A QUESTION OF TRANS-BOUNDARY RIVERS: LEGAL RULES, A COHERENT SYSTEM OR A VACANT CANYON: TOWARDS A CONSTRUCTIVIST APPROACH

A Thesis Submitted to the

Department of Law

In partial fulfillment of the requirements for the degree of

Master of Arts in Comparative International Law

By

Wesam Ali

July 2015
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II
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ABSTRACT

Trans-boundary Rivers form an important context for relations between multiple sovereign states. The paper tackles the dynamics of a state’s behaviour, regarding trans-boundary Rivers, through time so that state relations are not a constant competition or cooperation. The paper responds to the behavioural changes amongst states by adopting a constructivist approach. By using constructivist approach, this paper argues that legal norms are generated through interactions and communications between states. Multiple criteria include political, geographic, economic, and legal contexts determine state relations. The Indus and Euphrates basins demonstrate how legal norms are determined by each state subject to their geographic, economic and political conditions. The paper concludes that the economic interest is a key variable towards cooperation between riparian states. The most significant message of the thesis, obviously, if the national interests of states in question are willing to explore common ground of incentives, particularly economic incentives between riparian states, then cooperation will be more likely.
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I. Introduction:

Water is an indispensable resource for the survival of human beings. Industrial fields, agricultural domains and domestic uses all rely primarily upon this resource. This is a principal need that is shared across the states nation. The reasonable allocation of, access to, and control over quantitatively adequate amounts of water is not only a matter of political boundaries, but is ultimately tightly linked to social, economic and geographic variables of states. Water scarcity is one of the key challenges facing the world. As the global population grows and demands for food and energy increase, the need for fresh water will intensify. The continuing availability of water governs the ability of states to produce economic growth, poverty reduction, as well as conflict reduction and climate change adaptation. Consequently, the need for freshwater storage will become even more important.

Increasing storage and diversion of shared water rivers, according to the World Commission on Dams, has been a considerable basis of tension among states. The emergence of non navigational purposes of international rivers leads to an increasing competition around the rights and duties of each state to benefit from its natural resources. Since international rivers flow through several borders of states and its movement at any stage has consequences upon other states, the question of distribution and use of shared rivers is of utmost importance for riparian states.

Dams require cooperation between states for their construction because the methodology of the water diversion needs to be equitable. For example, the Euphrates basin has witnessed drastic reductions in water flow in recent years primarily due to excessive Turkish hydro power projects. There have been disputes between Turkey, Syria and Iraq concerning water distribution. When the downstream states (Syria and Iraq) objected to the Turkish hydropower, the Turkish government argued that it has sovereign rights over their natural resources.

At the same time, experience suggests that disputes over shared water can be resolved and cooperation can be achieved even where disagreements in other spheres of international relations remain unresolved.

An ideal example of water sharing is the Indus basin. Here, complete dependency upon finite fresh water supply, and challenges to that supply were coupled with political instability between India and Pakistan. Despite the reality of cooperation in the Indus basin appears even more unusual, India and Pakistan signed the Indus Water Treaty in 1960. This agreement was the most successful agreement in the nineteenth century.

In response to this phenomenon, I analyze the role of the UN watercourses convention in shaping the behavioral relations among states. The question arises: how international legal principles assist political change between the states riparian to an international river.

The UN Watercourses Convention creates a general framework for the management of international watercourses. The convention has adopted “regulated sovereignty” that enables each state to have a sovereign right to use water without causing harm to the other riparian states. The equitable use principle has led to a new understanding of the state sovereignty theory, given that the dominant old theories of sovereignty had proved unable to support and enhance cooperative management of water resources. The convention has adopted new rules and dismantled the old absolute sovereignty theories. However, what is considered an equitable share of the waters of an international river is a complex assessment.

The equitable use of states must be determined in each individual case and depends upon multiple criteria, none of which has inherent priority. These criteria range from the geography, economic, social, and demographic factors, to existing uses or availability of alternative resources. The amount of water constituting an equitable share often varies among states.

