

China's Transboundary Water Treaty Practices: A Comparative Study with the United Nations Watercourses Convention

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Abstract:- This article explores China's transboundary water treaty practice from the perspective of the United Nations Watercourses Convention (UNWC). It provides a comparative analysis of China's bilateral watercourse agreements with neighbouring countries, highlighting the evolution of these treaties and their alignment with the principles advanced in the UNWC. The article examines the scope, substantive rules, procedural rules, institutional mechanisms, and dispute settlement mechanisms China employs in its transboundary water treaty practice. It also identifies key differences between China's approach and the UNWC, such as the treatment of connected groundwater and transboundary harm, and highlights areas where the UNWC could provide useful guidance for China's treaty practice. The article concludes by emphasizing the importance of enhancing substantive and procedural cooperation, creating effective joint bodies, and developing a peaceful transboundary water resource management framework to promote regional leadership and cooperation.

Keywords:- UNWC; China; Transboundary Water Laws;

I. INTRODUCTION

With current consumption and population growth rates, water shortage can only become more acute. China is one of the world's largest economies, accounting for approximately 20% of the global population. However, its water supplies rank just sixth in the worldⁱ (Xie, Jian. 2009), and it is suffering from severe water shortages, with only 25% of the global per capita average for water resources.

Due to its position as the source of all major river systems in Asia, the Tibetan Plateau makes China the biggest provider of transboundary water globally. This is particularly evident as China shares its water resources with neighbouring countries such as Kazakhstan, Mongolia, and Russia. Despite voting against the UNWC, China continues negotiating and establishing treaties to manage its shared transboundary water resources effectively. The Indus, Brahmaputra, and Mekong rivers are among Asia's largest river systems originating from the Tibetan Plateauⁱⁱ (Yangtso, 2017).

This paper examines China's transboundary water treaty practice and contrasts it with the key principles of the 1997 UN Convention on Watercourses (UNWC). This paper examines the practice of Chinese treaties and identifies the similarities and discrepancies between these practices and the main UNWC provisions.

The research methodology for this study will involve a combination of desk research and qualitative analysis of primary and secondary data sources. The study will also include a comparative analysis of China's transboundary water treaties with the United Nations Watercourses Convention to identify areas for potential improvement. The findings from the desk research and interviews will be analyzed using thematic analysis to identify key themes and patterns related to China's transboundary water management practices, challenges, and opportunities. This will help to provide a comprehensive understanding of the current situation and identify opportunities for improvement.

➤ *Research Question (s)*

This study claims the following research questions.

- How do China's transboundary water treaties compare with the United Nations Watercourses Convention, and what are the implications of these differences?
- What lessons can be drawn from the United Nations Watercourses Convention for China's management of transboundary water resources?

➤ *Aims and Objective*

This study will comprehensively analyze China's transboundary water management practices and their impact on neighbouring countries. The primary objective is to evaluate China's current practice in implementing transboundary water law and identify the key provisions of its agreements with neighbouring countries. The study also seeks to compare China's transboundary water treaties with the United Nations Watercourses Convention and to draw lessons from international best practices for managing transboundary water resources. The ultimate objective is to provide recommendations for improving China's transboundary water management practices and promoting greater collaboration and cooperation among regional stakeholders. By achieving these objectives, the study will better understand the challenges and opportunities associated with transboundary water management in China

and its neighbouring countries and help support sustainable development in the region.

II. CHINA'S NATIONAL WATER LAW

China's National Water Law, also known as the Water Law of the People's Republic of China, was first enacted in 1988 and was amended in 2002. According to the Water Law, all water supplies belong to the state, and the State Council has the right to access water resourcesⁱⁱⁱ (water law of China). Important rivers and lakes, usually intra-provincial, are regulated by management bodies led by the central government^{iv} (water law of China). The management bodies responsible for regulating important rivers and lakes within China should be considered an extension of the State Council rather than independent entities. Although provincial governments retain the power to manage certain sections of intra-provincial rivers within their jurisdictions, collective water resource management is unlikely to be achieved due to each province prioritizing its interests. Even in the event of a natural disaster, the political environment in China makes it difficult to realize collective water resource management.^v (Fozia, 2020). Furthermore, the law requires implementing measures to prevent water pollution and the protection of water ecology. It establishes penalties for illegal water use and pollution and outlines procedures for resolving water disputes.

