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MODERN RULES GOVERNING THE PEACEFUL MANAGEMENT OF INTERNATIONAL WATERCOURSES: FROM DOCTRINES AND THEORIES TO CONVENTIONAL PRINCIPLES

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ABSTRACT: *The management of transboundary watercourses poses enormous problems to the States that share them since the advent of the use of international watercourses for purposes other than navigation. This last aspect makes water the most used and coveted resource in the world, justifying both the value and rarity of this resource. The equitable use, protection, and non-conflictual sharing of international watercourses have always been subject to regulation based on a number of theoretical and conventional principles that vary from one context to another. These Doctrines and theories and principles enshrined in several international agreements, including the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses are currently constituting the modern rules governing the management of shared watercourses. This article aims to make a deep study of doctrines and theorical rules as well as conventional principles currently govern the management of international watercourses. in this purpose, the principles consecrated in the 1997 New York framework Convention adopted on 21 May and entered into force in 2014, will be deeply analyzed.*

KEYWORDS: transboundary watercourses; water resources management; theories and doctrines; conventional principles law; 1997 United Nations conventions.

INTRODUCTION

The challenge of protecting the environment is delicate and perplexing because it opposes national sovereignty to the general interest of all humanity. In this situation, the role of the international community is very important because it must take appropriate measures to conciliate the national sovereignties and the general interest of the planet. To overcome this problem by finding effective solutions to protect the environment in its various components including water, several theories and doctrines have developed around the sharing of water between states. These theories are developed in consideration of the crucial question of national sovereignty, often favored by the States, to the detriment of a true mechanism of equitable sharing of the resource. Among these best-known theories and doctrines include: The theory of absolute territorial sovereignty, the theory of absolute territorial integrity and the theory of limited territorial sovereignty. The latter rule expresses the equality of States and advocates the principle of cooperation between them as regards the resolution of disputes arising from the sharing of water resources. From these rule,

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other principles have emerged that are even more adapted to the contemporary challenges posed by the sharing of transboundary waters in the occurrence of the principles of fair and reasonable utilization; The obligation not to cause significant harm; The general obligation of cooperation and the peaceful settlement of disputes, (Rahman, 2009). These rules and doctrines governing the sharing of international watercourses are unsuitable with the proliferation of uses of water and the resulting conflicts. Some politicians believe that the race for access to fresh water will be in the future the main cause of conflicts between populations ((Kofi ANNAN, 2001). This excessive desire for water is materialized by unilateral acts on the watercourses shared by some riparian states without any prior consultation with neighboring states. These similar behaviors fanned considerable tensions between the states sharing the watercourse, as was the case with Turkey, which is embarking on a controversial project to build 22 dams on Tigers and Euphrates rivers, leaving only 30% of water of the latter to Iraq, (Jacques Sironneau., 2012), and recently, the decision of the construction of the great "Renaissance" Dam on the Nile by Ethiopia without any cooperation with the downstream countries including Egypt. While relations between states are becoming more and more conflictual because of the different uses and the sharing of transboundary watercourses (Bruno Hellendorff, 2012), we are simultaneously witnessing the emergence of a hydro policy, resulting in the conclusion of several agreements on the management of international watercourses. Since the 1970s, the international community has become aware that the rules of international water law are capable of accounting for an extremely complex reality: it is, therefore, essential to identify legal principles that adapt to changes. economic, social and ecological requirements. Slowly, as part of these reflections, begins to emerge a "watershed right". Those principles are essential: the principles of equitable and reasonable utilization; The obligation not to cause significant harm; The general obligation of cooperation and the peaceful settlement of disputes, consecrated by several international agreements, including the 1997 UN Framework Convention on the law of the non-navigational uses of international watercourses, (F. Lassere and Yenny Vega Cárdenas, 2014).

Through this article, we will first analyze the doctrines and theories that served as the theoretical foundations of the principles of international water law, dealing with the management of transboundary water resources (1). Our study will then focus on the role of the principles enshrined in modern international water law in the management of shared watersheds (2). Still in the context of studying the relevance of these principles on the management of transboundary waters, since these principles are to be included in the New York Convention, we will proceed to an analysis of this convention, to demonstrate its impact on the shared basins management and identifying its limitations and weaknesses (3).

METHODOLOGY

This work is based, on the one hand, on an analysis of the doctrine and theoretical rules and principles enshrined in international legal instruments concluded in the field of the peaceful management of shared watercourses. Databases from recent literature on transboundary water rights have been used in this research. This research was conducted through the Central Library of Wuhan University, web sites of some international organizations, such as UN, UNICE, UNICEF, IUNC, involved in the equitable and no-conflictual sharing of transboundary water sources.

