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A Reflection of Change: Evolutions in International Water Law Principles Through the Lens of Euphrates-Tigris Dispute

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A Reflection of Change: Evolutions in International Water Law Principles Through the Lens of Euphrates-Tigris Dispute

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SIT Switzerland: International Studies and Multilateral Diplomacy

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Abstract

As climate change intensifies, water scarcity will increase. Coupled with a growing global population, water security is a major modern challenge. To bring stability to international watercourses, states must establish effective sharing agreements. On this matter, international water law can help. International water law captures some of the major principles and considerations that states must account for while considering issues related to water security. This paper uses primary interviews and secondary sources to identify some of the major characteristics, features, and developments in international law to develop a conceptual framework for the topic. It then moves into a case study of the Euphrates-Tigris dispute, outlining major geographic characteristics, historical moments, and present-day influences. Lastly, after a comprehensive review of international water law and the dispute at hand, this paper will demonstrate how developments within the Euphrates-Tigris dispute exhibit greater trends in the overall practice of and scholarship on international water law.

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I. Introduction

Water is the world's most precious resource. It is vital to human life, facilitates trade, generates energy, and supports states' agricultural sectors; water is at the nexus of many modern security challenges. Despite water covering most of the world's surface area, only 3% is freshwater and a smaller fraction of that is accessible (Kirschner & Tiroch, 2012). Water's great importance and limited supply contribute to its unique position as an international source of cooperation and conflict. The UN projects that "half of the world's population could be living in areas facing water scarcity by as early as 2025," ("Water Scarcity", N.D.). As the world's population grows, climate change intensifies, and water becomes increasingly scarce, international actors seeking to resolve water-related issues will face new challenges and be forced to make new considerations. This is particularly true for shared watercourses as water conflicts will increase in the coming decades at the interstate and intrastate levels (Yu, personal communication, November 7, 2023). Parties to watercourse disputes will need to determine how to equitably share their resource within the framework of international water law (IWL). IWL is "a framework for sharing, enhancing the optimal utilization for transboundary water resources for all co-riparians," (Tanzi, N.D.).

In this paper, I will begin by discussing IWL at large, some of its major principles, and some challenges that it faces. Next, I will conduct a case study of the Euphrates-Tigris dispute that involves the states of Turkey, Syria, and Iraq. This will include an introduction to its history, geography, states' stances in the dispute, and some of the major points of tension between states. Finally, I will demonstrate how changes in this dispute reflect overall evolutions in IWL's practice and interpretation. This will focus on two shifts: Turkey's stance towards the major IWL principles of "no significant harm" and "equitable and reasonable utilization" and the conflict as

to whether the Euphrates-Tigris system are "international rivers" or are "transboundary watercourses." This final section will seek to answer the question: how does the Euphrates-Tigris dispute reflect changes in International Water Law?

Research and Methodology

For this research paper, I used both primary and secondary documents. For primary resources, I utilized interviews with experts, official statements from state governments, UN conventions, and other documents of a legal nature. The secondary sources that I used cover a range of scholarly research including IWL, water scarcity, the nature of the Euphrates-Tigris dispute, and a combination of these matters.

The four interviews that I conducted were semi-structured and lasted between 20 minutes and 1 hour. Of the four interviews, two were done face-to-face and two were done via Zoom. For each interviewee, I had between 8 and 12 prepared questions. Though some questions were consistent between interviews, the list varied depending on the expert's exact area of expertise and on what point I was at in my research process. Questions often dealt with the basic nature of IWL and international law at large or characteristics specific to the Euphrates-Tigris dispute. Though each interview began with a list of prepared questions, I adapted the list as the interviews progressed; I added or omitted questions based on whether I needed clarification, had a follow-up, or if the questions flowed in the conversation. Given this paper's nature, the research was qualitative.

The interviews faced several limitations. One is that all the experts are either based out of Switzerland or Italy. Hence, though the experts are knowledgeable on the Euphrates-Tigris dispute, none are from the states involved. This is both good and bad for the research project; all

interviewees were not biased by being a representative or citizen of the involved parties, but they also did not reflect the first-hand interpretation of officials from the three states. Additionally, all the experts specialize in international law. This is particularly important given this paper's scope. However, it does limit the multidisciplinary nature of this analysis. Since the questions focused on international law and answers were expected to be presented with an international law lens, the analysis may not reflect some interpretations from different disciplines. This is to say that there could be other facets of the dispute or understanding of water scarcity not reflected in this paper. This would be particularly important in this paper's case study portion which could benefit from a more holistic interpretation of the dispute.

