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Water sits low at the Barada river spring basin near Syria's border with Lebanon April 13, 2009. SYRIA-WATER/ ©REUTERS/ Khaled al-Hariri

THE RELEVANCE OF INTERNATIONAL WATER LAW TO THE GOOD GOVERNANCE OF TRANSBOUNDARY WATER RESOURCES IN THE ARAB REGION

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Introduction

In the Arab world, water is considered an extremely scarce resource that requires good governance, but water resources in the region are suffering from poor governance practices. Water resources are also facing new pressure as a result of the need for economic growth, excessive modernization (El-Din Haseeb *et al.*, 2012) and climate

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change, in addition to the traditional geopolitical and armed conflict-related pressures (Gayar, 2017)². Experts have been calling on Arab states to change the way they manage water resources for some time, because of water scarcity, the amount of money that is being spent on water infrastructure and the inefficient use of the water resources (World Bank, 2007). The Arab countries are aware of these problems and have attempted to tackle the increasing demand for water through a supply-driven approach to water management. It has been noted, however, that this approach does not provide a long-term solution; states have reached their physical and financial limits and existing freshwater resources have been heavily overexploited. In other words, the supply-driven approach has not delivered a secure or sustainable water supply. A new approach to water sharing is needed; water cannot be seen solely from an economic or ideological perspective. States must instead focus on enhancing their ability to adapt to changes with the ultimate objective of ensuring the sustainable use of shared freshwaters (Al-Jayyousi; Bergkamp, 2008). A new approach that takes a long-term perspective is vital, given the extremely complicated issues involved in the management of natural resources, including water; numerous stakeholders have a role to play yet must also be held accountable for their actions (Laban, 2008).

The Challenge of Managing Shared Freshwaters

Management of transboundary water resources must be a high priority as it requires the establishment of multilateral and bilateral agreements grounded in international water law to regulate the various aspects of good governance of shared freshwaters (World Bank, 2007). Transboundary freshwaters in the Arab region are important because numerous Arab countries rely on shared water resources that originate in non-Arab countries for residential use and for economic development (Cahan, 2017; Salih and Abdo, 2017). The reliance on shared freshwaters, along with other factors – mainly “poor water quality, political instability, climate change, non-beneficial water losses, absence of water use efficiency, and excessive population growth” – has resulted in a decline in freshwater resources in the Arab region (Hameed et al., 2019). The dependence on shared water resources, which need to be properly managed, is further complicated in places that lack institutional mechanisms to tackle the many issues associated with water governance and reduce risks and uncertainties (UNESCO, 2010). This is why, water is considered a matter of national security in the Arab countries and why they seek to control the water resources on which they rely (Hildering, 2006). Nevertheless, inadequate governance is still affecting the stability of shared water resources in the region (UNDP, 2013).

² See for instance, Jan Selby, “The Geopolitics of Water in the Middle East: Fantasies and Realities”, *Third World Quarterly*, 26(2) 329-349 (2005).



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International borders have complicated water governance in the Arab world, in particular the management of non-renewable aquifers (World Bank, 2007). If shared water resources are to prove sustainable there need to be improvements in the management of transboundary surface water and groundwater (Connor, 2015). Water management needs to be “multi-objective and based on navigating competing interests” (Wolf, 2007). Innovative approaches and policies are required to tackle current problems surrounding shared freshwaters (Khouri, 2003), given the important role played by this resource in achieving national water security (El Hajj, 2017). Transboundary water regulations and policies “emphasizing demand management and conservation are urgently needed, with the overall objective of securing long-term water supplies whilst meeting strict criteria for socio-economic, financial and environmental sustainability, and public health requirements” (World Bank, 2007). A new approach that emphasizes cooperation on the basis of international water law is the only way forward for the Arab countries (El Hajj, 2017).

