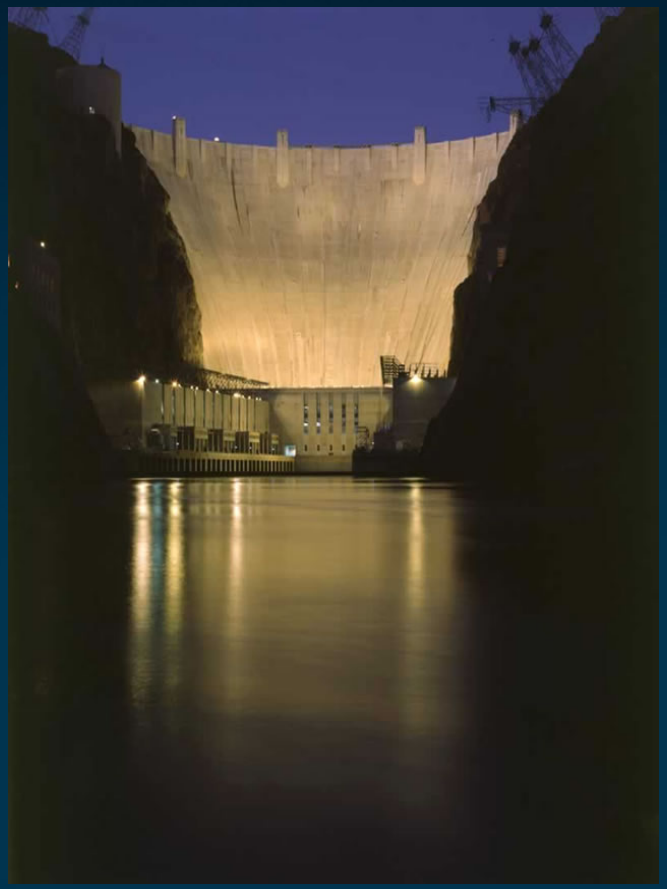
Dam (45,000) building and Water use in irrigation is a relevant indicator of the hydraulic mission's indicative trajectory



Hydraulic Mission: Dominant Paradigm

- The political economies of the industrialized countries have been inspired for just over a century by the belief that nature, including water resources, could be controlled
- Concerted efforts have been witnessed, especially in the industrialized world, to build up of physical structures: dams and irrigation canals

Hydraulic Mission: Dominant Paradigm



- In the water sector the ideas of the enlightenment; engineering capacity, science and investment initiatives of the state and the private sector characterized industrial modernity. Industrial modernity was manifest as the ***hydraulic mission*** of the mid-twentieth century
- The mission was first and most fully implemented in the United States. Half of the world's rivers were dammed at unprecedented scale of 45,000

Hydraulic Mission

•Hydraulic mission was also implemented in Britain's colonies, to irrigate fertile lands in order to grow cotton and other industrial crops for boosting textile industry in Britain. Hence, cotton fields in India and Egypt were irrigated by waters of Indus and Nile rivers for decades

• **H**ydraulic mission was not only adopted in the capitalist West, but also in the Soviet Union in irrigating the vast lands of Central Asia and generating electricity by building giant dams

•The hydraulic mission proved to be readily exportable to the South in the second half of the twentieth century.

Hydraulic mission's dilemmas

However, it was discovered that measures to increase water use through dams and irrigation facilities had to face problems regarding the financing of these facilities

Thus, as the augmentation of supply is reaching its limits and demand is expanding with population growth and urbanization, hydraulic mission's (engineering) progress and achievements fell short of responding the looming water crisis

Green paradigm

In the seventies, with the beginning of environmental movement in the developed countries, the water infrastructures expansion came under severe criticism. By the end of the 1970s, we observe the transition from the "old agenda" of developing and providing water for the competing sectors of the economy to a "new agenda" that requires sustainable, ***environmentally sensitive use of water resources***

Green paradigm

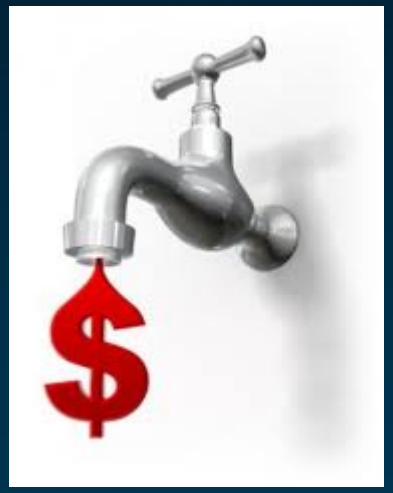
Based on the notion that environmental resources such as water were being damaged rather than controlled by the impact of the alliance of science, engineering and national investment gained currency in the North and Northern donors by the mid-1970s. The environmental movement focused initially on problems in the industrialized countries and changed the political system to a large extent