There were several ethical considerations that I factored into my research process. First, I did not interview any vulnerable populations. All interviewees were experts and/or practitioners of international law rather than individuals that the Euphrates-Tigris dispute could have personally impacted. Secondly, while conducting the interviews, I made sure that the nature of my research project was clear and would receive verbal approval to reference them in my final paper. This entailed pausing the conversation at the beginning of the interview, rearticulating the purpose and nature of my research, and then asking for explicit consent for the conversation to be referenced in my final product.

Literature Review

An abundance of scholarship exists on international water law and water conflicts. Petersen-Perlman, Veilleux, and Wolf identify the dual nature of water conflicts in their 2017 publication, "International Water Conflict and Cooperation: Challenges and Opportunities." In this article, they state that water relations are "often both conflictive and cooperative at the same

time" and that "it is not shortage or lack of water that leads to conflict but how water is governed and managed," (Petersen-Perlman, et al, 2017, p. 108 & 109). In 2020, Tanzi described the connection and relations between major international water law principles, outlining historical developments and common perceptions. The paper argued that two major principles "reinforce one another and therefore apply, indistinctly, to both water apportionment and environment protection issues," (Tanzi, 2020, p. 620). Salman charts international water law's history, major conventions and rules, and common perspectives in his 2007 work (Salman, 2007).

Furthermore, the realm of power dynamics and factors that lead to international water disputes is well-documented. In Nincic and Weiss's work titled, "The Future of Transboundary Water Conflicts," they identify some of the major characteristics that determine whether water scarcity will lead to conflictual or cooperative relations. These include, "the overall tenor of relations among riparians; … existence or absence of an institutional context of water management; and … the balance of power," (Nincic & Weiss, 2016, p. 722). Additional works, like that from Dauody, analyze power asymmetries, specifically in the Euphrates-Tigris dispute (Dauody, 2009). These types of power analysts help to understand water disputes. Works such as these are foundational in understanding the nature of the problems that international water law seeks to solve.

Scholarship on the Euphrates-Tigris system analyzes the dispute both through and not through the lens of international water law. However, there are fewer articles with an exclusive internal water law perspective. For instance, Ünver, Yıldız, Kibaroğlu, and Özgüler outline major characteristics of the tension over the Euphrates-Tigris but do not analyze it through an international law lens nor do they make an explicit reference to "international water law." Conversely, the 2012 publication from Kirschner and Tiroch titled "A Water of Euphrates and

Tigris: An International Law Perspective," deals explicitly with the nexus of this conflict and international water law.

II. Understanding International Water Law

History of International Water Law

In IWL, bilateral, regional, and international agreements, treaties, and conventions play out simultaneously. In their 2017 publication, Petersen-Perlman, Veilleux, and Wolf (2017) found that 650 treaties relating to water had been signed since 1820. This sheer number captures IWL's complexity. Prior to WWII, international law primarily sought to govern navigational water uses. However, modern IWL began to address non-navigational uses, including drinking water, energy production, and irrigation, shortly after WWII as non-navigational uses of water exploded due to reconstruction projects and a growing global population (Salman, 2007). These factors led to a greater demand for international frameworks to manage and share transboundary watercourses, hence the rise of non-navigational IWL.

Four principles influenced IWL's roots: the Harmon Doctrine, absolute territorial integrity, limited territorial sovereignty (or limited territorial integrity), and community of co-riparian states in the waters of international rivers (Salman, 2007). Though all are relevant to the early history of IWL, the Harmon Doctrine, absolute territorial integrity, and community of co-riparian states in the water of international rivers have all been discredited for being too extreme and are therefore not reflected in modern IWL doctrine (Salman, 2007). Hence, the limited territorial sovereignty principle is the only principle to survive criticism and forms the basis of IWL today (Salman, 2007). This principle asserts that "every riparian state has the right to use that water of the international rivers but is under a corresponding duty to ensure that such use does not harm

other riparians," (Salman, 2007, p. 627). IWL today includes "procedures and mechanisms for dispute resolution and a series of tools for conflict prevention, such as obligations regarding information exchange, notification, consultation and negotiation in good faith," (Leb, 2012, p. 1).

