



# 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.  
© Feng Hu, March 2011.

WI and IWRA Policy Briefs are published by IWRA with the support of Routledge. They aim to provide high quality analysis and practical recommendations for policy makers on important development issues.

• Access *Water International* by becoming a member of IWRA: [www.iwra.org](http://www.iwra.org)

• or subscribe only to the journal at:  
[www.tandfonline.com/toc/rwin20/current](http://www.tandfonline.com/toc/rwin20/current)

*IWRA Policy Briefs are based on WI Special Issues and are for the purpose of stimulating discussion and awareness; IWRA, as a neutral forum, does not necessarily endorse the views expressed.*

 **Routledge**  
Taylor & Francis Group



## 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.

## REFERENCES

- From *Water International* 2014  
Issue 5: *The China Water Papers*, Part 1
- Yu Su. *Contemporary legal analysis of china's transboundary water regimes: international law in practice.*
  - Marleen van Rijswijk, Jurian Edelenbos, Petra Hellegers, Matthijs Kok & Stefan Kuks. *Ten building blocks for sustainable water governance: an integrated method to assess the governance of water.*
  - Karin Vink. *Transboundary water law and vulnerable people: legal interpretations of the 'equitable use' principle.*
  - Liping Dai. *Exploring China's approach to implementing 'eco-compensation' schemes: the Lake Tai watershed as case study considered through a legal lens.*



■ 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.

## REFERENCES

- From *Water International* 2015  
Issue 1: *The China Water Papers*,  
Part 2: *Transboundary Water Cooperation*
- Christina Leb. *One step at a time: international law and the duty to cooperate in the management of shared water resources.*
  - Jing Lee. *The governance of wetland ecosystems and the promotion of transboundary water cooperation – opportunities presented by the Ramsar Convention.*
  - Owen McIntyre. *Benefit-sharing and upstream/downstream cooperation for ecological protection of transboundary waters: opportunities for China as an upstream state.*
  - Xiuli Han. *Approaches to investment in Chinese transboundary waters.*
  - Liping Dai. *A new perspective on water governance in China: Captain of the River.*
  - Vivian Louis Forbes. *Mapping Asia’s trans-boundary waters, with a focus on China.*
  - Mirja Kattelus, Matti Kumm, Marko Keskinen, Aura Samivaara & Olli Varis. *China’s southbound transboundary river basins: a case of asymmetry.*
  - Seungho Lee. *Benefit sharing in the Mekong River basin.*
  - Aysegül Kibaroglu. *An analysis of Turkey’s water diplomacy and its evolving position vis-à-vis international water law.*
  - Bo Libert. *The UNECE Water Convention and the development of transboundary cooperation in the Chu-Talas, Kura, Drink and Dneister River basins.*
  - Velma I. Grover & Gail Krantzberg. *Transboundary water management: lessons learnt from North America.*
  - Emma S. Norman & Karen Bakker. *Do good fences make good neighbours? Canada-United States transboundary water governance, the Boundary Waters Treaty, and twenty-first century challenges.*

- From *Water International* 2015  
Issue 2: *The China Water Papers*,  
Part 3: *Transboundary Water Cooperation in Asia with a focus on China*
- Huiping Chen. *The human right to water and foreign investment: friends or foes?*
  - Yanmei He. *China’s practice on the non-navigational uses of transboundary waters: transforming diplomacy through rules of international law.*
  - Yan Feng, Daming He & Wenling Wang. *Identifying China’s transboundary water risks and vulnerabilities – a multidisciplinary analysis using hydrological data and legal/institutional settings.*
  - Bjørn-Oliver Magsig. *Water security in Himalayan Asia: First stirrings of regional cooperation?*
  - Yang Liu. *Transboundary water cooperation on the Yarlung Zangbo/Brahmaputra – a legal analysis of riparian state practice.*

## 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'.

## REFERENCES

### Additional References

- Devlaeminck, David, 2018. *Revisiting the substantive rules of the law of international watercourses: an analysis through the lens of reciprocity and the interests of China*, *Water Policy*, 20(2), 323-335.
- He, Daming, Ruidong Wu, Yan Feng, Li Yungang, Chengzhi Ding, Wenling Wang & Douglas W. Yu, 2014. *China's transboundary waters: new paradigms for water and ecological security through applied ecology*, *Journal of Applied Ecology*, 51(5), 1159-1168.
- Schmeier, Susanne, 2013. *Governing International Watercourses: River Basin Organizations and the Sustainable Governance of Internationally Shared Rivers and Lakes (Earthscan)*.
- Wouters, Patricia, Huiping Chen & James E. Nickum, eds., *Transboundary Water Cooperation: Principles, Practice and Prospects for China and its Neighbours (Routledge 2018)*.

## FOR FURTHER READING

- Chen, Huiping, Alistair Rieu-Clarke & Patricia Wouters, 2013. *Exploring China's Transboundary Water Treaty Practice Through the Prism of the UN Watercourses Convention*, *Water International* 38(2), 217-230.
- Rocha Loures, Flavia, 2015. *The Dragon as Part of Transboundary Basin 'Villages': Community of Interests and International Law in China*. *Journal of Water Law*, 24, 220-238.
- Wouters, Patricia, 2014. *The Yin and Yang of International Water Law: China's Transboundary Water Practice and the Changing Contours of Sovereignty* *RECIEL* 23(1), 67-75.
- Wouters, Patricia & Huiping Chen, 2013. *China's 'Soft-Path' to Transboundary Water Cooperation Examined in the Light of Two UN Global Water Conventions—Exploring the 'Chinese Way'*, *Journal of Water Law* 22, 229-247.

### ACKNOWLEDGEMENTS

Authors: Patricia Wouters, School of Law, Xiamen University  
David J. Devlaeminck, School of Law, Chongqing University  
Editors: James E. Nickum and Nick Griffin  
Layout: Nathalie Lyon-Coen

This brief arises from the first annual China International Water Law (CIWL) symposium and workshop held by the School of Law, Xiamen University (May 19-22, 2014).