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THE SETTLEMENT OF INTERNATIONAL WATER DISPUTES- A LEGAL PERSPECTIVE

"*When the Well Is Dry, We Shall Know the Value of Water*" - Benjamin Franklin

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ABSTRACT

"The previous war in the Middle East was about oil, the next war will be about water."Such predictions have been made particularly with reference to the conflicts in major rivers which cross interstate boundaries. Interstate and International river water disputes frequently occur, recur and continue, generating problems with diverse economic, social and political implications in addition to the legal contestation and tensions. Even within the Indian domestic context references have been made to the international law on river water sharing. The Indian Constitutional set up to regulate and decide on the river water disputes has also been examined. Article 262 bars the jurisdiction of the Indian Supreme Court and it allows Parliament to make appropriate laws to resolve river water sharing conflicts. The Inter-State River Water Disputes Act, 1956 has been enacted to meet this constitutional requirement (and the same has been amended from time to time). The international law on river water sharing, therefore, has been contributing to the development of law and jurisprudence in India. Various inter-state water tribunals within India have referred to international law and on the basis on these factors and principles water sharing arrangements have been concluded.

Keywords: Inter-state, Constitutional, jurisdiction, Supreme Court, tribunal

INTRODUCTION:

International water refers to a watercourse or a water body parts of which are situated in different states (nations). There are about 261 major international river basins, covering 45 percent of the land surface of the earth, excluding Antarctica. Altogether

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145 nations include territory within the international river basins and 33 countries have more than 95 percent of their total land are in such basins. Man has been utilising these international watercourses since ages for various purposes like drinking, household uses, irrigating fields, navigation, etc.[1]

It is universally accepted that inter-state and international water sharing is an area which requires constant attention and surveillance. The socio-economic developmental needs of wide tracts of land and its people can be simply blocked by an upper riparian state, by diverting the course of a stream, or reducing the water flow by constructing a dam on the river in the upstream. A constitutional or public law discourse on water sharing and associated disputes would be looking precisely at problems of this kind. The factors that would be identified in such pubic law discourses would be primarily involving issues of: (i) allocation of waters between different states; (ii) apportionment of construction costs and benefits if a project is developed jointly by more than one state; (iii) compensation to the states prejudicially affected by the implementation of a project by another state; (iv) dispute settlement relating to interpretation of agreements and; (v) excess withdrawals by a state.[2]Principles of federalism and division of powers within the federation between the constituent states would be analyzed and international principles of water dispute settlement as laid down in the Helsinki Rules and the Convention on Law of the non-Navigational Uses of international Water Courses[3] would be spoken about at great length, in an extra-ordinary juxtaposition of rules evolved in the context of colonization and those evolved in the historic context of European Capitalism.[4]

Very often, intergenerational issues of utmost importance like sustainable utilization of water find no reference.[5] This paper seeks to precisely avoid charting this path. In

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[1] Rakesh Tiwary, *Conflict over International Waters,* ECONOMIC AND POLITICAL WEEKLY, April 29, 2006, at 1684

[2] Jain, S.N., Alice, J., Inter-State Water Disputes In India: Suggestions For Reform In Law 11 (1971) And Haris Jamil ., Praveen Kumar, *Interstate Water Dispute and Federalism: Governance of Interstate River Water in India*, CIVIL AND ENVIRONMENTAL RESEARCH, Nov 2, 2012 at 11 www.iiste.org

[3] Convention On The Law Of The Non-Navigational Uses Of International Watercourses, New York, 21 May 1997

[4] D'souza Radha, The Confluence Of Law And Geography: Contextualizing Inter-State Water Disputes In India, 256, (2002)

[5] PATRICIA WOUTERS, THE LEGAL RESPONSE TO INTERNATIONAL WATER SCARCITY AND WATER CONFLICTS: THE UN WATERCOURSES CONVENTION AND BEYOND 20 DUNDEE, (Feb, 20, 2003), available at

this paper, while the principles and policies of conflict resolution would be analyzed at length, the analysis would not lose sight of an essential ingredient of the conflict resolution process – efficacy. Thus, while looking at the existing dispute settlement framework, prescribes changes for their improvement.