Major Treaties and Conventions of International Water Law

Since IWL's inception, there have been several developments that have influenced IWL's practice, interpretation, and scope. These include the Helsinki Rules in 1966, the Berlin Rules that updated the Helsinki Rules in 2004, and the UN Convention on the Law of the Non-Navigational Use of International Watercourses 1997 (UNWC) (Salman, 2007). Though all have shaped IWL, the most important is the UNWC, as it is the principal international treaty governing the use of international watercourses. According to Mr. Burchi, the UNWC is highly authoritative because the UN International Law Commission (ILC) drafted the convention. He continued that the ILC is the "highest intergovernmental body" in the realm of international law (Burchi, personal communication, November 13, 2023). Hence, since such a reputable and esteemed authority created the UNWC, it carries more weight than competing treaties or conventions. Given the UNWC's superiority in IWL, the rest of this section will discuss some of its history and main provisions.

In 1970, the United Nations asked the ILC to consider the topic of international watercourses, a task that the ILC accepted (Salman, 2007). They completed their draft articles of the UNWC in 1994, which the UN General Assembly adopted three years later in 1997 (Salman, 2007). In the adoption vote, 103 countries voted in favor of the convention, 27 countries abstained from voting, 52 countries did not participate, and 3 countries voted against this convention (Salman, 2007). These three countries were China, Burundi, and Turkey (Çarkoğlu & Eder, 2001; Salman,

2007). Despite the General Assembly adopting the UNWC in 1997, it did not enter into force until 2014 after 35 countries had ratified the convention (United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997).

The UNWC "aims at ensuring the utilization, development, conservation, management, and protection of international watercourses, and promoting optimal and sustainable utilization for present and future generations," (Salman, 2007, p. 632). Additionally, it codifies major IWIL's customary norms that predated the Convention, including the "no significant harm" and "equitable and reasonable utilization" principles. The UNWC is not only important because it solidified preexisting customary law, but it "serve[s] as [a] reference document for treaties agreed on regional and basin levels," (Leb, 2012, p. 2). Dr. Tignino asserted that global treaties are important in concert with regional and bilateral agreements. She stated that international conventions like the UNWC and the Water Convention contain, "global language countries can tailor to specific contexts" and that regional and global treaties "reinforce each other," (Tignino, personal communication, November 10, 2023.) Professor Boisson de Chazournes discussed a similar idea suggesting that international water law must be developed at the universal and local levels.

Regional and basin treaties are extremely important in addressing individual disputes. Each dispute has specific geographic and domestic conditions that determine the path to resolution, including power dynamics, relative water scarcity, history, economic concerns, and national priorities. International agreements create frameworks for and guide more localized treaties and agreements (Tignino, personal communication, November 10, 2023). Furthermore, states that ratified the UNWC can learn from other ratifiers' experiences to better manage their water challenges (Tignino, personal communication, November 10, 2023). Both the universal and local

levels are needed to address water scarcity. Though regional and international treaties and agreements could run into tension, this is not the case because they are mutually reinforcing and often reflect many of the same principles.

Major Principles of International Water Law

IWL contains two major customary law substantive rules that this paper has previously referenced because the UNWC codifies them (Tanzi, 2020). These are the "equitable and reasonable utilization" and the "no significant harm" principles. "Equitable and reasonable utilization" is a compromise "regarding the right conferred upon States, by virtue of their territorial sovereignty, to use shared transboundary water resources found within or passing through their territory," (McIntyre, N.D.). Conversely, the "no significant harm" principle binds states "to prevent, reduce and control the risk of environment harm to other states," (UN Environment, N.D.). In the UNWC, Article 5 and Article 7 codify the "equitable and reasonable utilization and participation" principle and the "obligation not to cause significant harm" respectively (United Nations Convention on the Law of the Non-navigational Uses of International Watercourses, 1997). Importantly, the principle of "no significant harm" is an obligation of conduct and not an obligation of result (Tignino, personal communication, November 10, 2023). This means that the state acting on or in the system needs to take preventative measures to not negatively impact the other state but if harm occurs even though they took proper mitigation measures, it cannot be seen as truly guilty.

