

The contribution of ITLOS to the development of the Law of the Sea

OC - (ILA-14220) - THE FLOW OF INTERNATIONAL WATER LAW, ACCORDING TO INTERNATIONAL COURTS AND TRIBUNALS

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Experience:

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Abstract

In spite of learned predictions to the contrary, adjudication has been proving to be a valuable method of dispute settlement in regard to international water management. This has been demonstrated in the last three and a half decades by numerous international water-related cases which have been brought to the International Court of Justice, such as those on the Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia), Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Pulp Mills on the River Uruguay (Argentina v. Uruguay), Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Case Concerning Sedudu/Kasikili Island (Botswana v. Namibia), Case Concerning the Gabčíkovo/Nagymaros Project (Hungary v. Slovakia); to the Permanent Court of Arbitration, like the Rhine Chlorides Arbitration concerning the Auditing of Accounts (The Netherlands v. France), Guyana v. Suriname, the Indus Waters Kishenganga Arbitration (Pakistan v. India); or, lately more frequently, to the International Centre for the Settlement of Investment Disputes' courts, in arbitrations such as those relating to the Bayview, Azurix, Aguas del Tunari v. Republic of Bolivia, SAUR International v. Argentine Republic, Biwater v. Tanzania, Suez v. Argentina, Urbaser v. Argentina) cases; and even to regional tribunals, like the European Court of Justice, as illustrated by a growing list, ranging from Case C-36/98, Kingdom of Spain v. Council of the European Union through the Weser Case C-461/13, Bund v. Germany, C-664/15, Protect, and other cases related to the Water Framework Directive, a European Union Law instrument which also contains legal inroads into international and international law matters.

In the growingly robust jurisprudence that these cases generated, it is possible to track down and showcase important *obiter dicta* relating to the major themes of international water, such as issues relating to the principles applicable in the sector; matters of sovereignty and boundaries; coexistence or cooperation; the problems of allocation and sharing of

waters; quantitative problems and problems of utilisation of water, but also ones of protection of waters; quality of water and environmental protection; issues relating to the universe of actors entitled to participate in water management as well as in the settlement of disputes which arise in the implementation of water regimes; the procedural obligations and rights related to both the normal management of water regimes and more topical instances of 'crisis' derived, for example, from the intention to pursue measures of further development of watercourses; old forms of regulation of water use like navigation of hydroelectric use of a river as well as newer economic challenges related to water transfers; a general appetite to commodify water; and problems related to investment in water structures or water services. Together with more recent cases, this case law even addresses, settles or bears the potential to settle the intricate problems of the interface of the older rules of international water law and the human right of water as well as the rights of indigenous communities, and the relevance of the relation between international water management and the wider, complex issues of climate change.

The substantive analysis of this burgeoning water-related case-law demonstrates that this jurisprudence contributes powerfully to the reassessment of the traditional normative messages of international water law, to the clarification of some intricate issues therein, and generally to the progressive development of this body of law, thus dynamically participating in the paradigm-shifts that international water law has been witnessing, in the attempt to embrace and honour emerging values as well as cardinal options of the international community in the field, ultimately by ensuring a sustainable water management capable of responding to the contemporary global water crisis and the current climatic emergency.

Palavras-chave : International Water Law, International Courts and Tribunals, international water management