It is argued that on the subject of water sharing, one witnesses this tale of hegemony and power-play at both levels, national and international.[6] It is not always borne out of purely social or economic demands of people. Often, purely political issues take the centre-stage in disputes that assume gigantic proportions, cutting into shreds the hallowed principles of federalism and fraternity that we so harsh preach and propagate in our public law discourses.

This study discusses the relevance and role of judicial and arbitral decisions in developing international water law to promote cooperation over shared transboundary watercourses.

SOURCES OF INTERNATIONAL LAW FOR INTERNATIONAL WATERCOURSE DISPUTES SETTLEMENT:

CHARTER OF UNO

The endeavour of international law is to maintain the non-violent relations of states by preventing and resolving interstate conflicts and controversies. In UN CHARTER, Art. II (IV)[7], in this, the principal UN organs like the General Assembly, the Security Council, and the International Court of Justice (ICJ) in particular are entrusted with various dispute settlement duties and functions. The Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States, 1970, provides that: "States shall seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial

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http://www.dundee.ac.uk/iwlri/Documents/Research/IWLRI%20Team/Wouters/GYIL.pdf,

[6] ADELMAN, S. & CAESAR, E., THE DEBT CRISIS, UNDERDEVELOPMENT AND THE LIMITS OF LAW IN ADELMAN, S., PALIWALA, A. (EDS.), LAW AND CRISIS IN THE THIRD WORLD. (LONDON: HANS ZELL PUBLISHERS, 1993). 172–194. AND Chimni, B.S., *International law and world order "a critique of contemporary approaches" New Delhi: Sage Publication ,(1993).*

[7] UN CHARTER, Art. II(IV). The Charter of the United Nations provides that "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered

settlement, resort to regional agencies or arrangements, or other peaceful means of their choice"[8].

ARTICLE 38 OF THE STATUTE OF ICJ

The development of International Water Law is inseparable from the development of International Law in General. International Water Law incorporates various rules which have emerged and developed through centuries by different interstate practices. The rules that legally bind states are found in International Treaties, International Customary Law, and general principles of law. International treaties and International custom are the "primary sources" of International law. The decisions of International courts and arbitral tribunals, and legal doctrine like the teachings of the "most highly qualified publicists" of various nations are also used to determine the applicable rules of law, as "subsidiary" sources. The ICJ Statute also recognises International conventions, International customs, General principles of law recognised by civilised nations, judicial decisions and the teachings of the most highly qualified publicists[9] as sources of International law.

CUSTOM

The recent development of International water law is to recognise rules of customary or unwritten law as the most prevalent source of International law. International custom has evolved from the practice of states, usually in the absence of formal agreements. This played a dominant role in expressing different rules regarding the lawfulness of a state's International behaviour relating to watercourses. But to become a binding rule of customary law, there must be a demonstrable general, and widely accepted practice, to show that states consider this rule as the one that governs their activities in a particular area. The evidence of customary law can be found in agreements, statutes and decrees, diplomatic correspondence, statements of states' representatives in International organizations, conferences etc. This customs may exist as both treaty norms for signatory member states of any International agreement and customary rules for those states that are not party to any instruments. The basic

[8] UN GENERAL ASSEMBLY; *Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, 24 October 1970*, available at: http://www.unhcr.org/refworld/docid/3dda1f104.html; (Sep. 14, 2012)
[9] ICJ STATUTE, Art. XXXVIII(1).

principles of international water law and various doctrines like the principle of equitable and reasonable utilization initially emerged and developed as rules of customary law.