Dr. Tignino asserted that "agreements should include both principles (i.e. the principle of equitable and reasonable utilization and the obligation not to cause significant damage," (Tignino, personal communication, November 10, 2023). However, at the time of UNWC's

negotiations, there were tensions between the two principles as to whether one should be subsidiary to the other. Upstream riparians tended to favor the principle of "equitable and reasonable utilization and cooperation" because they thought it placed greater value on national sovereignty (Tanzi, 2020). Conversely, downstream riparians put more emphasis on the "no significant harm" principle because they were more likely to experience the negative impacts of an upstream riparian's utilization of a shared watercourse (Tanzi, 2020). However, this debate has subsided over the years as "the two principles reinforce one another and therefore apply indistinctly to water apportionment and environment protection issues," (Tanzi, 2020, p. 620).

Finally, there are many important procedural obligations in IWL. A central procedural rule that supports the two above substantive principles is the "duty to cooperate" which the UNWC's Article 8 describes. Other procedural rules include: "prior notification, the obligation to exchange data and information, the obligation to consult with potentially affected states, the obligation to conduct an environmental impact assessment (EIA), and the central and embracing obligation to cooperate," (Kirschner & Tiroch, 2012, p. 385). These procedural obligations support the IWL's substantive obligations.

Challenges to International Water Law

Today, IWL faces numerous challenges, some of which stem from international law's basic nature. One obstacle is that IWL requires the states' consent to be effective, which means it is difficult to enforce. Unlike national law, which is based on vertical enforcement, meaning the state has the sovereignty of law enforcement over its citizens, international law is based on horizontal enforcement requiring the consent of states to hold them accountable (Kwon, 2017). As Mr. Yu articulated, international environmental law is based on sunshine compliance

regimes. He described that sunshine compliance regimes require “open and public reporting on the actions that your government has taken,” and that the term sunshine stems from “shining a light on your actions,” (Yu, personal communication, November 7, 2023). In this regime, there are typically no dispute-based enforcement mechanisms. International law depends on the political will of states (Boisson de Chazournes, personal communication, November 14, 2023). However, international law still finds strength because it primarily serves “to influence and change state behavior” which helps it “maintain international stability and order,” (Kwon, 2017).

Additionally, treaties can suffer from non-compliance due to perceived inequities in the arrangements. Treaties can “reflect (or worsen) existing inequalities between parties” due to power dynamics during negotiations or the exclusion of some actors (Petersen-Perlman et al., 2017, p. 111). This can lead to “a lack of participation by other riparians” because they deem the treaty as unfair or illegitimate (Petersen-Perlman et al., 2017, p. 111). While discussing the difference between bilateral and multilateral agreements with Mr. Burchi, he articulated that bilateral agreements on a dispute that involves more than two parties can make the excluded party or parties feel like losers (Burchi, personal communication, 2023). Hence, for treaties to be successful, meaningful consultation and inclusion of all relevant parties is paramount.

Finally, the level of ambiguity to include in treaties and agreements poses a challenge to international water law. To have parties consent to certain agreements, it can be beneficial, even necessary, to include some vagueness in treaties because ambiguity “may prove to increase the agreement's resilience towards conflict,” (Petersen-Perlman et al., 2017, p. 110). However, when treaties include ambiguity, states have latitude in their interpretations that may cause future disagreements over meaning. This is particularly pertinent in IWL because “disagreements papered over with imprecise language are less reconcilable with growing scarcity,” (Nincic &

Weiss, 2016, p. 720). Hence, developing agreements is a difficult balance of precision and vagueness. The three above examples highlight some of the challenges involved in developing agreements and treaties concerning international watercourses. They also underscore concerns that actors in the Euphrates-Tigris dispute would need to consider while negotiating a multilateral agreement for the basin.

III. Background on the Euphrates-Tigris Dispute

The Geography of Euphrates-Tigris Dispute

The Euphrates-Tigris dispute involves two rivers (the Euphrates River and the Tigris River) that both originate in Turkey's eastern mountainous region (Kirschner & Tiroch, 2012). Though these are two separate rivers, they both form the Al-Shabbat river basin, flowing together for the last 190 Km before emptying into the Persian Gulf and are connected by the Iraqi-constructed Tharthar canal (Kirschner & Tiroch, 2012). Hence, these rivers "are commonly considered together" (Kirschner & Tiroch, 2012, p. 334). As for what percentage of the rivers lie in which states, 29% of the Euphrates drainage basin is in Turkey, 17% in Syria, 40% in Iraq, and the rest in Saudi Arabia; 54% of the Tigris' drainage basin is in Iraq, 34% percent in Iran, 12% in Turkey, and 0.2% in Saudi Arabia (Kirschner & Tiroch, 2012). In the region, besides "the Nile, the Euphrates-Tigris system is the only river system that offers economically exploitable water surplus in the Middle East," (Çarkoğlu & Eder, 2001, p. 56).