In my viewpoint, the new innovation of regulated sovereignty is still determined by how parties perceive it. It appears at first that the equitable norm leaves up to riparian states to weighting the criteria of water sharing that leads to conflictive interests among riparian states. There is no norm to follow in determining a priority of uses. Accordingly, the riparian states adopt the legal argument that is most favorable to each. For example, states with existing uses, specifically the

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downstream states, prefer the resolution to stem from the significant harm principle. In the same
vein, upstream neighbors however, argue in favor of the equitable use principle. The question
arises: how the legal domain affects political change amongst riparian states. My aim is to
explore factors that have derived to competition and cooperation on water distribution between
states. In doing so, I tackle the important bridge between international relations and international
law disciplines. I intended to focus on the constructivist approach to give plausible explanations
to the changes of a state’s behaviour regarding trans-boundary rivers.

The central question arises: does international politics really matter in international law? The
study of international relations is an effort to understand the means and conditions, which states
cooperate with one another. In the international relations field, there are multiple explanations
that could derive to competitive or cooperative manner. Interpretations varied from power shared
approaches to the power of shared understandings among communities. According to power
approach, the powerful state, “strength is defined as a state military power, control of
headwaters, and position in the international community, or a combination of these attributes,
will take the lead in establishing any sharing regime.”

I invoke the power shared approaches. The power approach cannot explain why India, by far the
larger and stronger of the Indus states, accepted the division of the Indus river flow. Had India
acted in accordance with its strength, it would have used its control of the headwaters to deny
water flow to Pakistan. One of the apparent gaps in the power shared approaches is that they
cannot give concrete explanations to the transformations in the cooperative or competitive nature
of trans-boundary Rivers. In this paper, I apply the constructivist approach to explain the
behavioral changes of states regarding international rivers.

Constructivist approach focuses on interactions, communications among state actors. Participation in an international legal regime can actually alter the identities and interests of states. I mean by identity how states perceive themselves and the others. I contend that legal norms are subjectively determined by each state, subject to their social, economic, and political conditions. The legal aspect cannot translate solely the cooperative or competitive nature of trans-boundary Rivers. Without sufficiently interactions between participants in the legal system;

6 Hogan, supra note 5.
7 Stefano Guzzini & Anna Leander, Constructivism and International Relations: Alexander Wendt and His Critics, (Routledge 2005).
legal rules will remain, or become deadlock. I believe that the legal aspect is not fully autonomous. Various factors interact to determine the cooperative and competitive behavior between states. There are multiple variables that interact to influence the legal regime. I emphasize that law is one vital factor as legal principles are the products of state actions. Law entitles independent normative force that should not be ignored. Others include political relations, economic, geographic, and social. Law has the ability to combine all these factors in order to regulate behavior between riparian states.

In addition, the analysis of historical representations helps us to understand how social, economic, political aspects are produced. History has a central role in determining state identities. In the process of state identities construction; the national interests of states are the driving force in order to reach a common ground of cooperative incentives among riparian states. For instance, an offer of financial incentives is occasionally able to circumvent impasses in negotiations. This variable, among others, helped in resolving the Indus dispute.

This paper is divided into three parts. The first chapter introduces the conceptual framework of the international water law. It discusses the general principles and doctrines of international law of water resources; it describes the international state practice, the roles of the principles of state sovereignty over natural resources in the utilization of international water resources. The chapter observes that international water resources law does not and cannot offer an authoritative definition of rights and obligations or specific prescriptions for the equitable utilization of the waters of an international basin.

The second chapter presents a constructivist approach to explaining Water sharing relationships. Constructivist approach is best suited to the analysis of how identities and interests can change over time. Identities of states are constructed by these shared ideas rather than given by nature. Constructivist approach assumes that interactions and communications among state with shared understandings led to the emergence of legal norms. Legal norms are subjectively determined by each state, subject to their social, economic and political conditions. Constructivist approach assists to determine how legal principles could lead to competition and cooperation.