TREATIES

Non-legally binding instruments which are sometimes referred to as "soft law" like declarations, resolutions, and recommendations adopted by the UN General Assembly and various international organizations and conferences, help in indirect formation of international law as they have "normative" value. The Helsinki Rules on the Uses of the Waters of International Rivers[10] is one such instrument which provides basis for peaceful settlement[11]. The UN International Watercourse Convention, 1997 has no binding dispute resolution mechanisms (such as arbitration and adjudication, which are optional), but does include a compulsory fact-finding procedure, which can be invoked at the request of any state party to the convention, following failed negotiations[12].

RULES OF INTERNATIONAL LAW TO GUIDE INTERNATIONAL WATER DISPUTES:

The International water law deals with various rules for settlement of International water disputes. A state which violates a rule of international law is dealt with under the rules of "state accountability". Two criteria are to be met to qualify a state's conduct as wrongful. Firstly, there must be an action or omission attributable to the state. Secondly, the conduct must constitute a breach of a rule of International law[13].

The **"Theory of Limited Territorial Sovereignty" or the "theory of sovereign equality and territorial integrity"** is based on the concept that every state is free to use shared watercourse flowing through its territory as long as such utilization does

[10] Adopted by the International Law Association at the 52nd conference, held at Helsinki in August 1966. Report of the Committee on the Uses of the Waters of International Rivers (London, International Law Association, 1967)
[11] Chapter 6, Articles. XXVI-XXXVII.
[12] ART. XXXIII.
[13] Vinogradov, S. Wouters P, & Jones P., *Transforming potential conflict into cooperation potential conflict into cooperation potential* (Aug. 14, 2013, 4 PM) http://unesdoc.unesco.org/images/0013/001332/133258e.pdf;

not defeat the rights and interests of the co-riparians[14]. The co-riparians have reciprocal rights and duties in the utilization of the waters of their international watercourse and each is entitled to an equitable share of its benefits. This theory recognizes the rights of both upstream and downstream countries because its guarantees the right of reasonable use by the upstream country in the framework of equitable use by all interested parties.

Principle of "equitable and reasonable utilization" is an obligation not to cause significant harm is part of the theory of limited territorial sovereignty[15]. It is a use-oriented principle and part of the theory of limited territorial sovereignty. It gives each basin state to a reasonable and equitable share of water resources for beneficial uses within its own territory, but it does not necessarily mean an equal share of waters. In determining an equitable and reasonable share, various factors are taken into account like the geography of the basin, the hydrology of the basin, the population dependent on the waters, economic and social needs, the existing utilization of waters, potential needs in the future, climatic and ecological factors of a natural character and availability of other resources, etc[16]

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[14] Muhammad Mizanur Rahaman, *Principles Of Transboundary Water Resources Management And Ganges Treaties: An Analysis; Water Resources Development*, VOL. 25, MARCH 2009 at 160

[15] Schroeder-Wildberg International Watercourses Convention – Background and Negotiation, (1997)

[16] Helsinki Rules, 1966, Art. V and UN *Watercourses Convention,* 1997, Art. 6. Article 5

Equitable and reasonable utilization and participation : Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits there from, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.

Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention.

Article 6 Factors relevant to equitable and reasonable utilization

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

(a)Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character; (b)The social and economic needs of the watercourse States concerned; (c)The population dependent on the watercourse in each watercourse State;(d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States; (e)Existing and potential uses of the watercourse; (f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect; (g) The availability of alternatives, of comparable value, to a particular planned or existing use.

The principle of "**Obligation Not to Cause Significant Harm"** is also a part of the theory of limited territorial sovereignty[17]. This principle expresses that no states in an international drainage basin are allowed to use the watercourses in their territory in such a way that would cause significant harm to other basin states or to their environment, including harm to human health or safety, to the use of the waters for beneficial purposes or to the living organisms of the watercourse systems. Though it is not clear what amount of harm would lead to significant harm, but this widely recognized principle is incorporated in all modern international environmental and Water treaties, Conventions, Agreements and Declarations. It is now considered as part of the customary International Law[18].