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1. International Water Law Theories and Doctrines

The theories and doctrines of international water law on which are based the modern principles of international water law related to the management of transboundary water resources are three (3):

1. Theory of Absolute Territorial Sovereignty
2. Theory of Absolute Territorial Integrity
3. Theory of limited territorial sovereignty

Theory of Absolute Territorial Sovereignty

The doctrine of absolute territorial sovereignty was born at the end of the XIXe century from the idea of Judson Harmon, the American judge, hence its name doctrine "Harmon". Judge Judson Harmon, "General Attorney", a general advocate of the United States invented this doctrine in the framework of a sharing of waters of the Greater Rio between Mexico and the United States in 1985, (Marie Cuq, 2013) This was a complete disagreement at the end of the nineteenth century XIXe Mexico and the United States when the latter proceeded to diversify the waters of Colorado to irrigate the lands of the UAS southwest. After many diplomatic attempts to curb the diversion of water by the US, Mexico protested openly to warn the US against the depletion of water resources. The courts having found no solution to the dispute for lack of applicable texts, Harmon formulated his opinion in 1895: "the fundamental principle of international law is the absolute sovereignty of each State, as opposed to all the others, on its territory. The jurisdiction of the State in its own territory is necessarily exclusive and absolute. His only limits are those he imposes on himself ", (Stephen C. McCaffrey, 2007). By this position, Mr. Judson Harmon recognized the absolute right of the USA on the Rio-Grande through this comment: «The fact that the Rio Grande lacks sufficient water to permit its use by the inhabitants of both countries does not entitle Mexico to impose restrictions on the USA which would hamper the development of the latter's territory or deprive its inhabitants of an advantage with which nature had endowed it and which is situated entirely within its territory. This "Harmon doctrine excludes any question of cooperation between States and does not provide for any consideration by the Upstream State of the damaging consequences of the use of the watercourse using in the territory of the Downstream State. This doctrine was almost abandoned in the early XIXe century, although it has nevertheless been applied in certain disputes (Example: Chile and Bolivia, Rio Mauri in 1921, Rio Lauca in 1939). Unfortunately, absolute territorial sovereignty is still implicitly invoked today by countries like Tajikistan and Turkey, particularly to the detriment of their downstream neighbors as Uzbekistan for example, concerning the use of the waters of the Tiger, Euphrate, Syr Daria and Amou Daria, (Jacques Sironneau, 2012).

The theory of absolute territorial integrity

Contrary to the theory of absolute territorial sovereignty, this theory is based on the idea that the natural flow (quantity and quality of water) of a transboundary watercourse must be preserved for the benefit of downstream states. The idea of this theory is that any intervention by the upstream State requires the consent of the Downstream State to prevent alteration of the natural quality and quantity or the normal flow of the watercourse. Thus, each upstream riparian State must allow the shared rivers its normal flow without altering its natural flow. Qualified as "theory of riparian rights", the lawyer Sauser-Hall defines the theory of limited sovereignty as "the assertion that downstream states, especially those controlling the last segment of the watercourse, may require

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their neighbors upstream the transmission of a quantity of water equal to that which they themselves received "[1]. According to this theory, the downstream State has a veto right against any upstream use affecting the natural quality or modifying the normal flow of the waters of the watercourse, (Yenny Vega Cardenas et Frederic L, 2017). Although it has not been recognized in international law, this theory has nonetheless been defended by some states in Aval and applied in certain case laws, (Flavia Rocha Loures et Al, 2013) This is the case of Egypt, a country of Aval that requires a right of control over the uses of the Nile waters, made by Sudan and Ethiopia (all countries Upstream). Given its geographical position, Egypt is totally dependent on the Upstream states (Soudan and Ethiopia) and any hydraulic policy in these countries to modify the normal flow or the natural quality of the waters of the Nile, will have consequences. serious about Egypt. Other downstream countries including Pakistan, Bangladesh, and Bolivia have also taken a stand for international recognition of the theory of absolute territorial integrity. Moreover, in the dispute which opposed it to France in 1957 about the Lac Lanoux case, Spain also has pleaded for an application of this theory.[2]

The theory of limited territorial sovereignty

The theory of territorial sovereignty is supported by authors like Leon Michoud, Carré de Malberg and Léon Duguit is related to the community of interests defended by Schwarzenegger and Friedmann have appeared to try to balance the international balance of power concerning the sharing of water resources between sates,(Jacques Sironneau, 2012.p 80-81; Santiago Villalpando, 2014).According to this theory, each State has freedom of use of the shared watercourse crossing its territory provided that such use does not affect the rights and benefits of other riparian States of the same watercourse. Thus, the sovereignty of States over shared water resources is relative and qualified, and each riparian State enjoys the same rights and duties in the use of the waters of the international watercourse as the other co-riparians. The theory of limited territorial sovereignty probably remains the prevailing theory of transboundary watercourse rights in that it guarantees the rights and obligations of all riparian states over the waters of shared watercourses. Qualified as "riparian rights theory," the Sauser-Hall jurist's theory defines the theory of limited sovereignty as *"[the assertion] that downstream states, especially those controlling the last segment of the watercourse, can to require from their upstream neighbors the transmission of a quantity of water equal to that which they themselves received "*.Otherwise known as the theory of sovereign equality and territorial integrity, the advantage of this theory is that it advocates the guarantee of the right of a reasonable use of the watercourse for the upstream States in view of an equitable use by all other States concerned, Sylvie Paquerot,2007) .Principles that currently govern the international watercourse law, including the principle of equitable and reasonable use and the obligation not to cause significant harm, constitute the basis of the limited territorial sovereignty

[1] G. Sauser-Hall, l'utilisation industrielle des fleuves internationaux, recueil des cours de l'académie de droit international de la Haye, t.83, 1959-II, p.541 cité par Lucius Caflisch, *Convention du 21 mai 1997 sur l'utilisation des cours d'eau à des fins autres que la navigation*, Annuaire Français de Droit International, XLIII, 1997, CNRS éditions, Paris, 1997, p.751-798.