Chapter three examines the degree of cooperation and competition among the basin states in recognizing the waters through the Indus and Euphrates rivers, using the framework outlined in chapter two. The development of knowledge about trans-boundary rivers is related to examine how parties perceive it.
The chapter traces the initial approach of the riparian states in using the river and the evolution and outcome of these efforts. The chapter addresses the interaction between geographic, social economic, political, and legal variables, which lead to a different degree of cooperation and the adherence to law throughout the case studies. These variables have assisted to reshape both the identities and interests of state actors moving them toward a different degree of cooperative behavior.
II. The Conceptual framework of the international water law:

In this chapter, I present a portrait of the normative framework of international water law that demonstrates its definition, features, and nature. My aim here is to tease out the legal principles of international watercourses as a means of settling international water disputes. By design, I emphasize the features of the UN watercourses convention in order to determine the impact of legal principles in state relations.

A. What is meant by International Water Law?

International water law forms the basis of formal conventions, state practices, and decisions of international tribunals of state relations. The practices of states which have emerged from a sense of legal commitment confer duties upon riparian states. As a consequence, international tribunals might have been taken as evidence that states consider a particular rule to be a legal commitment. The body of rules developed by international water law offers a range of means and mechanisms to states for dispute avoidance and dispute settlement.

Central to the principles that have evolved in the area of international water law are those principles embedded in the UN watercourses convention for non-navigational uses. This convention adopted in 1997 provides a general scheme of water management among riparian states regarding apart from navigational aspects. The scope of international water law, which I emphasize in this paper, is the UN watercourses convention as the principal and only universal treaty in this area of international relations.

Despite the UN convention of watercourses is considered a remarkable development; the difficulties encountered in negotiating this convention are reflected in its vague operative principles. Before I turn to the problematic issue of the UN watercourses convention, I present the development of international law theories in order to determine the potential link between substantive principles and state sovereignty.

B. The Evolution of international law theories:

Although water issues have been very common in the past; developments in international law to address such disputes have been very modest, often requiring states to resolve such concerns on their own. There are substantive principles that have acquired a normative status in state practice. Over the years, dispute around international rivers have emerged from differing interpretations of the question of sovereignty. States, traditionally, have enjoyed an absolute right to use water resources within their territories. Generally speaking, upstream states claim an exclusive right
over their water resources without regard to downstream riparian. Downstream states, contrarily, claim an absolute territorial integrity, which grants an exclusive right to the natural flow of the river from the territory of upstream riparians. According to this approach, upstream states cannot develop any projects that affect the quantity or quality of water that flows down the watercourse. Historically, upstream and downstream riparian states have promoted extreme and self-interested theories to enhance their sovereign rights over natural resources.

History has shown that absolute theories have been used as strong bargaining positions. Friedrich Berber asserted that such claims “are based upon an individualistic and anarchical conception of international law in which personal and egotistical interests are raised to the level of guiding principles and no solution is offered for the conflicting interests of the upper and lower riparian.”

Recently, the more compromised concept of limited territorial sovereignty is widely accepted. The concept has balanced between sovereign rights of states and the management of international water resources. The principle centered on the theme that all states have the right of utilizing watercourses without causing harm to other neighboring states. Fundamentally, there is a community of interest encourages riparian states to take joint actions to use their natural resources.

1. Absolute sovereignty principles:

According to the reasoning behind this principle, a state may adopt all measures suitable to its national interest regarding international rivers regardless of their effects beyond its boundaries. The Harmon Doctrine is considered the oldest principle concerning water disputes. It is also known as the theory of absolute territorial sovereignty. The Harmon Doctrine was named after the previous United States Attorney General Hudson Harmon. In 1890, a dispute arose between the Mexican government and the United States about diverting water from the Rio Grande to the

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detriment of the Mexicans downstream.\textsuperscript{12} This case caused debate about the international legal obligations resulting from the no harm rule.\textsuperscript{13} The doctrine affirmed that a state has an absolute right to utilize its natural resources within its respective territories and cannot be exposed to international legal liability for any damage caused to the other state riparian.\textsuperscript{14} This is a classical approach defended by upstream states in order to serve their national interest at the discretion of other state riparian.