Every riparian state in an International watercourse should abide by the Principle of "**Notification, Consultation and Negotiation".** The right to prior notice, consultation and negotiation is essential where the proposed use by another riparian of a shared watercourse may cause serious harm to its rights or interest[19]. Principle of "Cooperation and Information Exchange" is the responsibility of each riparian state of an International watercourse to cooperate and exchange data and information regarding the state of the watercourse as well as current and future planned uses along the watercourse[20]. Principle of "Peaceful Settlement of Disputes" advocates that all states in International watercourse should adopt a peaceful means of settlement of disputes when they cannot reach to an agreement by negotiation[21].

JUDICIAL APPROACH:

[17] Eckstein, G., Development Of International Water Law And The UN Watercourse Convention, In: Turton And R. Henwood (EDS) Hydropolitics In The Developing World: A Southern African Perspecity (2002), Pp. 81–96

[18] Id., at 82–83

[19] UN Convention 1997, art. XI-XVIII, And ILA's Complementary Rules Applicable to International Resources (adopted at the 62nd conference held in Seoul in 1986) art. III.

[20] Supra note 17, p. 322; Helsinki Rules, 1966 (Articles XXIX, XXXI); UN Watercourses Convention, 1997, art. VIII-IX; USA-Mexico Water Treaty, 1944; Columbia Treaty between USA and Canada, 1964; Indus Waters Treaty, 1960 (arts. VI–VIII); The ILA's Montreal rules on water pollution in an international drainage basin, 1982 (art. V); SADC protocol on shared watercourse systems, 1995 (art. II and V), Mekong River basin agreement, 1995 (art. XXIV and XXX); Framework agreement of the Sava River basin, 2002 (art. III-IV).

[21] Helsinki Rules, 1966 (art. XXVII); UN Watercourses Convention, 1997 (art. XXXIII); Indus Waters Treaty, 1960 (art. IX, Annexure F and G), SADC protocol on shared watercourse systems, 1995 (art. VII); Mekong River basin agreement, 1995 (art. XXXIV-XXXV); Framework agreement of the Sava River basin, 2002 (art. XXII–XXIV).

International judicial decisions played a predominantly important role in the advancement and clarification of the customary rules of International water law. On a number of occasions International tribunals were asked to settle disputes over transboundary waters between riparian countries. The Statute of International Court of Justice recognises International conventions, International customs, general principles of law recognised by civilised nations, judicial decisions and the teachings of the most highly qualified publicists[22] while adjudicating on the disputes between the states. But with this the statute mentions that "the decision of the Court has no binding force except between the parties and in respect of that particular case"[23]. For this the International judicial decisions have less importance as it has no binding effects. This is contrary to the common law system. This situation is equivalent to the concept of stare decisis. The arbitral awards are also on the same footing. Though there exists some flaws in the international law itself, but some significant judicial and arbitral decisions have been delivered in the settlement of international water resources disputes.

PRIOR TO WORLD WAR II

Some important judicial decisions are summarised as follows:

The Wimbledon Case[24]

Case of the S.S. Wimbledon (PCIJ, Ser. A., No. 1, 1923)

In this case The British, French, Italian, and Japanese Governments filed an application with the registry of the court (PCIJ) on January 16, 1923 against the German Government for refusing a steamship right of passage. *Here the question came whether a state could be completely sovereign while it is still under obligation with some higher authority like a treaty signed with another sovereign state with respect to German sovereignty and Treaty of Versailles, 1919.*

The application was made to the Permanent Court of International Justice (PCIJ) to gain damages for lost time and money in refusal of the ship Wimbledon and the transport of the goods. The (PCIJ) ruled in favour of the applicants stating that in