➤ *Transboundary Water Law and China's Practice*

China is a party to several transboundary water treaties with its neighbouring countries, including the Mekong River Basin Agreement with Cambodia, Laos, Myanmar, Thailand, and Vietnam; the Agreement on the Cooperation for the Sustainable Development of the Yangtze River Basin with Russia, Kazakhstan, Kyrgyzstan, Tajikistan, and Mongolia; and the Agreement on the Sharing of the Brahmaputra River Waters with India. These treaties establish a framework for cooperation and joint management of shared water resources to promote sustainable development, protect the environment, and prevent or resolve water-related conflicts. China has concluded border treaties with its Northern and Western neighbours. Some of these border treaties contain provisions relating to transboundary waters, and four treaties specifically address transboundary waters^{vi} (China-Russia Agreement, 2008). However, fewer agreements are in place in its southern areas, which have significant transboundary watercourses. Consequently, many foreign watercourses in China remain unprotected by particular agreements.^{vii} These main waterways are subject to the rules of customary law in this area without treaty laws^{viii} (Chen et al., 2013).

➤ *China-Kazakhstan Agreement 2011*

The China-Kazakhstan Agreement of 2011, also known as the "Agreement on Water Quality Protection of Transboundary Waters"^{ix} (Chen et al., 2013), is a bilateral treaty aimed at managing and protecting the water quality of shared rivers between China and Kazakhstan which covers both the Irtysh and the Yili/Ili Rivers. This Agreement builds on the 2001 China-Kazakhstan Agreement Concerning Cooperation in the Use and Protection of

Transboundary Rivers^x (China-Kazakhstan Agreement, 2001). The main objectives of the 2011 agreement are to protect and improve water quality in transboundary rivers, ensure sustainable use of water resources, and safeguard the environment and ecosystems^{xi} (China-Kazakhstan Agreement, 2001). The Agreement includes provisions related to:

- cooperation in monitoring and assessment of water quality.
- Exchange of hydrological and meteorological data and information.
- Joint research and development of technical standards and guidelines for water quality protection.
- collaboration in preventing, controlling, and mitigating water pollution incidents.

The China-Kazakhstan Agreement of 2011 signifies a commitment by both countries to address water quality issues in their shared rivers and represents an important step in fostering cooperation and sustainable management of transboundary water resources in the region^{xii} (Ibrahim, 2020). The Agreement ensures water security, maintains ecological balance, and promotes sustainable development in both countries by focusing on water quality protection. The China-Kazakhstan Agreement of 2011 demonstrates the importance of bilateral cooperation in managing and protecting shared water resources.

➤ *China-Russia Agreement, 2008*

The China-Russia Agreement of 2008, officially known as the "Agreement Concerning the Reasonable Use and Protection of Transboundary Waters," is a bilateral treaty between China and Russia that aims to strengthen cooperation in managing and protecting their shared transboundary water resources^{xiii} (Vinogradov & Wouters, 2013). The Agreement promotes the rational use, protection, and conservation of these shared resources while preventing and controlling pollution in transboundary rivers. Key provisions of the Agreement include cooperation in water resources management, monitoring, and assessment; exchange of hydrological, meteorological, and water quality data and information; collaboration in the prevention, control, and mitigation of water pollution incidents;^{xiv} (Ministry of Water Resources, P.R.China, 2015) and joint research and development of technical standards and guidelines for water resource protection and utilization. The China-Russia Agreement of 2008 highlights the importance of bilateral cooperation in managing and protecting shared water resources.

➤ *The China-Mongolia Agreement 1994*

The China-Mongolia Agreement of 1994, officially known as the "Agreement on Protection and Utilization of Transboundary Waters," is a bilateral treaty between China and Mongolia that prioritizes sustainable use and management of shared transboundary rivers^{xv} (China-Mongolia Agreement, 1994). Its primary objectives are to ensure the rational use, protection, and conservation of shared water resources and to prevent and control pollution in transboundary rivers. The agreement includes provisions for cooperation in water resources management, monitoring,

and assessment; exchange of hydrological, meteorological, and water quality data and information; collaboration in the prevention, control, and mitigation of water pollution incidents; and joint research and development of technical standards and guidelines for water resource protection and utilization.

