

FOREWORD

The impact of the September 11 attacks on the World Trade Center and Pentagon has created, especially here in America, an almost total preoccupation with the war on global terror, and its goal of restoring security at home and abroad. In this atmosphere it is difficult to gain attention for almost any other pressing policy issues that need our analysis and response. Even the previous dominant concern with and controversy about the future of economic globalization has been eclipsed, at least temporarily. In such circumstances, resource concerns seem remote, other than perhaps oil, which remains so closely associated with the interaction between the West and the Muslim world. Yet it may turn out that by the time this new century reaches its midpoint in 2050, the eyes and ears of the world will be focused on the struggle to provide the peoples of the world with sufficient fresh water to meet individual and collective needs. For this reason alone it is appropriate to include Hilal Elver's book on the role of rivers in this Transnational series on Innovation in International Law.

From its inception, the series has tried to extend the reach of international law beyond the present agenda of global policy issues. Such an undertaking presupposes a willingness to avoid dwelling on the familiar and routine challenges confronting international law and lawyers. The idea has been to identify topics that are or will become important for the international legal order, but are not yet sufficiently appreciated as such. Our effort has also been to seek approaches that go beyond the standard boundaries of inquiry, and especially exhibit multidisciplinary sensitivity to the interfaces between international law and history, politics, geography, ethics, and ecology.

In the background of such an outlook is the overall relevance of the changing role of the sovereign state and the emergence of non-state actors, of transnational social forces and of global networks that link individuals and groups without deference to international boundaries. Such a re-framing of world order suggests that traditional categories for interpreting international behavior from a legal perspective need to be modified and reconsidered. At the same time, it is important not to fall into the trap of supposing the existence of a post-Westphalian world. The territorial state remains the primary political actor on the global stage and is of manifest dominance with respect

to the disposition of resources. The originality of our historical period is that statist problem-solving capabilities are being increasingly tested by the growing leverage of non-state forces, and not always for the better. The rise of transnational crime, the potency of global terror, and the regulation of abusive behavior in cyberspace should overcome a certain romanticism about the NGO sphere of activity. Human society continues to depend on the state to provide its daily security and the framework for societal well-being. At the same time, the state needs itself to be more imaginative about reaching accommodations that depend less on territorial prerogatives and more on frameworks of regional and global cooperation and include roles for constructive participation by non-state actors.

Against this background, a turn to the international law implications of hydrogeopolitics is an obvious, indeed an ideal, choice of topic. While the focus on the struggle against mega-terrorism is likely to overwhelm the media for some years, at least in the United States, broad underlying trends associated with the fit between the supply and demand of vital resources should not be neglected. This is especially so to the extent that scarcities already exist and are likely to become more acute and widespread in the years ahead. It hardly requires explicit mention to stress the decisive role of water in human experience from the earliest times that the species made its appearance on the planet. Most of the notable ancient experiments in governance centered on the regulation of the use and control over water, particularly river flows in arid regions where scarcity made its daily imprint on the organization of individual and collective existence. But in modern times, the dominance of Europe and North America, where there exist abundant fresh water resources relative to demand, except for some local shortages, the issue of water scarcity receded into the background of governmental and societal concerns. For much of the rest of the world, especially those mired in poverty, the quest for safe and sufficient water has always been close to the surface of political consciousness.

This observation has never seemed truer than it has become during these days when authoritative statistics demonstrate the extent to which much of the Third World suffers from waterborne disease, from shortages of safe and accessible water for consumption, and from the impacts of deficient water resources on health, wellbeing, and life expectancy. With world population rising and trends toward urbanization persisting, additional pressures on fresh water resources are constantly mounting. Some of these pressures relate to the need for increasing agricultural production to meet rising living standards and expanding human numbers in a setting of shrinking acreage available for growing crops. The only way to meet these demands under such conditions is through the irrigation of less fertile land, which of course adds further strains to water supplies that are often already stressed beyond capacity

by existing levels of use. It also stimulates the construction of controversial large dams that may help meet certain needs relating to the availability of water, while causing environmental and cultural damage (for example, flooding archeological sites), and necessitating the anguished displacement of thousands, and sometimes millions, of people, including often traditional communities attached for centuries to specific land and to river waters held sacred.

It needs to be underscored that water policy is becoming important in all parts of the world, and not just in the poor and most crowded countries of the South. Those who live in California and other parts of the Western United States have grown highly sensitive to the precariousness of their water supplies. Climate change has brought droughts and floods that have spread these concerns to many new geographical settings, and called attention to how important water is to the successful conduct of our daily lives.

The relevance of water scarcities to peaceful modes of conflict resolution is also part of the context. It is premature to project a geopolitical role for water in this century that resembles the role of oil in the previous century, but it would be remiss to discount the relevance of water to tensions among neighboring countries—a factor that may prompt interventionary politics, and in extreme cases contribute to, or even cause, water wars in the not too distant future.

It is against such a complex background that Hilal Elver's study of international rivers, with its particular emphasis on the Euphrates/Tigris river basin, should be read. Elver brings to this subject-matter a rich appreciation of the historical foundations of contemporary concerns, which allows us to understand the degree to which international law is mired in the past. In particular, Elver shows the tensions that exist between the territorial allocation of water rights based on the claims of sovereign states. She also shows how to achieve a more functionally effective allocation of such rights on the basis of river basin management schemes that are not constrained by political boundaries, but are guided by ecological considerations, and the search for arrangements that seek sustainable use levels without sacrificing water quality.

In the course of conducting such an inquiry, Professor Elver also explores the efforts of international law to make a transition from a state-centric past of water abundance to a basin-management approach needed in an era of water scarcities. The narration of these efforts is not encouraging, as it shows how reluctant states are to give up or alter their entrenched rights to achieve the common good. To date, the international efforts to challenge sovereignty-oriented approaches have resulted only in miniscule progress. What progress has been achieved has resulted from national and transnational civic activism that has challenged particular projects that imperil the environment or displace settled communities, as in resistance mounted against dam construc-

tion.

In the end, the importance of Hilal Elver's comprehensive study is to demonstrate how urgent it is to adopt a more rational approach to the conservation and use of fresh water resources in the face of mounting scarcities than results from reliance on a distribution of rights based on territorial sovereignty. Her book illuminates the dimensions of the challenge confronting the international legal order, how that challenge might best be met, and the obstacles that block such a path. She is sensitive to the often dysfunctional allocational impact of strong upper riparians making wasteful and excessive use of river flows at the expense of lower riparians. Sometimes, as in the case of the Nile, the greater power of the lower riparian, Egypt, reverses the distribution of benefits, but also shows that power rather than law exerts predominant influence in shaping behavior. Unless the world does better in the 21st century than it did in the previous century, we will become increasingly disturbed by the negative impingement of water scarcities on the life experience of peoples throughout the planet. The message of this book is that we desperately need to summon the energies of international law if we are to have much chance of coping with these challenges associated with fresh water in a humane and effective way.

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