The Role of International Water Law

International water law plays a vital role in places such as the Arab region, where there is a need to reform and update existing water legislation, establish new institutional arrangements and enforce water laws (Haddadin, 2004). “International water law has a significant role to play in reducing the risks of water-related conflicts and supplying guidelines for better management and allocation of transboundary water resources” (Kibaroglu, 2017). International water law principles and provisions that have been codified in multilateral conventions are the basis on which agreements relating to specific shared water resources must be drawn up. Although their effectiveness has been questioned, international water law principles have been invoked countless times during negotiations between states over shared water resources (*Ibid.*). Most Arab states recognize the importance of water legislation, which is why they have started to reform their laws and introduce new rules (UNDP, 2013) to regulate the demand and supply of water whilst taking into consideration customary law and, in certain countries, religious doctrines (Morill and Simas, 2009). They have, however, failed for numerous reasons, including the lack of enforcement. For example, water resources are increasingly becoming more polluted due to chemicals, pesticides and fertilizers as well as human and industrial waste despite the adoption of modern legislations tackling water pollution (UNDP, 2013).

Many shared freshwater resources in the Arab region are managed unilaterally by the states concerned. Still, a number of models of cooperation have been established, such as agreements between states or technical committees, meetings among experts and joint projects. For instance, two agreements on the sharing of the Orontes and the Nahr Al-Kabir Al-Janoubi rivers have been concluded between Lebanon and Syria while a treaty was concluded between Jordan and Syria on sharing the Yarmouk river (Stephan, 2013). Existing international water agreements and arrangements in the Arab region do not incorporate the



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main principles of international water law. They also exclude some of the nations sharing the resource concerned. For instance, the Jordan River arrangement excludes Lebanon despite being an upstream country. This highlights the lack of multilateral political negotiation amongst the countries sharing freshwaters (UNDP, 2013). The existing models of cooperation have failed to prevent tensions arising between states sharing freshwater resources (Stephan, 2013). There is a need to establish international agreements setting out the rights and duties of states in relation to shared freshwater resources (UNDP, 2013). The Arab countries see international water law as an important means of protecting their rights and supporting their claims over the shared water resources of the region. This is why they have supported the development of international water law individually, by ratifying international water agreements such as the UN Watercourses Convention (UNWC), and collectively, through the establishment in 2008 of the Arab Ministerial Water Council (AMWC), which has adopted resolutions in favor of unifying the positions of the Arab states with regard to international water agreements such as the UNWC or the Draft Articles on the Law of Transboundary Aquifers.

A Draft Legal Framework for Shared Water Resources in the Arab region that covers all types of transboundary water resources and incorporates the main principles of international water law has been prepared in response to a 2010 AMWC resolution calling for such a framework to be prepared (Stephan, 2013). The Draft will serve as a regional water instrument covering the Arab region (Tanzi, 2013); it clarifies the principles and provisions that will underlie the management of water resources shared by Arab countries and by Arab and non-Arab countries (UNESCWA, 2011). The objective of the Draft Legal Framework is to “develop a common regional vision and a legal basis with a focus on regional priorities as a step towards achieving water security in the Arab Region” (Mechlem, 2013). The intention is to build consensus among the Arab states on the principles on which multilateral and bilateral water agreements will be based (UNESCO, 2010). The Framework complies with the provisions of the principal international water agreements and instruments but does not contain provisions related to the creation of joint institutions or a secretariat (Stephan, 2013). Still, the development of such Framework would require the establishment of adequate institutions where existing structures such as the AMWC may also assume this role (Mechlem, 2013). Numerous versions of the Draft Legal Framework have been discussed at the various intergovernmental consultative meetings held since 2011. These meetings have highlighted the disagreements among the Arab states over many provisions, leading to the postponement of the decision to adopt the Framework as a binding instrument (UNESCWA, 2018).

Conclusion

The incorporation of established international water rules and provisions is vital to the success of any multilateral or bilateral water treaty in the Arab region (Kirschner and Tiroch, 2012). International water rules can provide much-needed support to the Arab region and



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should also provide a foundation for the development and implementation of national water legislation. The establishment of multilateral or bilateral water agreements in this context is intended to ensure that water is used for regional and national development instead of being perceived as a source of tension (Salih and Abdo, 2017). The lack of consensus over the provisions of the Draft Legal Framework and the postponement of its adoption highlight the difficulty the Arab countries have in reaching consensus on water management. They have agreed to establish common guiding principles for cooperative management of water resources in order to pave the way for adoption of a binding instrument (UNESCWA, 2018). Analysis of the Draft Legal Framework and the common guiding principles are beyond the scope of this policy brief. The developments described here demonstrate, once again, the reluctance of states to commit to binding water conventions, because water resources are vital to the survival of nations, in particular those in regions where water is scarce, such as the Arab world.



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- Briefing sessions and working breakfasts
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