Green paradigm

The activists succeeded in persuading governments and voters in industrialized semi-arid regions to allocate water to the environment and reduce allocations to agriculture. However, this paradigm reflecting environmental concern has only achieved very limited purchase on water policy making in the South

"Water as an economic resource" economic paradigm

- By the end of the 1980s, a further set of principles gained currency. A shift from supply to demand management and the adoption of economic principles are largely emphasized in international water community
- This phase was inspired by economists who began to draw the attention of water users in the North to the economic value of water and its importance as a scarce economic input



"Water as an economic resource" economic paradigm

In order to ease the growing pressure on water resources and to be able to use the existing resources in a more efficient way, tools of neoliberal economy such as '(true-cost) pricing,' 'water markets' and 'privatization' are suggested as possible tools

There has been an attempt to export these ideas to the South via such agencies as the World Bank. This paradigm has been resoundingly rejected in the South

Integrated Water Resources Management (IWRM): Current Paradigm

- Surface and groundwater (conjunctive uses)
- Water and land resources coordinated management
- Water quantity and quality: balanced attention

- Upstream and downstream relations (competition)
- Relations between suppliers and users

- Environmental fundamentals such as the hydrological logic of the river basin and economic fundamentals relating to the value of water are central to the concept of IWRM
- IWRM has become a concept and strategy for policy change in the water sector, mainly directed at policy and institutional changes on a sub-national, national and international level

IWRM: how it becomes operational

This paradigm is bringing forward approaches, which include participation, consultation and inclusive political institutions to enable the mediation of the conflicting interests of water users and the agencies, which manage water

This paradigm's participatory political processes include:

- → **Water users**
- → **Government**
- → **Civil society**
- → **Private Sector**

in planning, and implementation water policy at various levels

Transboundary river basins: global outlook

- **There are 276 watersheds that cross the political boundaries of two or more countries**

- **These international basins cover 45.3 percent of the land surface of the earth, contain about 40 percent of the world's population, and account for approximately 60 percent of global river flow:**

  - the result of the "internationalization" of national basins through political changes, such as the break up of the Soviet Union and the Balkan states
  - access to today's better mapping sources and technology.

- A total of 145 nations include territory within international basins

Contending theories over use and management of transboundary river basins:

- *Water wars literature*
- *"Virtual Water" or liberal political economy approach*
- *Institutionalist approach: international water law, international regimes*

Water Wars Literature

- During the 1980s and the early 1990s the spectre of armed conflict over water was argued as the logical outcome of the resource scarcity by specialists from various disciplines inspired by dangerous persuasiveness of unquestioned environmental determinism
- The water issue has been elevated from low politics to high politics:

  "hydro-politics

Water Wars Literature

- Disputes over water distribution in major watersheds of the Middle East are likely to lead to conflicts since there are striking asymmetries among the riparians in terms of resource and power endowments

- It is highly unlikely that cooperative outcomes could be achieved in such river basins since the upstream riparian, regarding its advantageous position, would not be motivated to come to terms with the downstream riparians

- Cooperation is only likely when it serves the interests of a dominant power that takes the lead in creating cooperative arrangements and enforces compliance to its rules

Water Wars Literature

- No chances for negotiated order in international river basins in settling disputes
- Identified potential trouble areas related to the water issue, but did little good in the name of providing tools for solving the existing problems
- Theoretical discussions stay at a rather abstract level and in isolation from the real world practices of the riparians of major watersheds:
  - Slogans (Rivers of Fire, Coming Water Wars)
  - Rhetoric (B. Boutros Gali, King Hussein, Süleyman Demirel)
  - Past events (Jordan) and future (Nile and Euphrate-Tigris)

Water conflicts: Where? Between whom?

- Between states (interstate conflict) ?
- Or at sub-state level
  - Between different ethnic, religious groups
  - Between state (police forces) and farmers (e.g. India)
  - Between rivalry tribes (e.g. Kenya)
  - Between state and non-state actors (e.g. ISIS in Iraq and Syria)

Water Conflicts or Cooperation?

Historical evidence shows that states preferred the following ways of (preventive) diplomacy instead of *waging war*:

- Dialogue
- Negotiation
- joint project (joint dams): defining joint interests and adopting, to some extent, benefit sharing approach
- Joint institutional mechanisms (technical committees, river basin organizations)

Do those mechanisms/methods for "water diplomacy"effective for solving water problems?