[22] Statute of the International Court of Justice, art. XXXVIII(I) (d).
[23] Statute of the International Court of Justice, art. LIX.
[24] United Kingdom and Other V Germany Judgment P.C.I.J. - Series A- No. l. (1923) http://www.worldcourts.com/pcij/eng/decisions/1923.08.17_wimbledon.htm

terms of Article 380 of the Treaty of Versailles, 1919, Germany had to submit to an important limitation of its sovereign rights which she had under customary International Law possessed over the Kiel Kanal and decided that treaty making is an attribute of sovereignty, although sovereign are without doubt bound to the treaties they sign

The Court ruled that Germany had no right to refuse entrance to the S.S. Wimbledon on behalf of the cargo that it was carrying. In addition, the Court claimed that the Kiel Canal is no longer in the same category as normal internal waterways that are ruled at the discretion of the state they are housed in, but rather it should be considered an international waterway as laid out in the Treaty of Versailles. Thus, the Kiel Canal should be open to all vessels, regardless of state, as long as that state is at peace with Germany, because the point of the canal is to provide easier access to the Baltic.

Since the Treaty of Versailles specifically said that the canal could deny access to states at war with Germany, it obviously was not a mistake that it did not include the closure of the canal if Germany was neutral in a war between two other states. Also, the intent of the writes of the Treaty of Versailles was to have the canal be an International waterway to the Baltic. Finally, the Court dismissed Germany's claim that their Neutrality Order superseded the provisions of the Treaty of Versailles.

In this case a limit on some state sovereignty and gave more power to International Law in that it affirmed that International peace treaties hold more weight than individual Neutrality orders of specific states. And this showed that the PCIJ considered the Treaty of Versailles to be binding, and that of obligations imposed upon them, in the light of basic principles relating to state Sovereignty, equality and non interference.[25]

The Oscar Chin Case[26]

[25] MALCOLM N. SHAW, INTERNATIONAL LAW (836) 2007
ART CCCLXXXVIII The application was made to the Permanent Court of International Justice (PCIJ) to gain damages for lost time and money in refusal of the ship Wimbledon and the transport of the goods. The (PCIJ) ruled in favour of the applicants stating that in terms of Article 380 of the Treaty of Versailles, 1919, Germany had to submit to an important limitation of its sovereign rights which she had under customary International Law possessed over the Kiel Kanal and decided that treaty making is an attribute of sovereignty, although sovereign are without doubt bound to the treaties they sign

[26] Britain v. Belgium [1934] PCIJ-Series A/B, No. 63 (12 December 1934).

The United Kingdom asked the Court to declare that the Belgian Government, by its decision of 20 June 1931, violated obligations toward the Government of the United Kingdom under the Convention of Saint-Germain and general international law and that the Belgian Government should pay the reparation for the damage suffered by Chinn. First, the Court analysed the basis on which these obligations arose, namely the Convention of Saint-Germain of 1919, and the general principles of International Law.

Article 1 of the Convention of Saint-Germain reads:

"The signatory powers undertake to maintain between their respective nationals and those of States, Members of the League of Nations, which may adhere to the present Convention a complete commercial equality in the territories under their authority within the area defined by Article 1 of the General Act of Berlin of 26 February 1885, set out in the Annex hereto, but subject to the reservation specified in the final paragraph of that Article."

This Article makes it clear that the Convention of Saint-Germain abrogated the General Act of Berlin of 1885 and the General Act and Declaration of Brussels of 1890. The law applicable to this item case was the Convention of Saint-Germain, which confirmed the principle of free navigation and the principle of freedom of trade. But, for the Court, freedom of trade "does not mean the abolition of commercial competition; it presupposes the existence of such competition."

Taking into account the temporary character of the measures taken by the Belgian Government and the special circumstances (the depression of 1930/31), the Court did not consider these like a violation of the Convention of Saint-Germain.

As for any violation of general International Law to the effect that all States have a duty to respect the vested rights of foreigners - the Court could not accept this argument, since no vested right was violated by the Belgian Government.