Though the Euphrates-Tigris system crosses five states, many studies on the dispute only concern three: Turkey, Iraq, and Syria. In Saudi Arabia the system dries up during the summer months and in Iran, the Tigris is not accessible "due to the difficult geographic and climatic conditions of the region," (Kirschner & Tiroch, 2012, p. 334). Hence, the aforementioned three

states are the only ones that make significant use of the system. Therefore, the remainder of this paper will follow the pattern of previous studies and focus only on Turkey, Iraq, and Syria.

The History of the Euphrates-Tigris Dispute

Before the 1960s, states' utilization of the Euphrates-Tigris system was "harmonious," with little apparent tension (*Turkey, Syria, and Iraq, N.D.*). However, the dynamics and relations in the system began to change as "the co-riparian states unilaterally initiated large-scale water development projects in an uncoordinated way," (*Turkey, Syria, and Iraq, N.D.*). Iraq was the first state to start a unilateral infrastructure project on the Euphrates-Tigris while Syria and Turkey launched their construction initiatives later (Kirschner & Tiroch, 2012). These states' "large-scale development projects" were "in competition with one another," stressing the water in the system (Kibaroglu, 2015b).

Since these projects began, the states have attempted to reach an agreement on how to govern and manage the Euphrates-Tigris system. For instance, the states formed a Joint Technical Committee (JTC) in 1964 (Kibaroglu, 2015b). The JTC's 1980 mandate was to determine "the methods and procedures, which would lead to a definition of a reasonable and appropriate amount of water that each country would need from both rivers," (Kibaroglu, 2015b). Additionally, the states have signed bilateral agreements and published Memorandums of Understanding (MoUs) on multiple occasions (Kirschner & Tiroch, 2012; Chibani, 2023). However, these efforts have not resolved the dispute and are merely interim solutions (Dauody, 2009).

Lastly, to analyze each state's present-day positions, their past stances, interpretations of, and commitment to the UNWC must be understood. Iraq, Syria, and Turkey each have had

different interpretations of the UNWC and view its authority to varying degrees; "while Turkey has seen [the] resolution as verification of the rights and claims of the upstream states, Syria and Iraq mainly consider [the] document as an endorsement of equal rights over the transboundary waters," (Çarkoğlu & Eder, 2001, p. 70). Of the parties, Syria is the only one to have signed, acceded, and ratified the UNWC while Iraq acceded to the UNWC but has not ratified it (Hamid, 2020). Conversely, as previously mentioned, Turkey is one of only three states that voted against the UNWC in 1997, whose justification will be discussed in full in a forthcoming section (Salman, 2007). Turkey's opposition to the UNWC demonstrates the state's opinion on the Convention and customary international water laws at large. However, Turkey's vote against the UNWC does not mean that no parts of the Convention apply to Turkey. According to Mr. Burchi, the UNWC codifies "a number of very basic core principles which are customary international law," (Burchi, personal communication, November 13, 2023). Since these principles are customary, Turkey must abide by them whether it subscribes to the UNWC or not. The scholar Aysegül Kibaroglu (2015a) claims that "Turkey has observed the main principles of international customary water law as codified in the [UNWC] Draft Articles," (p. 153). Therefore, though the Convention at large may not apply to Turkey, it is still relevant and applicable for Turkey must abide by the customary principles that the Convention crystalizes.