[2] Serge Pannetier, la protection des eaux douces, le droit international face à l'éthique et à la politique de l'environnement, Georg éditeur, Genève, 1996, cité par Hélène Willart, *le droit international de l'eau et son rôle dans l'élaboration de la paix, l'exemple du partage des ressources en eau de l'Oronte et du Jourdain*, mémoire de recherche, IEP de Toulouse, avril 2004. The arbitral decision on this case is available at: http://legal.un.org/riaa/cases/vol_XII/281-317_Lanoux.pdf

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theory (Schroeder-Wildberg, 2002p.14). Modern international water law is based on this theory because it is currently the only widely accepted theory. (Salman, 2007a, p.628). In recent case law, it should be noted that the theory of limited territorial sovereignty has undoubtedly been applied in several decisions, especially by the International Court of Justice. The undisputed support for this by the ICJ lies in its decision on the famous case of Gabcikovo Nagymaros[3] where the court argued that the principle governing international watercourse law is that of equitable utilization.

Principles of International Water Law

The rules of international law applicable to the management of transboundary watercourses are those set out in Article 38 of the Statute of the International Court of Justice. Through the provisions of Article 38, the court requires to apply: a) International conventions, general or specific, establishing rules expressly recognized by disputing States; (b) International custom, as proof of a general practice accepted as law; (c) The general principles of law recognized by civilized nations; (d) judicial decisions and the doctrine of the most qualified publicists of the different nations, as a subsidiary means of determining the rules of law. This section summarizes the general principles of international law applicable to the management of transboundary water resources, accepted by the nations and especially incorporated in modern international legal instruments in the field of Water (Conventions, Treaties and Agreement). These generals' principles governing the sharing of international watercourses are essentially: 1) The principle of equitable and reasonable utilization; 2) The principle of the obligation not to cause significant harm;3) The general obligation to cooperate and 4) The principle of peaceful settlement of disputes.

The principle of equitable and reasonable utilization

The spirit of the principle of the equitable and reasonable use of water would require each State to use international watercourses on its territory in a reasonable manner, ensuring that its needs are met without compromising those of neighboring States. This norm, considered as a norm of customary international law, was expressly provided for in the Helsinki Convention of 1992 (Article 2.2) and included in the New York Convention (Article 5). The principle of equitable and reasonable utilization is formulated in general terms, its application requires states to take into account factors specific to an international watercourse and the needs and uses of the States of the stream (L. Boisson Chazournes, 2015). This principle is the corollary of the doctrinal theory of limited sovereignty. It has been enshrined in the Berlin rules, (Article 13); Helsinki Rules of 1966 (Article IV); Helsinki Convention of 1992 (Article 2.2), and the New York Convention on the Law of Non-Navigational Uses of International Watercourses (Article 5. The principle is based on the idea of sovereign concession between states depending on the need for water resources of each state. This explains why the principle implies a balanced use of the resource between the states but does not necessarily mean an equal sharing of the waters of the basin since its application is subject to specific factors to each watershed, (Marion Veber,2014). The Article 6 specifies the factors to be considered at the level of each basin: « 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

[3] Available at: http://www.acta.sapientia.ro/acta-legal/C3-1/legal31-2.pdf

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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 Equitable and reasonable utilization principle has been adopted in several international watershed agreements, such as the 1995 Protocol of the Southern African Development Community (SADC) on Shared Watercourse Systems, the 1995 Mekong River Basin Agreement, or the Water Charter of Niger River Basin of 2008 which reworded the principle as follows: "equitable and reasonable participation and utilization", (article 4).

Nevertheless, the New York Convention gives the priority of using the water resources of a basin to the "satisfaction of the essential human needs" in the event of conflicts between the riparian states of the watercourse, (Article 10). The principle of equitable and reasonable participation and use is substantially supported in state practice, international codification and judicial decisions (Birnie and Boyle, 2002, p.302). Indeed, the principle was mentioned in the case of the Nagymaros-Gabcikovo Dam, where the International Court of Justice stated that the appropriation of 80% of the waters of a river shared between two States is not fair (judgment of 1997, CIJ, Hungary/Slovakia). [4] This jurisprudence of the ICJ has therefore given this principle its fundamental character, (STEPHEN C. McCaffrey ,2007)

The principle of the obligation not to cause significant harm

The principle of the obligation not to cause significant harm derives from the maxim: "Sic utere tuo ut alienum non laedas" (So use your own as not to harm another), which is a perfect fit with the principle of Equality of Sovereignty between States in General International Law. Indeed, the principle of not causing significant harm is generally recognized as a general principle of international law. This principle also presents aspects of the theory of limited sovereignty, (Eckstein, 2002, p.82). Some argue that water law practitioners must make the pollution issue a general duty of "due diligence", that states have a duty to protect the rights of other states within the country (Stephen C. Mc, Oxford 2001).The rule of the obligation of not causing significant harm requires that no State bordering an international watershed should use the water resources of the watercourse on its territory in a manner to cause harm to other States in the same basin, their environment, their health or even the security of their populations. The principle is thus formulated in Article 7 of the United Nations Convention on International Watercourses as following: *"1. When using an international watercourse on their territory, watercourse States shall take all appropriate measures to avoid causing significant harm to other watercourses States. 2. Where, however, significant harm is caused to another watercourse State, the States whose use caused that harm shall, in the absence of agreement concerning that use, take all appropriate measures, taking adequately consider the provisions of articles 5 and 6 and in consultation with the affected*

[4] Decision available on: https://www.icj-cij.org/files/case-related/92/092-19970925-JUD-01-00-FR.pdf