The significance of the China-Mongolia Agreement of 1994 lies in the emphasis on bilateral cooperation in managing and protecting shared water resources. This agreement is an example for other transboundary water agreements and highlights the importance of joint efforts in ensuring sustainable and effective utilization of transboundary water resources (Su, 2019).^{xvi}

➤ *Sino-other neighbouring countries*

China and the Democratic People's Republic of Korea (DPRK) have been sharing hydrological information since the 1950s to ensure power generation, flood prevention, and water supply, particularly during the flood season of the Yalu River and Tumen River. They have also cooperated in constructing hydropower stations along the boundary river. Vietnam also signed ministry-level agreements with China in 2002 and 2009 to exchange hydrological information during flood season for the Yuanjiang-Red and Zuojiang rivers, respectively^{xvii} (Wouters & Chen, 2013). This has led to improved flood control and disaster relief in both countries. Additionally, China and Bangladesh have collaborated since 2008 to provide hydrological information for the Yaluzangbu/Brahmaputra River during flood season, resulting in effective flood prevention, forecasting, and protection of downstream populations' lives and property.

III. COMPARISON OF UNWC AND CHINA'S TRANSBOUNDARY TREATIES

The international law rules that regulate the use of transboundary water resources have been formalized in two global instruments. The "1997 Convention on the Law of the Non-navigational Uses of International Watercourses and the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes." The United Nations water conventions provide a comprehensive mechanism for directing states concerning the use and management of transboundary water. (Tanzi et al., 2015).^{xviii} However, China's transboundary water policy has been examined mainly in light of the convention on the watercourse 1997.

In most of its water treaties, China recognizes the overriding customary rule of 'equitable and fair usage' of transboundary waters. Nevertheless, UNWC's spectrum is wider than China's Treaties regarding non-navigational applications, including non-navigational applications and conservation, protection and management initiatives.^{xix}

➤ *Substantive Rules*

The UNWC's substantive procedures include the concepts of reasonable and equitable use and participation^{xx} (Art 5, 6), obligation not to cause significant harm^{xxi} (Art, 7) and the duty to protect the ecosystem^{xxii} (Art 20).

According to Article 5(1) of the 1997 UNWC, "watercourse states shall in their respective territories utilize an international watercourse equitably and reasonably". The corollary to this right of use is the obligation to "*participate* in the use, development and *protection* of an international watercourse in an equitable and reasonable manner". Article 5(2) stipulates further that "such participation includes the duty to cooperate in the protection and development thereof, as provided in the present Convention".

Most of China's transboundary water agreements (primarily with its northern and western neighbors) has adopted this principle in a general way, with cooperation facilitated largely through joint bodies. For example, the China-Mongolia Transboundary Waters Agreement provides, "Any creation and use of transboundary waters shall adhere to the equal and fair principle"^{xxiii} (Article 4, China-Mongolia Agreement). The concept of "equitable and fair use and security of transboundary waters" is also stated in the preamble to the 2008 China-Russia Agreement on transboundary waters, but not further elaborated in the document.

Another substantive clause in UNWC is Article 7, concerning significant harm, i.e., "The Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourses States"^{xxiv} (Art. 7(1)). However, "where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of an agreement to such use, take all appropriate measures" (Art. 7(2)).^{xxv}

In Chinese treaty practice, the duty to refrain from causing harm is acknowledged, as evident in the China-Mongolia Agreement (1994), which stipulates that the construction or utilization of transboundary waters should not be detrimental to the other side and "shall not cause harm to the fair use of transboundary waters"^{xxvi} (Art, 4) This clause appears to set a lower threshold for harm than the UN Watercourses Convention, limiting any harm to reasonable usage. Another key difference between these two instruments is the nature of the duty imposed: the UNWC requires states to "take all appropriate measures"^{xxvii} (Art,7) to prevent significant harm (a duty of conduct), while the China-Mongolia agreement (1994) relates to the actual outcome or result, whereby "any development or use of transboundary waters, should not be detrimental to the environment"^{xxviii} (Art, 4). In this respect, UNWC is unambiguous as far as the overarching rule is equitable and reasonable utilization, while China's agreements which refer to the concept of equitable and reasonable utilization, do not clarify its connection to the no-harm rule.