Current Agreements on the Euphrates-Tigris System

Though no legally binding instruments regulate the management or use of the Euphrates-Tigris today, some existing agreements define states' positions, goals, and intentions. Principally, the memorandums of understanding (MoU). Though MoUs are not on the same level as treaties or conventions in IWL as they are not legally binding, they are important because they

"crystalize the will of states," (Burchi, personal communication, November 13, 2023). MoUs are commitments in good faith (Boisson de Chazournes, personal communication, November 14, 2023). The High-level Strategic Cooperation Councils (HSCC) between Turkey and Iraq and Turkey and Syria in 2008 and 2009 respectively produced dozens of bilateral MoUs (Kibaroglu, 2015b). Between Turkey and Iraq, one MoU dealt exclusively with the issue of water; between Turkey and Syria, four MoUs dealt with the water issue. These Mous' "overarching concern is to establish a platform for cooperation between the two countries where both might benefit from each other's experiences," (Dawood, 2019). The 2009 MoU between Iraq and Turkey references data, information, and expert exchanges (Kirschner & Tiroch, 2012). Furthermore, the MoUs mention joint project cooperation, though some analysts question if this applies to the GAP project (Dawood, 2019). In 2021, Turkish and Iraqi officials released a new MoU that reiterated their stances and intentions for water sharing (Chibani, 2023).

Though these MoUs are important and could lay the basis for greater cooperation, they have several shortcomings. One is that they lack reference, "to the relevant international standards and conventions," (Dawood, 2019). Hence, they engage with international water law content but do not commit the involved actors to abide by the customary principles. Additionally, officials at the high political levels have failed to ratify these MoUs (*Turkey, Syria. and Iraq, N.D.*). Finally, these have "not been followed with more lasting or binding agreements," (Chibani, 2023). Hence, though these MoUs help to solidify states' positions and outline potential areas of agreement that could inspire future cooperation, the MoUs are not overly powerful and lack long-term influence.

Finally, states' official foreign policies on water influence the dispute. In the Turkish government, the Department of Water Law and Political Development under the Ministry of

Foreign Affairs heads Turkish policy on regional and transboundary waters (Kibaroglu, 2015a). On the official government website, the MFA states that it prioritizes a “foreign policy of building institutional structures with neighbors,” (Turkey’s Policy on Water Issues, N.D.). According to Kibaroglu (2015a), “MFA authorities have time and again emphasized that Turkey views water as a catalyst for cooperation rather than a source of conflict,” (p. 155.) This cooperation priority began to take shape in 2005 when the Turkish government shifted from a “distributive (conflictual) to an integrative (cooperative) negotiation,” (Dauody, 2009, p. 381). Though these are stated Turkish positions, there may be dissonance between a state’s official priorities and principles and how they conduct themselves in practice. As Mr. Burchi articulated in his interview, Turkey must engage in “good faith negotiations” with other states while conducting large-scale projects but has failed to do so with the GAP project (Burchi, personal communication, November 13, 2023).

The Dispute Today

In the region, the increasing severity of drought and other climate change pressures bring new urgency to the need for water cooperation and project coordination. Over the last three decades, the “Euphrates-Tigris river system’s flow was reduced to half of the average annual flow in drought years,” (Ünver, et al., N.D, p. 3). These droughts could increase tensions. Additionally, for states like Syria whose economies depend on their agricultural sector, droughts are particularly concerning because they threaten their economic and food security (Ünver, et al. N.D.). These modern trends influence the dispute’s calculations and characteristics.

On the Euphrates-Tigris system, Iraq and Syria share similar interests as two downstream riparian states while Turkey is the primary upstream riparian (Dauody, 2009). The dispute and

each state's position "is an outcome of an intricate two-level interaction between riparian states that involved their domestic political concerns, as well as strategic international ones," (Çarkoğlu & Eder, 2001, p. 42). Presently, one of the key points of tension in the dispute is the system's classification. Iraq and Syria favor referring to the system as "international rivers" while Turkey argues that it should be "transboundary watercourses" (Kibaroglu, 2015b). The states also dispute over whether the rivers should be considered as one system or not (Kibaroglu, 2015b).

Furthermore, Turkey's Great Anatolia Project (GAP) drives conflict between the states. GAP is a decades-long effort by Turkey to build infrastructure along the Euphrates-Tigris systems to generate hydroelectricity and irrigate surrounding land (Çarkoğlu & Eder, 2001). The effort includes the construction of 22 dams and 19 hydroelectric power plants (Dauody, 2009). Launched in the 1980s, the GAP project impacts the flow of water to the downstream riparians as it is estimated to use a maximum of 70% of the Euphrates' flow and 50% of the Tigris' flow (Dauody, 2009). Though Turkey states GAP is beneficial to the downstream riparians because it helps to regulate the rivers' flows and maintains consistency, Syria and Iraq disagree (Chibani, 2023). These two downstream riparians argue that the GAP project increases the water supply's uncertainty and threatens their states (Chibani, 2023).