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State, to eliminate or mitigate such damage and, if appropriate, discuss the question of compensation".[5] This obligation requires both the establishment of adequate standards and measures for the prevention of damage, as well as vigilance vis-a-vis the activities are undertaken by both public and private operators (Laurence Boisson et al., 2015). This principle undoubtedly dominates both the international law of water and of the environment (Rahaman, 2009).[6]

Several modern international legal instruments, inspired by the United Nations Framework Convention on Water, have enshrined this principle. It should first be noted that the principle was first proclaimed by the 1966 Helsinki Rules (Articles V, X, XI, XXIX) before being consecrated in the 1992 UN-ECE Convention (Articles 2.1, 2.3, 2.4, 3) and finally adopted by the New York Convention on the law of water. The principle is thus practically enshrined in all conventions and other agreements or international legal arrangements adopted nowadays in the context of the use of shared watercourses. This is the case of the 1995 Southern African Development Community (SADC) Protocol on Shared Watercourse Systems (Article 2), the 1995 Mekong River Basin Agreement (3.7 and 8), the revised Convention establishing ANB of October 29, 1987 (Article 4) and included in the Water Charter of the Niger Basin of 2008 (Article 5) which provides: *"States Parties shall ensure that activities in their territory cannot cause harm to other States Parties in accordance with Article 4 of the Revised Convention Establishing the Niger Basin Authority."* Moreover, it should be recalled that the principle is also accepted by several of the modern international conventions and declarations on the environment, notably the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment (Principles 21), Declaration adopted at the 1992 United Nations Conference on Environment and Development (Principles 2,4,13,24),[7] or the 1992 Convention on Biological Diversity (Articles 3). It should also be remembered that special attention has been given to this principle by various judicial decisions such as that of the International Court of Justice in the case of the Pulp Mills on the Uruguay River between Argentina and Uruguay. (ICJ Reports 2010, para.197).[8] The issue of the obligation not to cause significant harm was raised by the ICJ in its decision of 25 September 1997 on the Gabcikovo-Nagymaros case (ICJ, 1997).

The general obligation to cooperate

There are some 300 river basins in the world and several aquifers across national borders. This must exhort states to find ways and means of cooperation to ensure good management in a framework of sustainable development of these transboundary basins. For optimal and sustainable development and use, as well as efficient and effective protection of international watercourses, the riparian States of these watercourses must put forward a spirit of cooperation based on "good faith" among them. The issue of cooperation is important in the shared natural resource character that reveals an international watercourse. According to Herbert Smith, (2002): « The first principle is that every River system is naturally an indivisible physical unit and that as such hit should be so developed as to render the greatest possible service to the whole human community which serves,

[5]Ibid. page 409
[6] Available at: https://www.inderscienceonline.com/loi/ijssoc
[7]Ibid. page 424.
[8] Decision available at: http://www.icj-cij.org/files/case-related/135/135-20100420-JUD-01-00-EN.pdf (accessed May 1, 2018)

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whether or not that community is divided into two or more political jurisdictions. *It is the positive duty of every government concerned to cooperate to the extent of its power in promoting this development »*

As a procedural principle, the obligation to cooperate is a customary principle, codified in Article 8 of the New York Convention which states that: "Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith with a view to achieving the optimal use and protection of the international watercourse ". It should be recalled that the article on the general obligation to co-operate was the work of the working group. In addition to the first paragraph of the ILC text, which urged States to cooperate "in good faith", the working group, having reproduced the first paragraph of ILC, found it useful and even necessary to add a second paragraph. In the second paragraph, the working group thus took care to stress the importance of mechanisms or joint commissions in the effective and harmonious management of international watercourses. Harmonious and effective cooperation among States in the management of transboundary waters is also important for the ICJ which asserts in the Gabcikovo-Nagymaros case that "The re-establishment of the joint regime will also optimally reflect the concept of joint use of shared water resources to achieve the different objectives mentioned in the treaty and, in accordance with article 5, paragraph 2, of the New York Convention ..." It should be recalled that the general duty to co-operate consists of the obligation of the riparian States of an international watercourse to proceed to notification and prior consultation within the framework of the planned measures. This general obligation to cooperate provided for in Article 8 of the 1997 New York Convention manifests itself in several ways, for example through "joint mechanisms or commissions" (Articles 8 and 24), "regular exchange of 'information' (Article 9) between riparian states on the state of the shared watercourse or the question of 'notification of planned measures' (from Articles 11 to 19). The obligation to notify is subject to the obligation of prior consultation, which consists of exchanges aimed at reconciling the positions between the project-making State and the State that the territory will be impacted by the proposed project, (Flavia Rocha Loures ,2013)

It should be noted that the principle was first proclaimed by the 1966 Helsinki Rules (Articles V, X, XI, XXIX) before being adopted by the 1992 UN-ECE Convention (Articles 2.1, 2.3, 2.4,3) which precedes that of New York. The principle is thus virtually enshrined in all conventions and other international legal agreements or arrangements adopted today in connection with the uses of shared watercourses. This is the case of the 1995 Protocol of Southern African Development Community (SADC) on the Shared Watercourse Systems (Article 2), the 1995 Mekong River Basin Agreement (3.7 and 8), the revised Convention establishing ANB of October 29, 1987 (Article 4) and also the Water Charter of the Niger Basin of 2008.

The Principle of peaceful settlement of disputes.