Despite this doctrine not having much acceptance in the international community, this doctrine was followed by some states. The approach was exercised to support the American utilization of the Rio Grande River that separates the United States of America from Mexico. India, in 1948, temporarily interrupted the flow of the river from India to Pakistan based upon absolute sovereignty doctrine. According to Caponera, this theory failed to accept the dual character of a state that territorial sovereignty is a source of responsibilities as well as rights.\textsuperscript{15} This principle, however, has proven to be highly impracticable and has not received an acceptance among international community since it ignores the rights of other riparian states that share the same resource.

In some formulations, the theory of absolute territorial integrity holds that nations are entitled to expect fixed flows of water within their territories from upstream states.\textsuperscript{16} More specifically, upstream states are not able to utilize the river if it will cause injury to downstream states. The limited territorial integrity is the counter argument to the absolute sovereignty of upstream states. The approach places an obligation on the upper riparian states; however, it does not entitle any mutual obligation upon downstream states. The doctrine was invoked by Egypt, Pakistan, and Bangladesh in the 1950, which are the downstream states.\textsuperscript{17} The doctrine gives a veto right of downstream states to prohibit upstream states from any excessive use without the consent of the

\textsuperscript{12} McCaffrey, supra note 10, at 257
\textsuperscript{15} DANTE CAPONERA, NATIONAL AND INTERNATIONAL WATER LAW AND ADMINISTRATION: SELECTED WRITINGS, (Patricia Wouters, ed., 2013).
\textsuperscript{17} GEBRE DEGEFU, \textit{THE NILE: HISTORICAL, LEGAL AND DEVELOPMENTAL PERSPECTIVES} (Trafford Publishing 2003).
downstream states.\textsuperscript{18} The existence of such a veto right was claimed by Spain in the Lac Lanoux arbitration. France could not proceed with the planned diversion of the river without Spain’s prior consent. However, as was observed by the tribunal, giving a veto right to would mean revoking sovereign right of one state at the discretion of another. The tribunal did not consider Spain’s argument because the diversion did not result in harm as France undertook to replace all the displaced water. The tribunal concluded that “if it is admitted that there is a principle which prohibits the upstream State from altering the waters of a river in such a fashion as seriously to prejudice the downstream State, such a principle would have no application to the present case because …… the French scheme will not alter the water in question.”\textsuperscript{19}

These traditional doctrines equally deny that sovereignty presupposes duties as well as rights. State sovereignty cannot be exercised in isolation because activities of one state may have a significant impact on sovereign rights of co-riparian states. So, the principle of territorial sovereignty finds its limitations where acts of one state touch upon the territorial integrity of another state. In the words of Oppenheim "A state, in spite of its territorial supremacy, is not allowed to alter the natural conditions of its own territory to the disadvantage of the natural conditions of a neighboring State ,for instance, to stop or to divert the flow of a river".\textsuperscript{20} Consequently, actions of states arising from the principle of sovereignty are determined by such principles such as state responsibility for actions causing transboundary injury. In the Island of Palmas Case awarded in 1928, it was a case involving a territorial dispute over the Island of Palmas between the Netherlands and the United States which was heard by the Permanent Court of Arbitration. The arbitrator Huber, who was then president of the Permanent Court of International Justice, stated that “territorial sovereignty involves the exclusive right to display the activities of a state. This right has a corollary a duty: the obligation to protect within the territory the rights of other states”.\textsuperscript{21} The most controversial question is the scope of the restrictions imposed by international law upon a state's sovereignty in the use of trans-boundary rivers.

\begin{thebibliography}{9}
\bibitem{18} \textsc{Trilochan Uperti, International Watercourses Law and Its Application in South Asia}, (Pairavi Prakashan2006).
\bibitem{19} Lac Lanoux (Spain v. France), 12 R.I.A.A.281 (Nov.16, 1957).
\bibitem{22} Island of Palmas (Netherlands vs.USA), P.C.A., U.N vol. II, (1928) at 829-871.
\end{thebibliography}
Sovereignty rights are acknowledged on the basis that every nation has the right to utilize the waters within its territory to the extent that a state takes into consideration the rights of other state riparian.\(^{22}\)

2. Moderated Sovereignty:

The equitable use considers a remarkable innovation that enables states to have sovereign rights over their water resources without causing harm to other neighboring states.\(^{23}\) The equitable use postulates that an international basin is a coherent legal unit. In the Case regarding Oder River, the Permanent Court of International Justice concluded that the community of interests becomes the origin of legal right among States.