IV. Evolutions in the Euphrates-Tigris Disputes

"No Significant Harm" and "Equitable and Reasonable Utilization" in the Euphrates-Tigris Dispute

The "no significant harm" and "equitable and reasonable utilization" principles have influenced international water law agreements and arrangements for many years. However, though many existing frameworks reflect both these principles and hold them equally, a major

past debate in IWL was whether one principle should be subordinate to the other, and if so, which was superior. Oftentimes, upstream riparians would put the "equitable and reasonable utilization" principle above the "no significant harm" principle and downstream riparians would advocate for the opposite (Tanzi, 2020). This was common because the "equitable and reasonable utilization" principle favored states' sovereign rights more than the "no significant harm" principle so advocates would try to ensure its dominance (Tanzi, 2020). The historical stances of the states in the Euphrates-Tigris dispute reflect this discourse on precedence, as Turkey's position at the 1997 vote on UNWC demonstrates.

While developing the Convention, Turkey suggested eliminating the "no significant harm" principle (Kibaroglu, 2015a). Most of Turkey's dissatisfaction with the principle stemmed from the provisions that would help enforce it (Çarkoğlu & Eder, 2001). Turkey argued this because it felt that "the obligation to prevent harm is subsidiary to that of equitable and reasonable utilization," (Kirschner & Tiroch, 2012, p. 381). However, Turkey's efforts to exclude "no significant harm" from the Convention ultimately failed for Article 7 encapsulates this principle. Therefore, Turkey rejected the Convention because it required "prior approval of the water projects by the riparian states," one of the procedural measures for the "no significant harm" principle, and because Turkey was concerned that Article III of the Convention would "constrain its official stance in future negotiations," (Çarkoğlu & Eder, 2001, p. 70; Kibaroglu, 2015a, p. 163). Hence, Turkey's position and actions during the UNWC's development demonstrate a clear opposition to "no significant harm" and the belief that it should not be considered equal to the "equitable and reasonable utilization" principles.

However, though Turkey has argued the "equitable and reasonable utilization" principle's superiority in the past, its position has evolved since 1997. On the MFA page, the official

Turkish stance is: “Each riparian state of a transboundary river system has the sovereign right to make use of the water in its territory without giving ‘significant harm’ to other riparian countries,” (Turkey’s Policy on Water Issues, N.D). In addition, the MFA asserts that “water should be used in an equitable, reasonable, and optimum manner,” (Turkey’s Policy on Water Issues, N.D.). Therefore, the official website for the Department of Water Law and Political Development reflects both the “no significant harm” principle and the “equitable and reasonable utilization” principle without an indication that one preempts the other. Hence, since the time of the UNWC vote in 1997 and today, the Turkish position towards these two major customary international water law principles has shifted.

Not only does the Turkish government’s stated stance demonstrate commitment to both principles, but external analysis suggests a level of acceptance for both “no significant harm” and “equitable and reasonable utilization.” Turkey has made efforts to include both principles in bilateral documents that govern its watercourses, whether they are legally binding or not. Furthermore, Kirschner and Tiroch (2012) assert that Turkey has, “expressed its adherence to the core norms of international water law, such as the obligation to prevent harm and equitable and reasonable utilization,” (p. 382). Therefore, not only does Turkish policy reflect these two principles that were once in perceived tension with one another, but outside analysis determines that Turkey has made efforts to include both principles in its written actions. This transition in positions aligns with a broader trend in IWL practice at large.

Despite the historical tension between these two principles in international water law practice and literature, “no significant harm” and “equitable and reasonable utilization” are accepted as major customary standards that must be included in any international watercourse agreement today. Scholars including Attila Tanzi argue that these two principles can be included

simultaneously without either principle being subordinate to the other. Dr. Tignino discussed the nature of conflict between these two principles. She asserted that the basic argument is that there is no priority between them. She further articulated that in practice there is, "no conflict between the two principles but the question remains how to ensure the implementation of the two principles," (Tignino, personal communication, November 10, 2023.) She even discussed the historical example of how France originally would not accede to the UNWC because it misunderstood the two principles. However, after resolving France's misperceptions and their understanding evolved, the state eventually ratified the UNWC. Mr. Yu supported Dr. Tignino in his assertion that "there is no prioritization between the two of them and [they] have to be met at the same time," (Yu, personal communication, November 7, 2023). In summation, Turkey's position on the "no significant harm" and "equitable and reasonable utilization" principles evolved which demonstrates the same trend in broader international water law discourse.