The principle of disputes settlement over the use and protection of shared water resources is one of the cardinal principles of international water law, (Inga Jacobs,2012). This principle requires riparian states to find peaceful and concerted solutions in case of conflict between them. In order to settle the dispute, the principle recommends that the parties to the conflict follow the procedures for the peaceful settlement of disputes provided for by international law, namely mediation, conciliation, negotiation, and the investigated States may also, for example, submit a dispute to a

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basin organization, seek a third-party arbitration submit the dispute to the International Court of Justice. Nevertheless, States are free to choose the dispute settlement procedure. Some authors believe that this choice is difficult because it requires the consent of all parties to the conflict, (L.Boisson, 2013). However, the difficulty of the consent of all parties is mitigated by the 1997 UN Convention, which provides for an innovative model of settlement that unilaterally initiates a mechanism of investigation in case of a conflict. (Article33.3).[9] The obligation of States sharing an international watercourse is based primarily in the United Nations Charter, (Article 2 (3), secondly, the same issue of the peaceful settlement of conflicts arising from of the utilization of shared watercourses was raised by Stephen C. Mc CAFFREY[10] in his sixth report. In addition to the New York Convention, the principle is also enshrined in several international conventions and agreements such as: the UNECE Water Convention of 1992 (Article 22, Annex IV), the Niger Basin Water Charter of 2008, (Bolognesi T. et Bréthaut C, 2016.) , (Article 29, Chapter IX), Protocol of 1995 of the Southern African Development Community (SADC) on Shared Watercourse Systems (Article 7), Agreement on Cooperation for the Sustainable Development of the Mekong River Basin of 1995 (Articles 18.C, 24.F, 34, 35),[11] Cooperation Convention for the Protection and Sustainable Use of the Danube (Article 24),[12] Convention for the Protection of the Rhine 1999 (Article 16).[13]

Analysis of the New York Convention

In its resolution 2669 (XXV) of December 1970, the United Nations General Assembly mandates the International Law Commission (ILC, see below) to conduct "the study of the law relating to the use of railway tracks". international waters for purposes other than navigation, with a view to the progressive development and codification of this right "The first attempt to codify the norms governing the law relating to international or transboundary der watercourses was made in 1966, both with regard to navigation and to the question of utilization for other purposes, (Marie Cuq,2013).In the same year, the Helsinki Rules were laid by the International Law Association (ILA).[14] The ILC[15] thus retained the definition of "international drainage basin" as follows: *"It is" a geographical area extending over two or more States and determined by the boundaries of the area of the feeding of the hydrographic system, including surface water and groundwater, flowing into a common sewer".* After six long years of controversy over the ILC project, the United Nations General Assembly finally adopted on 21 May 1997, the New York Convention on the Law of the non-navigational uses of International Watercourses. On Resolution 51/229, the text was adopted by 103 Nations for (including the USA, Mexico, Syria), 27 abstentions (including Egypt, Ethiopia, France ...) and 3 against (China, Turkey and Burundi).

[9] Text available at: http://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf (accessed May 11, 2018)
[10] Stephen C. Mc CAFFREY, Sixth Report, pp. 57-80
[11] Text available at: http://www.mrcmekong.org/assets/Publications/policies/agreement-Apr95.pdf (accessed May 12, 2018)
[12] Texts available at: http://extwprlegs1.fao.org/docs/pdf/mul17444.pdf (accessed 12 May 2018)
[13] Texts available at: https://www.admin.ch/opc/en/classified-compilation/19995744/index.html (accessed 14 May 2018)
[14] ILA: International Law Association
[15] ILC: International Law Commission

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This Convention codified the principles for the sharing and use of international watercourses on the basis of the 1966 Helsinki Rules. For its entry into force of the Convention requires 35 instruments of ratification, approval, acceptance or accession, Article 36 (1). The Convention entered into force with the deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations, on May 20, 2014, by Vietnam (IUCN, 2014). The legal framework set out in the Convention is based on key principles that are detailed in Part Two, General Principles (Marion Veber, 2014). These principles are none other than the general principles of international water law already discussed above. Convention has had a very positive impact on the transboundary watersheds water resources management (1) It is nevertheless strongly criticized by some observers, who see in it several weaknesses (Sylvie Paquerot, 2007) (2).

The impacts of the 1997 Convention on the utilization of international watercourses

The Convention on the Law of the non-navigational uses of International Watercourses, with the general principles it sets out, contributes positively to the integrated management of shared water resources, on many levels (2). Note first that the Convention has set an innovative principle unprecedented (principle of public participation), which expanded the chain of actors for the management of transboundary basins (1)

The Innovative Principle of the Public Participation

Conventional instruments governing the management, use and protection of transboundary rivers are generally concerned with the question of the rights and duties of the authorities in charge of the management of these rivers. The rights of direct users of international watercourses are not most often taken into consideration by these international legal instruments. However, facing to these serious deficiencies, the United Nations Convention on the Law of Non-Navigational Uses of International Watercourses of 1997 enshrines this innovative provision that expressly addresses the rights of individuals, (article 32). The New Convention thus guarantees the right of access to all jurisdictional or administrative proceedings of the citizens of a State in the context of the occurrence of significant transboundary harm arising from the activities of an international watercourse. It is a fundamental and innovative principle which obliges the states of the international watercourse to favor the access of their nationals to their internal jurisdictional and administrative procedures without any distinction as to nationality, place of residence and also wherever the damage occurs, (Boisson de Chazournes L., et al, 2015). This provision of the New York Convention has been taken into account by some basin organizations, including the Niger Basin Authority (NBA). In the framework of the implementation of the "shared vision" process, aimed the integrated management of water resources of the Niger River basin, the question of public participation was recommended by the Bamako Declaration, at which the civil society actors have participated. This provision of the New York Convention has been taken into account by some basin organizations, including the Niger Basin Authority (NBA). In the framework of the implementation of the "shared vision" process, aimed the integrated management of water resources of the Niger River basin, the question of public participation was recommended by the Bamako Declaration, at which the civil society actors have participated. Indeed, the issue of public involvement in the implementation of the "shared vision" process started with the Bamako Declaration of the Actors of Civil Society was formalized by the adoption of Resolution No. 2 of the Ordinary Session of the Council of the NBA Ministers which held on September 2006 in