Regarding ecosystems, Article 20 of the UNWC specifies that "watercourse states shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses". This ecosystem protection responsibility can be seen as extending the general obligation of protecting international

watercourses^{xxix} (Rieu, Moynihan, & Magsig, 2012). Most of China's water treaties do not have provisions regarding it. Only the Agreement with Mongolia contains one clause concerning ecosystem security that allows the parties to "jointly protect the ecosystem of transboundary waters"^{xxx} (Art. 4). China's treaty procedures are not as extensive nor as comprehensive as those of the UNWC. China's treaty practice shows intermittent and inconsistent compliance with these particular obligations.

➤ *Procedural Rules*

UNWC obliges transboundary water states to collaborate in "attaining optimal utilization and adequate protection of an international watercourse"^{xxxi} (Art. 8). Whereas Article 9 of the UNWC allows watercourse states to share relevant data and information regularly.

China supports cooperation as a core subject in its treaty practice, most generally referring to this notion at the beginning of its international agreements. The treaty specifies how collaboration can be carried out in certain situations, generally by technical activities. For example, the China-Mongolia Agreement (1994) provides comprehensive lists of areas in which the parties can collaborate, such as supervision, infrastructure maintenance, technology exchange and development, and joint research^{xxxii} (Art. 2, 3 & 5). Likewise, the 2001 China-Kazakhstan Agreement lists cooperative activities such as applying new technology; maintaining irrigation infrastructure; preventing and mitigating pollution; preparing for floods and disasters; and controlling water quality^{xxxiii} (Art.5). China- Russia agreement also addresses emergencies requiring all States to quickly share information and understand the appropriate measures to eliminate or minimize any effects^{xxxiv} (Wouters & Chen, 2013).

Under the UNWC, there is a phased mechanism for planned measures which requires prior notification and exchange of information, the consultation requirement of consultation and compulsion to consult^{xxxv} (Chen, Rieu & Wouters, 2013). In compliance with its adherence, China has not established procedural rules on planned measures^{xxxvi} (Wouters & Chen, 2013).

➤ *Institutional Mechanism*

When it comes to institutional structures, the UNWC is not quite specific. The UNWC does not create its institution for collaboration. However, it encourages states to create certain mechanisms or commissions to promote cooperation on related measures and procedures^{xxxvii})Art 24(1), and 8(2)).

In several of its transboundary water treaties, China's treaty practice has supported the establishment of institutional frameworks. China has a variety of joint bodies in charge of cooperating with its neighbors on environmental and water issues^{xxxviii} (China-Kazakhstan Agreement (2001) art 8, China-Mongolia Agreement (1994) Art 10 and China-Russia Agreement (2008) Art 4). These joint bodies have common responsibilities, such as information exchange, water quality control, and

collaborative scientific research^{xxxix} (Wouters, & Chen, 2013). The approach taken by most of the joint bodies formed under Chinese treaties usually provides for annual meetings to assist with agreement implementation.

➤ *Dispute Settlement Procedure*

The 1997 UNWC encourages the peaceful resolution of all transboundary water-related conflicts. The convention contains a comprehensive dispute resolution clause. UNWC requires watercourse states to pursue peaceful resolution of any conflict by Agreement, good offices, mediation, or conciliation, participation of any joint watercourse agencies, arbitration, or adjudication through the International Court of Justice^{xl} (Art. 33). A fact-finding commission may be convened if the conflict is not resolved within six months using the procedures given^{xli} (Art 33 (3)). Although the commission's conclusions are not legally binding^{xlii} (Art 33 (8)).