POST WORLD WAR II

The Corfu Channel Case (1949)[27]

[27] United Kingdom v. Albania, [1949] ICJ Report, p.4 (9 April 1949).

In this case between United Kingdom and Albenia, the International Court of Justice emphasized the principle of respect for the sovereignty of the coastal state within its territorial waters. The Court did not accept the defence of "Operation Retail" among methods of self-protection or self-help. The Court recognizes Albanian Government's complete failure to carry out its duties. But to ensure respect for international law, the Court declared that the action of the British Navy constituted a violation of Albanian sovereignty.

The Court inferred consent from the unilateral application of the plaintiff state (the United Kingdom) coupled with subsequent letters from the other party involved (Albania) intimating acceptance of the Court's jurisdiction. In this Case UK sought to found the Court's jurisdiction inter alia on the recommendation of the Security Council that the dispute be referred to the Court, which it was agreed was a decision binding upon member states of the UN in accordance with article 25 of the Charter.[28] Accordingly it was maintained by the UK that Albania was obliged to accept the Court's jurisdiction irrespective of its consent. The ICJ did not deal with this point, since it actually inferred consent, but in a joint separate opinion, seven judges of the court rejected the argument, which was regarded as an attempt to introduce a new meaning of compulsory jurisdiction.[29]

North Sea Continental Shelf Cases (1969)[30]

Between the Federal Republic of Germany on the one side and Holland and Denmark on the other. The problem was that the application of the equidistance principle of article 6 would give Germany only a small share of the North sea Continental shelf, in view of its concave northern shore line between Holland and Denmark. **Article 6** of the **Convention on the Continental Shelf** (**516 U.S.T.S. 205 (1958)** says that if there

[28] Although not a member of the UN, Albania had agreed to assume the obligations of a member with regard to the dispute. This application was on the basis of that part of article 36(1) which specifies that the Court's jurisdiction also comprised 'all matters specifically provided for in the Charter' of the UN

[29] Supra 26 at 1076-77

[30] Federal Republic Of Germany v Denmark and v Netherlands I.C.J. Reports (1969), Article 6 of the Continental Shelf Convention, 1958 declared that in the absence of agreement and unless another boundary line was justified by special circumstances, the continental shelf boundary should be determined 'by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured', that is to say by the introduction of the equidistance or median line which would operate in relation to the sinuosities of the particular coastlines.

are two countries separated by a sea, the boundary between then should be calculated as the point equidistant from both coastlines.

It is important to know where the boundary is because a country can drill for oil in the seabed within their territory. The North Sea is surrounded by Norway, the UK, the Netherlands, Germany, Belgium, and Denmark. There is lots of oil right near the middle. Germany felt that they were getting a bad deal because their coastline was concave, while Denmark and the Netherlands had convex coastlines. This meant that based on the *equidistance principle*, they would get less seabed than they would get if the coastlines were all straight.

They went to the International Court of Justice and asked for a ruling on how to draw the boundary. Denmark and the Netherlands argued that the *equidistance principle* was not only codified in the **Convention of the Continental Shelf**, but that it was already 'crystallized' into *customary international law*. The ICJ agreed that the *equidistance principle* gives a country with a convex coastline more seabed than what a country with a concave coastline would receive. The ICJ found that the *equidistance principle* was still relatively new, and so it wasn't exactly *customary international law* just yet. In addition, there is a clause in **Article 6** that allows for different boundary lines to be drawn when "justified by special circumstances."The ICJ told the parties to go back and work out a boundary that was equitable to everybody. Basically, this case said that countries didn't need to follow the *equidistance principle* if it was inequitable.

- Issues are whether Geneva Convention binding on a State that has not ratified it?
- Is the equidistance rule International Law?

While the Geneva Convention does call for the rule of equidistance, the Court found that the Geneva Convention was not binding upon Germany.