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Niamey, (Robert Y. Dessouassi, 2013).[16] The issue of the public participation is then enshrines in the water charter of the Niger Basin (Article 2, paragraph 10), and materialized by several acts including the holding every four years of a Regional Forum gathering actors and resource users of the Niger Basin. The New York Convention has more impacts on the management of the transboundary basins.

The Contribution of the Convention to the Integrated Water Resources Management
The contribution of the Convention on the Governance of Transboundary Watercourses is at the legal, political and institutional levels**.**

Legal level: Some authors such as Frederic Lasserre et al (2017) argue that the binding force of the norms or principles enshrined in this convention was admitted well before its entry into force, with the case of Gabčíkovo- Nagymaros, opposing Hungary to Slovakia in 1997, date of the adoption of the Convention itself. Through this case, the international Court of Justice referred to the convention of New York (NYC) not yet in force, considering it as the embodiment of customary international law. Before the adoption of the Convention, most of agreements are often dominated by power relations through which, the powerful state dictates the rules governing the use of water, (Marion Veber, 2014) (Marion Veber, 2014). Indeed, with the NYC, Balanced or even equitable proposals for negotiation in the framework of the development of the rules governing transboundary watercourses governance have emerged. Some authors as Lasserre F et Al (2017), argued that the NYC plays a key role in three main situations: first, when there is no water governance regime that covers an international watercourse, as this convention can serve as a point of reference departure for the negotiations. Second, as an interpretative standard for existing bilateral or regional agreements. Thirdly, when regional agreements cover only one part of the rules found in the convention, supplementing the already established standards and equalizing the balance of power. Furthermore, will be necessary to note the effective contribution of the principles embodied in the CNY to face the challenges of climate change.

Pollical level: From the political point of view, some authors such as Flavia Rocha Loures and Al, (2009) argued that the entry into force of the CNY could also help reinforce the legitimacy of the approach advocated, namely the negotiation of limited sovereignty over water and encourage States from the same watershed in conflict, to engage in negotiations. This Convention adopted by an overwhelming majority in the vote of the General Assembly and summarizing the state of customary international law on water uses, was already confirmed by the ICJ in the case of the Gabcìkovo-Nagymaros project. This aspect would surely strengthen the political legitimacy of the proposed text. Indeed, it should be remembered that, despite China voted against the adoption of the CNY in 1997, It nevertheless concluded several treaties on the issue of water management with its neighbors, particularly with Kazakhstan (2001 and 2011), with Russia in 2008, (Lu Zhian, 2013), including provisions enshrined in the convention.

Institutional level: The adoption and entry into force of the New York Convention (CNY) is a new impetus for the construction or strengthening of institutions in charge of the shared basins water resources management. We can already note the existence of basin water management

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institutions at the level of basin organizations around the world such as the Danube Commission (1948), the navigation regime, the Organization for the development Senegal (OMVS), responsible for water management of the Senegal River (1972), the Niger Basin Authority (NBA) in the Niger Basin (1964), the Lake Chad Basin Commission (LCBC, 1964) , the Gambia River Development Organization (GRDC, 1978), the Mekong River Commission (MRC, 1957-1975), and the Indus Treaty, governing the sharing of water in the Indus Basin , signed between Pakistan and India in 1960, (Lasserre, Frédéric and Yenny Vega Cardenas,2017). These institutions have been strengthened in their role of managing waters of the mentioned basins by means of the principles enshrined in the NYC from its draft project to its adoption on May 21, 1997. Indeed, since the second half of the 1990s, marking the end of the drafting of this convention until its adoption by the General Assembly of the United Nations by A/RES/51/229 of mai 21,1997 (Cécile LACHERET, 2011), there is a movement of construction or institutional reorganization at the within basin organizations that would result from the new rules laid down by CNY, as summarized this table below:

Table 1. Summarizes the institutional constructions or reorganizations initiated since 1990.

Years	Titles
1992	Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention, Economic Commission for Europe.
1993	Interstates Commission for Water Coordination (ICWC) of Central Asia, centered around the Aral Sea.
1995	Mekong River Commission - takes over from the former Mekong Commission.
1995	Organization of the Amazon Cooperation Treaty (OACT).
1998	Revival of institutional cooperation within the Niger Basin Authority (ABN) at the Abuja summit (Auclair and Lasserre 2013).
1999	Beginning of negotiations between the Nile Basin States under the Nile Basin Initiative (NBI).
1999	International Commission of the Congo-Oubangui-Sangha Basin (ICCSB).
2000	Revised Protocol on Shared Watercourses de la Southern African Development Community (SADC).[17]

[17] Revised Protocol on Shared Watercourses in the Southern African Development Community (SADC), 7 Août 2000, SADC, disponible sur: https://www.sadc.int/documents.https://www.sadc.int/files/3413/6698/6218/Revised_Protocol_on_Shared_Watercourses_-_2000_-_English.pdf

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2000	The Orange-Senqu River Commission (Orange-Senqu River Commission, ORASECOM) comprises Lesotho, South Africa, Botswana and Namibia.