Discourse over "Transboundary" versus "International"

Not all international water law developments have led to a greater inclination for cooperation, which the Euphrates-Tigris dispute demonstrates. As discussed, a point of tension in the Euphrates-Tigris dispute is whether the system should be classified as "transboundary watercourses," terminology that Turkey advocates for, or "international rivers," which Syria and Iraq support. However, the language of "transboundary" versus "international" is a relatively new phenomenon in international water law.

Syria and Iraq on one side, and Turkey on the other, place this terminology in conflict with one another as a barrier to cooperation and a lasting multilateral agreement. Determining the proper language was a challenge for the JTC as they debated, "whether to formulate a

proposal for the *'sharing'* of *'international rivers'*, or to achieve a trilateral regime to determine the *'utilization of transboundary watercourses,'*" (Kibaroglu, 2015b). In these meetings, Syria and Iraq argued that its terminology placed a greater emphasis on sharing the system while Turkey favored its terminology because it suggested allocation (Kibaroglu, 2015b).

In his interview, Mr. Burchi stated that the notion of "transboundary" did not exist 40 years ago in official international water law. The term "transboundary" is "more [a term for] hydrology and geography rather than a legal term. [It] is not an original legal term but has become a legal term through years of practice," (Burchi, personal communication, November 13, 2023). The true legal term is "international" which is "more compelling and precise language," (Burchi, personal communication, November 13, 2023). Furthermore, the UNWC, the highest international legal standard for international water law, refers to "international watercourses" and not "transboundary watercourses," (Burchi, personal communication, November 13, 2023). Given the UNWC's stature, this supports the stance that "international" is a more official legal term than "transboundary." Mr. Burchi stated that there "is no substantive difference when using transboundary and international," for the two words "are essentially synonyms." Hence, though "international" may be more legally compelling than "transboundary," the two words mean the same thing for the layman, and the dispute over which is preferred is not an original legal discourse. Therefore, the debate over whether to refer to the Euphrates-Tigris system as "international" or "transboundary" is not a true legal conflict and reflects a relatively new development in international water law.

Mr. Burchi clarified that some people may be misled to believe that "international" means "internationalization," a term from the late 1800s that referred to navigable rivers.

However, this would be a misunderstanding because “internationalization” is a concept not relevant to non-navigable uses of watercourses.

V. Conclusion

Changes in the Euphrates-Tigris dispute over the years coincided with broader shifts in international water law practice and scholarship, as the examples of Turkey’s changing perspective on “no significant harm” and “equitable and reasonable utilization” and the tension between “international” and “transboundary” demonstrate. To comprehend these shifts, it is important to investigate the history of international water law and specific water disputes, as this paper has done. Scholars, practitioners, and officials must study shifts in international law to be better able to predict future developments and therefore prepare for such changes. Furthermore, using case studies to evaluate changes demonstrates how ideas are not just theoretical but have real-world implications that can impact people’s lives and states’ futures. The world is not a static place therefore the global standards that govern and inform decisions must evolve. Such an understanding of change is particularly important in the modern world due to contemporary challenges including climate change, present-day conflicts, population growth, and technological developments. These will change the global landscape and international law must adjust to meet new demands.

For future research, additional case studies should be conducted that evaluate how different water disputes reflect evolutions in international water law. Comparative studies between ongoing and past disputes or disputes occurring in different regions of the world would be particularly valuable. Further research may also seek to determine how technological innovations are forcing changes in international water law. There are many questions in this

realm including rights, patents, and resource sharing which would be valuable to evaluate through international water law. All such future studies should be done in the spirit of better understanding the nature of water and surrounding policy so that officials can be better equipped to safeguard this precious resource.

Abbreviation List

GAP – Great Anatolian Project

HSCC – High-level Strategic Cooperation

ILC – International Law Commission

IWL – International Water Law

JTC – Joint Technical Committee

MFA – Ministry of Foreign Affairs

MoU – Memorandum of Understanding

UNWC – 1997 UN Convention on the Law of the Non-Navigational Uses of International Watercourses

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