The Court rejected Germany's claim of proportional apportionment because doing so would intrude upon the natural claims due to States based on natural prolongations of land. Also, the Court's role was to outline a mechanism of delimitation only.

The Court found, therefore, that the two parties must draw up an agreement taking both the maximization of area and proportionality into account. These were to be based upon "equitable principles." The holding here is somewhat inconclusive, but the opinion is significant to International Law, regardless.

- The International Law elements of the case are the power of treaties, customary International law and the principle of equidistance in claims to sea territory.
- The rule of law upheld in this case is the Geneva Convention.
- There are several principles in this case manifested in the Geneva Convention. The court rejected the principle of equidistance.

  It upheld, rather, the idea of "equitable principles," which is only defined as those which maximizes land claims based on several cooperative factors. The Court also upholds the principle of customary International Law by using the text of the Geneva Convention and its purpose to exclude the mechanism of equidistance.

  The Court's ruling has a terminal impact on the principle of equidistance and its utilization through the Geneva Convention. The Court does not prescribe its use, but eliminates its legal credibility. This, of course, has no impact on the rest of the Geneva Convention. As the holding does not prescribe any specific remedy, this case does not significantly aid in any future decisions, other than for the purpose of denying the equidistance principle legal weight. If this case were used as precedent otherwise, it would merely direct the disputing states to look to customary International Law and cooperative action. Concerns it may have and if it doesn't it must then follow the rules it has agreed to.

ARBITRAL DECISIONS:

San Juan River Case - by President Grover Cleveland[31]

In this case, Grover Cleveland, President of the United States of America, held that the Boundary Treaty of 15 April 1858 was valid. The arbitrator observed that the Republic of Costa Rica under said Treaty has no right of navigation of the River San Juan with vessels of war and it cannot prevent the Republic of Nicaragua from executing at her own expense and within her own territory such works of improvement, provided such works of improvement do not result in the harming Costa Rica territory, or in the destruction or serious impairment of the navigation of the said River or any of its branches at any point where Costa Rica is entitled to navigate the same or the right bank of the River San Juan if occupied without her consent. A fall from this position can only give rise to Costa Rica's right to demand indemnification.

[31] Moore, *History and Digest of International Arbitration to which the United States has been a party,* WASHINGTON, 1898, VOL. V, P. 4706.

The award rendered on 22 March 1888 by Grover Cleveland, President of the United States of America, stated that the Boundary Treaty of 15 April 1858 was valid. With regard to the special rights of both Countries, the arbitrator next observed:

The Republic of Costa Rica under said Treaty and the stipulations contained in the sixth article thereof, has not the right of navigation of the River San Juan with vessels of war. The Republic of Costa Rica cannot prevent the Republic of Nicaragua from executing at her own expense and within her own territory such works of improvement, provided such works of improvement do not result in the occupation or flooding or damage of Costa Rica territory, or in the destruction or serious impairment of the navigation of the said River or any of its branches at any point where Costa Rica is entitled to navigate the same. The Republic of Costa Rica has the right to demand indemnification for any places belonging to her on the right bank of the River San Juan which may be occupied without her consent, and for any lands on the same bank which may be flooded or damaged in any other way in consequence of works of improvement.

Faber Case - Award by Henry M. Duffield[32]

The Zulia River rises in the Cordillera Oriental, west of Pamplona in Colombia. It flows North, past Puerto Villamizar, and across the international line, to Catatumbo River in the Maracaibo basin 4 miles West of Encontrados.

The Catatumbo River rises in the Cordillera Oriental of Colombia, southeast of Ocana, and flows North through foothills, then East into the Maracaibo lowlands of Venezuela, where it receives Zulia River, and then into Lake Maracaibo.

