



China's Upstream Dilemma: A Catalyst for Transboundary Cooperation?

KEY POLICY MESSAGES

- Transboundary water cooperation is incremental, evolutionary and multi-pronged.
- Such cooperation is at an early stage in Asia, home to 57 transboundary watercourses many of which are without formal cooperation arrangements.
- In particular, China, as a major upstream riparian is well-placed to catalyze regional water cooperation, but faces an "upstream dilemma".
- International law offers untapped potential for advancing regional cooperation in Asia.

■ Tributary of Upper Mekong (Lancang) River.
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TRANSBOUNDARY WATER MANAGEMENT ACROSS ASIA AND THE UPSTREAM DILEMMA

Many of the approximately 263 transboundary river basins and 300 transboundary aquifers across the world lack rigorous frameworks for their joint management. Asia, the most populous continent, its multitude of countries connected by 57 transboundary watercourses, is no exception (Schmeier, 2013). Given the diverse populations, cultures, economies and politics of the region, transboundary water cooperation faces significant hurdles, but is growing.

Most of Asia's transboundary watercourses, over 40, originate in China. These basins feed more than half of the global population. With the hydro-geographic advantage, China's low vulnerability provides it with significant political and economic leverage. All the more so as downstream riparians on many of these transboundary waters lack adequate governance. Together with their geographical position, this makes them quite vulnerable.

CHINA'S DOWNSTREAM RIPARIANS

Afghanistan, Bangladesh, Bhutan, Cambodia, India, Kazakhstan, Kyrgyzstan, Laos, Mongolia, Myanmar, Nepal, North Korea, Pakistan, Russia, Tajikistan, Thailand, Vietnam

Of particular interest are China's transboundary water resources that originate in the country's southwest, known as Asia's 'Water Tower', the Tibetan-Qinghai Plateau. At present, the massive volumes of these waters are still free flowing compared to many of China's other rivers (He et al. 2014). But as China and its downstream riparians seek to fuel economic growth through their exploitation, these flows are becoming a strategic resource for all parties. As the upstream riparian, China must meet domestic imperatives (especially economic, social and environmental concerns) while taking into account the needs of other riparians in accordance with international law - an 'upstream dilemma'.

MOTIVATING TRANSBOUNDARY WATER COOPERATION

How can China take into consideration the needs of its downstream neighbours, while meeting national needs and demands? The contributions to *Transboundary Water Cooperation*, a Routledge volume arising from special issues of *Water International*, offer several important insights.

Foremost among these is that *transboundary water cooperation is incremental, evolutionary and multi-pronged* (Leb, 2015). Upstream riparians have myriad opportunities for better advancing cooperation with those downstream by drawing on shared environmental, economic and social values and mobilizing

■ Hydropower development on the Mekong River, border of Laos and Thailand. © Olli Varis. March 2005.

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■ Broken bridge between China and North Korea on Yalu River. © Rheins. May 2011.

multidisciplinary expertise – in law and policy as well as science. In implementing its ‘good neighbour’ policy, China can explore the community-of-interests with its neighbours and other international partners through increasing integration. As China’s prosperity becomes more and more intertwined with that of its neighbours, it can draw on the framework provided by international law to advance equitable and reasonable sharing of benefits across national borders, including the uses of transboundary waters (Lee, 2015).

STRENGTHENING COOPERATION: THE UNTAPPED POTENTIAL OF THE GLOBAL CONVENTIONS

International law is founded on the integral principles of state sovereignty and the duty to cooperate that are enshrined in the UN Charter and customary law. These principles are expressed in ‘reciprocity’ which guides states towards fair and balanced outcomes (Devlaeminck, 2018). At the same time, we need to recognize the tension between these two principles in practice. In particular, it is necessary to find principles and practical processes to realize the overarching duty to cooperate in the shared beneficial uses of shared freshwaters.

Two global instruments are now in force governing transboundary waters – United Nations Convention on the Law of the Non-navigational uses of International Watercourses (UNWC) and the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention). China is party to neither instrument. With the exception of Kazakhstan and Vietnam, neither are any of China’s 17 riparians. Citing concerns of sovereignty among other things, China even voted against the UNWC at the UN General Assembly in 1997.

Despite this, the 50-some treaties that do govern China’s transboundary waters in many ways reflect the normative frameworks of the UNWC and UNECE Water Convention in scope, substantive and procedural rules, and institutional and dispute settlement mechanisms (Su, 2014). In tailoring and applying these frameworks to the Asian context, China could catalyse regional transboundary water cooperation in three ways:

- 1) **implementing** its ‘good neighbor’ policy through more complete transboundary water cooperation;
- 2) **connecting** its national and global environmental policies to enhance transboundary water cooperation, and
- 3) **linking** investment and trade issues to transboundary water cooperation efforts.

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A SELECTION OF CHINA'S TREATY PRACTICE

China-India	2005	MoU on the Provision of Hydrological Data on Langqen Zangbo/Sutlej during the Flood Season
	2002	MoU on the Sharing of Hydrological Information on the Yaluzangbu/Brahmaputra River during the Flood Season
China-Kazakhstan	2011	Agreement on Protection of Water Quality of Transboundary Rivers
	2001	Agreement on Cooperation in the Use and Protection of Transboundary Rivers
China-Mongolia	1994	Agreement on Protection and Utilization of Boundary Waters
China-Russia	2008	Agreement on Management and Protection of Transboundary Waters
	2001	Treaty of Good-Neighbourliness and Friendly Cooperation
China-Mekong River Commission	2002	Agreement on Provision of Hydrological Information on the Lancang/Mekong River during Flood Seasons

For a complete list of China's transboundary treaties and related documents, see: Appendix A: China's Major International Watercourses and Relevant Treaties in Wouters, Chen & Nickum, 2018.

Although China's southbound basins have yet to be covered by a treaty regime, transboundary water cooperation is regulated by some bilateral agreements, including information-sharing agreements between China and India as well as China and the Mekong River Commission. China has more recently taken a greater lead in the area through the establishment of the Lancang-Mekong Cooperation (LMC) Mechanism. This incremental step in regional cooperation can be strengthened through more detailed agreements and joint institutions beginning with technical cooperation. If this path is unavailable, then China may explore alternative legal pathways, such as investment dispute arbitration (Han, 2015), as well as dispute avoidance and settlement via joint mechanisms like those found in the UNECE Water Convention as well as those in operation on China's transboundary waters with Russia and Kazakhstan.



■ The Mekong River in Vietnam. © Olli Varis. January 2005.

- Transboundary water cooperation takes time, requiring consideration of the interests of neighbouring nation states, in light of reciprocal rights and duties, including good faith from all riparians.
- China's 'upstream dilemma' can be informed by the international legal duty to cooperate and may benefit by recognizing a community- of-interests.
- International law, in particular the two UN global water conventions, offers important guidance for further regional transboundary water cooperation in Asia in line with China's foreign policy strategy of being a 'good neighbour'.

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