- At the major river basins of the Middle East and North Africa, there still do not exist basin-wide agreements for effective and efficient use and management of transboundary waters:

  - **Jordan river basin**: Palestinian peole are deprived from using surface and groundwater resources in an equitable way

  - **Nile river basin**: Despite the recent rapprochement among Egypt, Ethopia and Sudan, there still does not exist a basin-wide agreement.

  - **Euphrates-Tigris river basin:** Despite for a decade of rapprochement between Turkey-Syria, and the existence of historical bilateral treaties and the JTC: there are very urgent problems and uncertainities i. e. ISIS and its control of water infrastructure, prolonged droughts: lack of basin-wide framework

POLITICAL ECONOMY OF WATER USE: Liberal political economy approach

Utilize powerful explanatory economic models (comparative advantage theory): international food trade between water scarce countries and the regions which have comparative advantage in food stated as the primary remedy to ease tension over transboundary water resources

•Allocative efficiency: reallocating existing water resources by shifting major emphasis from irrigation to domestic and industrial uses

VIRTUAL WATER

What is it?

A water scarce country can choose to import products that require a lot of water for their production rather than producing them domestically. By doing so, the country imports virtual water and allows real water savings relieving the pressure on the water resources. For example: to produce one ton of wheat requires one thousand (cubic meters) tons of water (J. A. (Tony) Allan, 1993*).* "Virtual water " : water embedded in water intensive commodities such as grains

- Trade in virtual water is already done for a very long time in the Middle East (since 1970s)
- Neither Israel, Palestine nor Jordan (80-90% of Jordan's domestic water demands comes from the import of virtual water) can meet their food needs relying solely on their freshwater resources

VIRTUAL WATER

Virtual Water: Is it beneficial and feasible?

- Global trade enables ME political economies to construct false but widely accepted notions of water security and to reinforce politically comfortable but environmentally and economically very suboptimal water allocation policies

- Necessary but politically difficult measures especially water reforms enabling more efficient water allocation which would achieve higher returns on scarce water assets, are avoided because of the perceived political costs of introducing them

- Will the water scarce countries be able to generate sufficient foreign exchange to pay for the import?
- Is the market reliable to supply the food at a reasonable price?
- What will be the new geopolitical situation in the case of a substantial increase in virtual water trade?

- A joint effort by governments, water organizations and research institutes has started to analyse the geo-political importance of virtual water. This includes the opportunities and threats involved and the associated political processes underlying decision-making on application of this concept

Institutionalist Approach: International Water Law (IWL)

- Water law, particularly with its performance at international level, has been relentlessly criticized in many circles for being vague, useless and impotent
- Yet, whenever a dispute arises at local, national or international level, water law has often been introduced as a panacea to design the framework for negotiations and reaching agreed settlements between competing stakeholders

Sources of IWL

- **Bilateral and multilateral Treaties ➔ 3,600 treatie)**
  - UN Watercourses Convention (1997)
  - UNECE Helsinki Convention (1992)
- **Customary Law:** ILA Helsinki (1966) and Berlin (2004) Rules
- **General principles**
- **Judicial decisions:** ICJ, arbitration tribunals

HYDROGRAPHY vs. CHRONOLOGY

- In conflicts between upstream and downstream users, the scenario at all levels in much the same:

  - The downstream user generally develops first and is keen to preserve into perpetuity these senior-in time uses

  - The upstream user (new user) especially in situations of water scarcity is thus placed in the unenviable situations of justifying the legitimacy of planned measures, which almost certainly will adversely affect the existing uses and raise the potential for conflict

- Transboundary water disputes are solved in dry regions when neither hydrography nor chronology is taken into consideration

EQUITABLE UTILIZATION

- A significant turning point could be reached when focus of the negotiations shifted from the contradictory principles of sovereignty espoused by upstream negotiators and prior use, agreed by downstream states, to that of equitable utilization

- An important element of this principle is the requirement that watercourse states take all reasonable measures not to cause significant harm to other watercourse states. These substantive rules are supported by a set of procedural rules, requiring, inter alia, prior notification, exchange of information and consultations concerning planned measures likely to adversely affect other watercourse state

IMPLEMENTING THE "PRINCIPLE"...