Source : https://cqegheiulaval.com/lentree-en-vigueur-de-la-convention-de-new-york-sur-lutilisation-des-cours-deau-internationaux-et-son-impact-sur-la-gouvernance-des-bassins-internationaux/

Example of the contribution of the CNY Convention on Integrated Management of Transboundary Water Resources in the Niger Basin Authority.

The contribution of the Convention is palpable at the level of the Basin Authority of the Niger Basin where certain rules relating to the integrated management of water resources of the Basin. This table below summarized a comparative study first between the New York Convention of 1997 and revised Convention establishing the Niger Basin Authority (NBA), and between the NYC and the Niger Basin water Sharter of 2008. This comparative study permits to discover the difference between the first convention signed (1987), before the adoption of the New York Convention and the second Convention after the adoption of the New York Convention (2008).

Table 2. Comparative Analysis: New York Convention and NBA Revised Convention/Niger Basin Water Charter

Convention Establishing the NBA	**United Nations Convention of May 21, 1997**
Revised Convention Establishing the Niger Basin Authority (ABN) Signed on October 27 1987 in N'Djamena. / Gaps and weaknesses of the Convention	The New York Convention on the Law of the non-Navigational of International watercourse / Fundamental provisions of the Convention
Absence of the principle of equitable and reasonable use and participation	Principle of reasonable and equitable use and participation (Articles 5 and 6)
Absence of water allocation rules between different users	Principles of international water allocation: lack of priority between uses of water; obligation to take into account the fulfillment of basic human needs in the event of conflicts over the uses of watercourses (Articles 5, 6 and 10)
Limited codification of the obligation to prevent transboundary harm	Obligation to take all appropriate measures to prevent significant transboundary harm (Article 7)

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Absence of a clear and detailed conflict prevention procedure related to the proposed measures, including the exchange of information and the obligation to consult and negotiate	Detailed rules on the proposed measures (Articles 11 to 19)
General wording of the prior notification requirement, without specifying the content of the notification in question or the obligations of the issuing State during the consultation procedures	Clarifies the requirement for prior notification of proposed measures (Article 12)
No obligation to regularly exchange information and data	Regular exchange of data and information (Article 9)
Single recourse to the basin authority in case of conflict, and absence of third-party intervention mechanisms	Mechanisms for the settlement of disputes involving third parties (Article 33)

Niger Basin Water Charter	**United Nations Convention of 1997**
More expanded définitions (Article 1)	Reduced definitions (Article 2)
Formulation of the duty not to cause transboundary harm without an explicit link with the principle of fair dealing (Article 5)	Recognition of the principle of reasonable and equitable use as the founding principle of the Convention (Article 7-2)
Extensive General Principles (Article 4)	Limited general principles (equitable and reasonable participation and use, non-harmful use (Article 2)
Water Management Institution (Permanent Technical Committee, Expert Panel, Regional Advisory Group, Sub-Basin Commission, Niger Basin Observatory, National Focal Structures) Articles 16, 17, 18	Absence of provisions relating to water management institutions
Deadline for notification of proposed measures: 3 months extendable by 1 month (Article 20)	Period of notification: 6 months (Article13)
Explicit provisions governing common works of common interest (Articles 27 and 28)	Absence of provisions governing these works.

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Lack of explicit provisions on the obligation to take joint measures in the event of transboundary pollution, introduction of alien species, protection and preservation of the marine environment, regulation, prevention and mitigation of harmful conditions	Explicit obligations for states to act jointly to prevent, reduce and control water pollution and damaging conditions. In addition, states refrain from introducing alien species and oblige themselves to build regulatory structures on an equitable basis (Articles 21, 22, 23, 25, 27).
Absence de dispositions relatives à la protection des installations et aménagements en période de conflits armés.	Provisions for the protection of installations and facilities in times of armed conflict in accordance with the rules of international law (Article 30)
Lack of provisions for the exchange of data and information on national defense and security.	No obligation for States of the international watercourse to exchange vital data and information on national defense and security (Article 31)
Lack of provisions for compensation for damage to affected populations.	Existence of provisions on non-discrimination of compensation for cross-border damage (Article 32)
Absence of provisions for impartial inquiry and arbitration by the arbitral tribunal as methods of dispute resolution.	The impartial inquiry and arbitration are devoted (Article 33)

Source : http://www.abn.ne/index.php?option=com_content&view=frontpage&lang=fr

The first comparison allowed many shortcomings and weaknesses contained in the revived Convention establishing the NBA, in comparison with the NY Convention. The second comparison showed that many shortcomings and weaknesses contained in the NBA Convention of 1987 have been corrected in the Water Charter of the Niger Basin as explained in the second part of the table.

NB: The shortcomings noted in the Water Charter have been taken into account in its environmental annex adopted by the 30th Ordinary Session of the Council of Ministers held on September 30 and October 1, 2011.