Summary of the Arbitral Award

[32] Germany V. Venezuela Reports of International Arbitral Awards, Vol. X, P. 466. (1903);
The claimant Faber was a German subject, not domiciled in Venezuela, residing and having his place of business in Cucuta, in Colombia. When Venezuela, by Executive decrees, suspended in 1900, 1901 and 1902 the navigation of the rivers Zulia and Catatumbo, Germany intervened forcing Venezuela of open the rivers Zulia and Catatumbo, Germany intervened, forcing Venezuela to open the river traffic on there two rivers stating that there were German merchants in Cucuta who were injured by the Venezuela decrees. By the Washington protocol of 13 February 1903, Germany and Venezuela established the mixed claims Commission, with Henry M. Duffield us umpire.

The Umpire Henry M Duffield, appointed by a German Venezuelan mixed claims commission, stated that: "The Catatumbo, so far as it is navigable is entirely within the boundaries of Venezuela after the confluence of the Zulia River with it".

After explaining the physical and political conditions of Venezuela, he said that: "Venezuela had the right to suspend the traffic on these rivers by the closing of these ports. She was in full possession of them and they were actually under her sovereignty."

Venezuela, by thus exercising her sovereignty, excluded from her internal commerce boats of other nationalities and she had the right to regulate the internal navigation over its rivers and lakes, according to the principle of the free use of rivers running to the sea because " It must be considered as an international doctrine that the navigation of rivers passing through the territory of several States together with all their affluents must be free from the point where they begin to be navigable to the point where they empty into the sea."

NATIONAL COURT'S DECISIONS:

There are some judgements by national courts which can be taken into account while discussing importance of judicial decisions.

Case Addressing the Lining of the All-American Canal[33]

From 1934 to 1942, the United States constructed the All-American Canal system to transport water from the Colorado River to the Imperial Valley. In 1988, facing growing demand for water, the United States began considering options to prevent seepage loss in the Canal and approved a plan to construct a parallel lined canal. In 2005, a Mexican community group, two American environmental groups, and the City of Calexico filed suit seeking injunctive relief. The district court ruled in favour of the United States. In 2006, while the case was on appeal before the 9th Circuit, President Bush signed the Tax Relief and Health Care Act of 2006. Part of the Act directed the Bureau of Reclamation to proceed with the lining project "without delay" and

[33] United States Court of Appeals, For The Ninth Circuit; available at (14th February, 2013) http://internationalwaterlaw.org/cases/Canal-Lining-Case/9th-Circuit-Decision-on-Lining-of-All-American-Canal.pdf;

"notwithstanding any other provision of law." Thus, the 9th Circuit held that the plaintiff's statutory complaints were moot because the Act prevented any effectual relief. The Court further held that the district court lacked subject matter jurisdiction for the remaining claims, and therefore remanded the case to the district court with instructions to dismiss the case.

CONCLUSION:

Inter-state river waters and dispute resolution thereto constitute a vital and sensitive area, that affects lives and lifestyles of scores of people and they also impinge on the social, economic, and political well being of the nation. Water disputes have become a universal phenomenon and India is not an exception to it. It is predicted that availability of fresh water is likely to be one of the critical challenges facing the human population all over the world and the future wars may be most likely the water wars. It will get complicated day by day with the growing demand and scarcity of water. It is argued that living in times when the Supreme Court is the final supervisory body of the decisions from all Tribunals, even the highly technical ones, a blanket curtailment of the jurisdiction of the Supreme Court under Article 262 of the Constitution and S 11 of the ISWD Act should be re-examined and done away with. The Supreme Court should have the final power of adjudicating not just the disputes under the ISWD Act, but also those borne out of the terms of the voluntary arrangements with respect to water sharing, between the states.

International institutions like International Court of Justice or Permanent Court of Arbitration are asked to meet too many expectations with too little power. It is criticized on the ground that the Court is ineffective in achieving international peace and security for its inability to control state behaviour because of its fundamental weakness jurisdictional power which is based entirely on consent. Thus, in spite of the non-compliance risks of the decisions, the World Court will remain a vital tool in resolving inter-state water disputes.

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