There was a dispute between Poland and several other States of Europe concerning the question of whether the jurisdiction of the International Commission of the river Oder extended to the tributaries of the Oder River located in Polish territory. So, The Court based its judgment upon a community of interest theory of riparian States by asserting “*When consideration is given to the manner in which States have regarded the concrete situations arising out of the fact that a single waterway traverses or separates the territory of more than one state ... it is at once seen that a solution... has been sought not in the idea of a right passage ...but in that of a community of interest in a navigable river becomes the basis of a common legal right, the essential features of which are perfect equality of all riparian States in the use of the whole course of the river and the exclusion of any preferential privileges of any riparian State in relation to others.*”\(^{24}\)

However, the application of equitable distribution seems to be vague. The absence of mechanisms for equitable use principle gives potential incentives to state riparian to impose their own interest in the absence of specific requirements. Basically, the classical doctrines of sovereignty are the source of the complex issues associated with modern resource allocation principles. More specifically, the correlation between state sovereignty and the rule of international water principles, mainly the responsibility of not causing harm to other riparian


states. On the other hand, many states are involved in several watercourse treaties that do not provide coherent responsibilities. Therefore, they make a positive application more difficult. Primarily, the concept of International River is a cornerstone for any water agreement. The concept has various implications in respect to international water conventions. Accordingly to start this discussion of the legal principles of watercourses, I clarify the development of conceptual framework of international rivers.

C. **The concept of International Rivers:**

International Rivers are the waterways that separate two or more states serving as a boundary or they cross successively two or more states.\(^25\) For international rivers flowing through more than two states, a state may be in the position of upper stream and lower stream. Different terms are used, such as multinational rivers, and trans-boundary Rivers. The differences of concepts do not mean different factual situations but differences of opinion as to the legal principles applicable to these rivers.\(^26\) Traditionally, trans-boundary rivers have been considered in light of the theory of territorial sovereignty. The segment of the international river flowing within the borders of a state was regarded as part of the state's territory.\(^27\)

In an attempt to give legal recognition to physical realities to the management of trans-boundary Rivers, codifiers of international law have struggled to adopt a workable definition of International Rivers based upon hydrological concept. The development of a workable definition has changed over time because State practice is guided by considerations of territorial sovereignty. Originally, Helsinki rules introduced the principle that international basins must be regulated as a whole physical unit to assure the maximum usage of trans-boundary Rivers.\(^28\) This principle explicitly includes all tributaries, including tributary groundwater, within the concept of drainage basin.\(^29\) The basin concept extends beyond the primary definition of international watercourse itself. There is a community


of interests in waters, created by the physical nature of trans-boundary Rivers. This unitary system of international rivers enables riparian states to manage trans-boundary rivers in the most beneficial way to achieve equitable and reasonable utilization.\textsuperscript{30}

Later on, the International Law Commission has rejected the drainage basin notion and replaced it with the concept watercourse. According to Article 2 of the UN Water Convention, the concept watercourse means "\textit{a system of surface and underground waters constituting, by virtue of their physical relationship, a unitary whole and flowing into a common terminus.}"\textsuperscript{31} By restricting this definition from its formerly broad definition to focus on international rivers and groundwater which is tributary to those rivers, the International Law Commission appears to be accommodating with the reality of State practice over a more holistic resource management approach.\textsuperscript{32} The scope of the concepts drainage basin system and international watercourses shall be addressed here below.