The shortcomings and weakness of the CNY

several criticisms are made of the effectiveness of the convention in improving the governance of transboundary rivers. While the principle of equitable and reasonable utilization is appreciated by most observers, some author considered that the Convention's provisions listing the factors to be considered in determining the equitable and reasonable of practice have not mentioned clearly a priority among those factors, (Marion Veber, 2014). This observation is also apparent from Article

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10 on the relationship between utilizations, which reaffirms in its first paragraph: *"In the absence of agreement or custom to the contrary, no use of an international watercourse has in itself priority over other utilizations. Admittedly, paragraph 2 of the same article specifies, however, that in the event of a conflict between utilizations of an international watercourse, the dispute is resolved with regard to Articles 5 to 7, with special attention being paid to the satisfaction of essential human needs"*. According to some observers such as (Lasserre, Frédéric and Yenny Vega Cardenas, 2017), this constitutes a serious breach by the convention, especially because water was officially recognized as a fundamental human right since the adoption in 2002 of the Observation N.15 of the Committee on Economic, Social and Cultural Rights. However, according to Marion Veber, (2014), the clarifications in paragraph 2 cannot be sufficient to prioritize the human needs factor over other factors because here, only "special attention" is mentioned, which reduces this priority character of the use of the resource related to the satisfaction of basic human needs on the other categories of use. On the other hand, some authors find the Convention's weaknesses in its silence regarding cooperation between States in terms of the protection of rivers against pollution, contrary to the Convention of the United Nations Economic Commission for Europe on the protection and use of transboundary rivers and international lakes. With this in mind, Sylvie Paquerot (2002) points out that: *"[...] to ensure sustainable management of water resources, although the New York Convention includes a number of articles aimed at ensuring cooperation in the field of pollution protection, it does not This is only a good-neighborly perspective between sovereign states whose interests may be in conflict, and not a common concern of humankind that freshwater resources are generally preserved in quantity and quality."*.[18] In addition, as the NYC addresses the issue of the use and sharing of international watercourses, it would be appropriate for the NYC to take a clearer view of water as a common good, the management of which Use and protection must rest with all States, beyond their own interests, for the welfare of all humanity. However, the Convention does not devote any provision dealing with "res communis"[19] water, as Sylvie paquerot notes; *"[...] States must" share "with their neighbors not because it is a common resource that no one should appropriate but because their neighbors are also" sovereign, owners "of their natural resources."*[20] For Sylvie Paquerot to add further in her criticisms against the convention that it moreover just limited to codify customary rules already existing. It is important to note another major limit of this Convention, which is the total lack of ambition with regard to conflict resolution and sanctions for non-compliance with the principles it has laid down.

CONCLUSION AND RECOMMENDATIONS

In view of the contemporary challenges posed by water management and the evolving nature of the international water law sector, it can be said that the recent principles of international water law and particularly those of the Convention New York 1997 is the cornerstone of integrated water resources management of transboundary basins. Convinced of the major and undeniable contribution of the principles set out in the CNY, we strongly support the position of Sylvie

[18] Sylvie Paquerot, Le statut des ressources vitales en droit international. Essai sur le concept de patrimoine commun de l'humanité, Bruylant, 2002, partie III.2 Un cadre juridique global récent et spécifique : la Convention de New York de 1997, p.216.
[19] Common good, belonging to all. Without a specific owner.
[20] Ibid. Sylvie Paquerot

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Paquerot (2007), who believes that with the principles of equitable and reasonable utilization, the principle of the obligation to cooperate and the importance of environmental protection ,and the prohibition of causing significant harm that it devotes, the convention present the following feats: The fact that sovereignty over this resource is "limited" seems to be widely accepted by the community of states; the need to protect water resources to a certain extent is recognized, although debates around the concept of sustainable development have illustrated the primacy given to development by many more states; and finally, basic human needs have also gained some recognition as no state has at least removed access to drinking water from the special attention that the Convention calls for. The contribution of the principles enshrined in the Convention on the integrated management of shared water, is indisputable worldwide, as recalled Marie-Laure VERCAMBRE, (2016) in an interview, that many basins agreements already signed between upstream and downstream countries have largely been inspired by the principles enunciated (ABN, 2018) in the New York Convention. In addition, this convention was therefore already applied in some regions that have not ratified it, China's case with its neighbors, (Lu Zhian, 2013). As for the criticisms of the Convention, according to which the Convention only provides for principles concerning the use and sharing of international watercourses, remaining silent on the issue of the protection of shared waters, in contrast with the Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes, it should be remembered that the 1997 New York Convention has already taken up some of the principles contained in the Helsinki Convention of 2992. As a result, some water law experts such as (Stephen C. Mc CAFREY.2014) argue that by adopting different approaches, both conventions mutually reinforcing. The real problem faced by the principles and the various instruments that state them (CNY) is a problem of effective implementation. This problem stems from the unbalance of power between sates, that often characterizes international law in general and water in particular. This unbalance power is due to the non-coercive character of the Convention and the existence of the hydro powers that continue their hydro-hegemony over the downstream states:(case of Ethiopia on Egypt about Nile water; Turkey on Iraq and Syria concerning the waters of the Tigris and Euphrates Tajikistan on Uzbekistan in the framework of the waters of the Syr Darya and Amu Darya). To overcome this crucial problem, it will be necessary to strengthen the framework of governance, environmental security, the maintenance of peace between riparian states and the protection of shared basins. To achieve this, we recommend on the one hand, to the UN, to promote a real and dynamic hydro-diplomacy between the States of the same basin in order to avoid the transformation of conflicts related to water, to military conflicts because water must be a unifying element and not a vector of tension. On the other hand, we suggest that States not Party to the New York Framework Convention adhere to the seventeen (17) United Nations Sustainable Development Goals (SDGs) in order to eradicate or mitigate hegemony water.

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