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.

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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.

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 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

CHINA’S DOWNSTREAM RIPARIANS
Afghanistan, Bangladesh, Bhutan, Cambodia, India, Kazakhstan, Kyrgyzstan, Laos, Mongolia, Myanmar, Nepal, North Korea, Pakistan, Russia, Tajikistan, Thailand, Vietnam

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shared freshwaters. cooperate in the shared beneficial uses of processes to realize the overarching duty to necessary to find principles and practical two principles in practice. In particular, it is need to recognize the tension between these (Devlaeminck, 2018). At the same time, we states towards fair and balanced outcomes Charter and customary law. These principles to cooperate that are enshrined in the UN (UNWC) and the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNCE 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.

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 (UNCE 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.

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.

STRENGTHENING COOPERATION: THE UNTAPPED POTENTIAL OF THE GLOBAL CONVENTIONS

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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.

### Transboundary Water Cooperation

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’

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

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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#### FOR FURTHER READING