1. International Drainage Basin:

The Congress of Vienna in 1815 stated that the international river system must be conceived as indivisible unit. This approach was reconfirmed by US President Theodore Roosevelt in 1908. It was stated that each river system from its origination in the forest to its mouth on the coast must be treated as a singular unit. Later, this idea was reiterated in a more modern version by Smith asserting the unified unit of the international basin state without any consideration to the political boundaries. According to Smith in his classic book \textit{"The Economic Uses of International Rivers"} the international river system, according to its physical nature, is seen as an inseparable unit of natural resource regardless of the political frontier that needs more development to increase the benefit of human communities.\textsuperscript{33}

The main course of an international river is not only the principal concern due to the fact they are always a component element of the same hydrologic cycle. Any modification in one part of a basin, quantitatively or qualitatively, taken by a state, will affect the right of other states sharing the same river. This approach constituted the foundation of the legal principles applicable to the evolution of international water law.

\textsuperscript{30} Libai, \textit{supra} note 25.
\textsuperscript{31} Art.2 of the U.N Watercourses Convention, A/51/869, 11 (11 Apr. 1997).
\textsuperscript{32} Lazerwitz, \textit{supra} note 28.
\textsuperscript{33} \textsc{Herbert Smith, The Economic Uses of International Rivers} (P. S. King & son, Limited, 1931).
The term international drainage basin was introduced by the New York Conference of the International Law Association in September 1958. The conference selected the concept drainage basin to define “an area within the territories of two or more states in which all the streams of flowing surface water, both natural and artificial, drain a common watershed terminating in a common outlet or common outlets either to the sea or to a lake or to some inland place from which there is no apparent outlet to a sea.” The International Law Association expanded the definition previously adopted to include underground waters in 1966. The term chosen by the Helsinki conference was international drainage basin, Article 2 of the Helsinki rules stated that “An international drainage basin is a geographical area extending over two or more states determined by the watershed limits of the system of waters including surface and underground waters flowing into a common terminus”.

Helsinki rules initially dealt with the question of whether equitable utilization applied to groundwater via a more cautious approach. The Helsinki rules concluded groundwater that forms part of an international basin, includes anybody of groundwater that is intersected by an international boundary. This applies even though the groundwater is not intersected to an internationally shared surface water source.

From a scientific point of view, “the river basin, bounded by its drainage divide and subject to surface and sub-surface drainage under gravity to the ocean or to interior lakes, forms the logical areal unit for hydrological studies”. In defining drainage basin may have been unfortunate since, it implies that not only water but also land areas might fall within the scope of the rules. This has caused some states to reject the entire concept of the drainage basin as the proper basis for a set of rules on international watercourses.

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34INTERNATIONAL LAW ASSOCIATION BERLIN CONFERENCE, BERLIN CONFERENCE WATER RESOURCES LAW 4th report, 3-4 (2004).
39 Id. at 144
2. International Watercourses:

During drafting of the UN watercourses Convention, the International Law Commission gathered state opinion on whether the notion of an international drainage basin should be the appropriate basis for their study.40 Some states objected to the concept, arguing that it could result in regulation not only of the use of the water but also of the land territory.41 Ultimately, the international watercourse notion was selected by the International Law Commission and supported by states. The term watercourse as expressed in article 2 in The UN watercourses convention defines the type of waters to which the convention applies. Article 2(1) states “Watercourse means a system of surface waters and ground waters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus.”42 According to Article 2, the Convention applies to watercourse systems that cross international boundaries, including major watercourses, their tributaries, and connected lakes and aquifers, even when these components are entirely located within a single state.43 “To the extent that parts of the waters in one State are not affected by or do not affect uses of waters in another State, they shall not be treated as being included in the international watercourse system”.44 Thus, “to the extent that the uses of the waters of the system have an effect on one another, to that extent the system is international, but only to that extent; accordingly, there is not an absolute, but a relative, international character of the watercourse.”45

The concept of an international watercourse system comes very close to that of an international drainage basin concept. The most obvious difference is what is described as the "relative international character" of an international watercourse.46 From a hydrographic approach, a watercourse is international if elements of the system are situated in more than one State.

40 Schwebel, supra note 35
41 Mccaffrey, supra note 38.
42 Article 2(a) of the U.N Watercourses Convention, (1997).
43 Article 2(b) of the U.N Watercourses Convention 11 (1997).
44 Mccaffrey, supra note 38.