- Implementation of the principle encourages an interdisciplinary dialogue inclusive of all stakeholders that is focused on accommodating a range of needs (irrigable land, population, priority projects), an approach to be preferred to one that promotes disputes over water rights

UN Watercourses Convention (UNWC)

- UNWC entered into force as of August 17, 2014, 90 days after receiving its 35th ratifying signature from Vietnam
- The treaty establishes several salient principles to which ratifying nations are held, most notably the obligations to not “cause significant harm” to other watercourse states as well as the “reasonable and equitable use” of shared water resources. Furthermore, it is the express duty of ratifying nations to cooperate and exchange pertinent hydrological data and information and to notify neighbors of planned developments (i.e. dams) on shared watercourses

UN Watercourses Convention

It creates a framework for water governance arrangements and a basic common ground that enhances predictability and encourages reciprocity; it codifies and clarifies existing norms and develops emerging principles of customary IWL; it constitutes a model that can guide the interpretation of other treaties and the negotiation and drafting of future ones; and, it has informed the judgments of international and regional courts

UNWC: challenges ahead

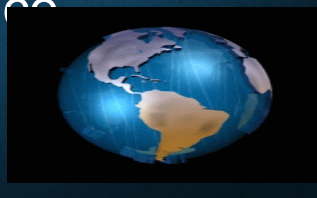
- The UNWC found widespread support in the UN General Assembly, enough to be adopted as a UN resolution in May 1997, and was only opposed by three countries—**Turkey**, Burundi, and China.
- By comparison, ratification of the treaty has been a relatively slow-going process, with support for ratification lagging in a fair chunk of the developing world
- As the Convention becomes effective, one fundamental question remains as to whether these rejecting states will ever consider becoming party to the Convention, and if not, how they will go along with their neighbors without the guidance of the Convention

Why did pivotal states reject the UNWC?

- Turkey, like China was seen as an “hegemon” in its riparian settings. Therefore, it is useful to look deeper into the factors that led to Turkey’s rejection of the Convention in 1997, and how its transboundary water policy discourse and practice has evolved dramatically ever since
- Why did Turkey reject the UNWC?
  - Problematique relationship between equitable utilization and no significant harm
  - Planned measures: too detailed
  - Dispute settlement should not be compulsory
- However,
  - Turkey’s water policy has evolved since the early 2000s both at national and regional levels mainly due to political developments at home and the state of affairs in its relations with its neighbors as well as with the European Union (EU). Major changes have occurred in the Turkish water bureaucracy and in the national legal framework over the last decade

UNWC: state parties…

- Yet while the UNWC is a step in the right direction for international transboundary water governance, numerous challenges still lie ahead for its effective implementation around the world
- The regional imbalance of member states in the UNWC presents its own challenge
- Of the 35 countries that have currently ratified and accepted the convention, the majority are found in Europe (16 signees) and Africa (12 signees), with some support in the Middle East (5 signees). At this point, only two nations in Asia—Uzbekistan and Vietnam—have ratified the treaty
- From this it is easy to notice more than a few notable omissions. In addition to the absence of ratifying states from both North and South America, the treaty has not been ratified by countries located in some of the most highly water-stressed regions nor in those most desperate for more effective transboundary water governance



Evolution of IWL

- Regional umbrella arrangements will gain strength (SADC, UNECE, EU Water Framework Directive)
- More emphasis on compliance measures
- Public participation will be the backbone of the legal regimes
- “[D]ifficult cases will be solved by cooperation and compromise, not by rigid insistence on the rules of law. This is one of the lesson’s of the World Court’s judgement in the Gabcikovo/Nagymaros case.”
- Mutual trust, understanding, dialogue, consultations, negotiations, coordination, cooperation, and the agreements

Evolution of IWL

- Agreements with more emphasis on equitable usage and socioeconomic development; delivering tangible and shared development *benefits* at all levels
- Agreements addressing the question of economic and social equity and the inter- and intra-national levels.
- Many recent water conflicts occur at subnational level. Local, regional, national and international interactions should be taken into consideration

Recent developments in IWL

- UN Watercourses Convention will go on providing the guiding reference and customary international water law will continue to evolve by particular emphasis on:
  - the human right to water: Is there a general acceptance among States that the human right to water forms part of customary international law
    - In 2002 the Committee on Economic, Social and Cultural Rights (ESC Committee) adopted General Comment 15 on the Right to Water
    - In 2010 the UNGA adopted Resolution A/64/292 on 'the human right to water and sanitation
  - transboundary groundwater
  - environmental protection
  - public participation

Win-win Regimes at the Transboundary Settings:

- One productive approach to the development of transboundary waters has been to examine the benefits in the basin from a regional approach.
- When negotiations focused solely on water sharing, upstream and downstream differences were reinforced, which made the water gains and losses more prominent. The opportunities to broaden the scope of negotiation agenda to involve other sectors beyond water and simultaneously foster a situation of regional interdependence should be seized in the current political atmosphere

Creation of cooperative frameworks that enable links between cooperation and development

- Multi resource linkages may offer more opportunities for creative solutions to be generated, allowing for greater economic efficiency through a “basket of benefits”

- They can offer broader agendas to the parties to tackle water resources management as part of larger framework of overall socio-economic development of the river basin (region), thereby showing a new potential framework for water based cooperation