Compared to the clauses in the 1997 UN water convention clauses, China's approach to dispute resolution in its water-related agreements is considerably more restrained. China usually does not recognize compulsory dispute resolution or the participation of third parties in dispute resolution. Its conventional strategy has directly resolved disagreements with other states through consultation or diplomatic negotiations. The China-Mongolia Agreement (1994) refers to "friendly negotiation" as the way to tackle any problems occurring under the treaty^{xliii} (Art 14). The China-Kazakhstan Agreement of 2001 establishes consultations to resolve any disputes about the understanding and implementation of the Agreement^{xliiv} (Art. 14). Negotiation is the preferred method of dispute resolution, and it is also one of the tasks of the Joint Commission^{xliv} (China-Russia Agreement, 2008 4(3)). However, comparing the UNWC's dispute-resolution provisions with China's treaty procedure shows significant similarities. Both cases strongly adhere to the core principle of international law that international disputes must be resolved peacefully. Provisions involving collaboration, negotiation, consultation, and support for creating joint institutional structures tasked with implementing the agreements are central to each strategy.

IV. LESSONS FOR CHINA'S TRANSBOUNDARY WATER MANAGEMENT FROM THE UNITED NATIONS WATERCOURSES CONVENTION

China can learn several important lessons from the United Nations Watercourses Convention (UNWC) in managing its transboundary water resources. The UNWC offers a comprehensive approach to transboundary water management encompassing surface water and connected groundwater. While China's transboundary water treaties primarily focus on surface water, the UNWC recognizes the importance of considering both surface water and groundwater for sustainable water resource management. China could learn from the UNWC's comprehensive approach and consider connected groundwater in its transboundary water treaties to avoid disputes over scope issues in the future.

Secondly, China's transboundary water treaties support the principle of equitable and reasonable use; they lack specific implementation guidance and monitoring measures. In contrast, the UNWC offers comprehensive instructions, including a list of factors to consider when implementing the principle. By following the UNWC's guidance, China could ensure more effective implementation of this principle and minimize the potential for disputes.

Thirdly, the UNWC strongly emphasizes transboundary harm prevention and ecosystem protection, where China's current transboundary water treaties fall short. China's involvement in various multilateral environmental agreements based on ecosystems could be beneficial in achieving this goal. By learning from the UNWC's emphasis on ecosystem protection, China could address the serious challenges to many of its ecosystems, especially from pollution, and ensure more sustainable water resource management.

Fourthly, the UNWC provides more detailed guidance on procedural rules, such as notification and consultation over planned measures, than China's current transboundary water treaties. By following the UNWC's practical guidance for implementing these rules, China could ensure more effective communication and cooperation with its neighbouring countries and minimize the potential for disputes.

Finally, the UNWC provides a framework for peaceful dispute settlement that includes compulsory dispute settlement and the involvement of third parties. China's current transboundary water treaties differ from the UNWC in this regard, and it is unclear how China would address disputes that cannot be resolved through negotiations and consultations. By considering the UNWC's approach to dispute settlement, China could establish an agreed framework for the peaceful management of disputes and promote regional cooperation.

In conclusion, China could learn several valuable lessons from the UNWC in managing its transboundary water resources, including a comprehensive approach, detailed guidance on the implementation of equitable and reasonable use, a strong emphasis on transboundary harm prevention and ecosystem protection, practical guidance on procedural rules, and a framework for peaceful dispute settlement. By following these principles, China could promote sustainable water resource management and regional cooperation.

V. CONCLUSION

This analysis of China's transboundary water treaty practice shows that the (mostly bilateral) watercourse agreements between China and some of its neighbors are still developing. China's treaties with neighboring countries regarding transboundary water have evolved and aligned with the principles espoused in the UN Watercourses Convention, albeit in a less detailed manner. Nevertheless, the treaties' scope predominantly pertains to surface water and may not explicitly cover constricted aquifers or connected groundwater. Although the principle of equitable and reasonable use is upheld, the specific measures for implementation and monitoring are lacking. Compared to the UNWC, China's treaty practice does not adequately address transboundary harm and ecosystem protection. While China's treaty practice lacks detailed procedural rules, the UNWC provides practical guidance to ensure effective implementation. While joint institutions for implementing agreed-upon watercourse regimes are encouraged, not all of China's transboundary watercourses are subject to treaty regimes. The dispute settlement mechanisms employed by China differ from those stipulated in the UNWC, and China's stance on compulsory dispute resolution remains unclear. Enhancing substantive and procedural cooperation, creating effective joint bodies, and developing a framework for peaceful transboundary water resource management is essential to promote regional leadership and cooperation.

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