D. The Scheme of International Water Law:
The basis of International Water law was formed by the Helsinki Rules of 1966, which were formulated by the International Law Association. It was the first attempt to codify the customs of international boundary rivers. They became widely regarded as the principal norms for the use of international rivers.47 Following the path of the International Law Association, the International Law Commission adopted the Draft Articles on the Law of Non Navigational Uses of Shared Rivers.48 The Convention was adopted by the UNGA.

1. Helsinki rules:
There are substantive rules that have evolved from state practices regarding the use of international watercourses among states. The International Law Association, an international nongovernmental organization founded in 1873 with the objective to develop and restate international law, formulated the equitable utilization principle to express the principle of limited sovereignty as applied to a shared watercourse49. Article 4 of chapter two in Helsinki rules states that “Each Basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin”.50 According to article 5(2), what is a reasonable share is to be determined in the light of several criteria, such as the geography and the hydrology of the basin; the climate affecting the basin; the economic and social needs of each basin State; the population dependent on the waters of the basin; comparative costs of alternative means of satisfying the economic and social needs of each basin State, the availability of other resources and the entitlement uses.51 The no harm rule appears in article 5(2), where it is one among a series of criteria that may be used to determine whether utilization is equitable and reasonable.52

52 Article5(2)k of Helsinki rules states that “The degree to which the needs of a basin State may be satisfied, without causing substantial injury to a co-basin State”
According to the no harm factor, States shall not cause substantial harm to the quantity or quality of the shared watercourse beyond the limits of the state’s jurisdiction.  

2. United Nations (UN) Convention on the Non-Navigational Uses of International Watercourses:

The Helsinki rules were further developed in the 1997 United Nations Convention on the Non-navigational Uses of Watercourses. The International Law Association revised its water laws at the Berlin Conference in 2004. Current international water laws consist of terms advocating equitable and reasonable water utilization, obligation not to cause harm to other riparian states and environmental sustainability. It took several years for the United Nations Convention on the Non-navigational Uses of Watercourses to enter into force on 17 August 2014. The convention has been ratified by thirty five nations.

Central principles to the UN watercourses convention are the equitable use and the no harm rule. The principle of equitable use is the main doctrine guiding water sharing in international water law. As stated in Art.5 (1) of the UN Convention, the principle determines that “watercourse shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse states with a view to attaining optimal and sustainable utilization thereof and benefits there from, taking into account the interests of the watercourse states concerned, consistent with adequate protection of the watercourse”. In this context, equitable share does not mean equal division of the waters. Rather, it means that all relevant factors such as population, geography, pre-existing uses, or the availability of alternative resources have to be considered in each individual case when allocating water rights.

54 Salman, *supra* note 47.
55 The U.N Convention of Non-Navigational Uses of International Watercourses Convention, A/51/869, 11 (1997). Under international law: 17 August 2014, in accordance with article 36(1). The present convention shall enter into force on the ninetieth day following the date of deposit of thirty-fifth instrument of ratification, acceptance, approval, or accession with the Secretary General of the United Nations.
Since the principle of equitable use is flexible, the concept demands balancing the competing interests of riparian states; taking into account all relevant factors and circumstances. Most uses are not static since different scenarios with different situations can trigger a need to reassess relevant factor in each case.

The second principal pillar of the UN water convention is the obligation not to cause significant harm to other neighboring states. Article 7(1) of the UN Watercourses Convention requires that states “in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States”. The principle that States have an obligation to cooperate in the interests of avoiding harm to another State was clearly articulated in the Lake Lanoux Arbitration “States are today perfectly conscious of the importance of the conflicting interests brought into play by the industrial use of international rivers, and of the necessity...to reconcile them by mutual concessions. The only way to arrive at such compromises of interests is to conclude agreements on an increasingly comprehensive basis. . . . There would thus appear to be an obligation to accept in good faith all communications and contracts which could, by a broad comparison of interests and by reciprocal good will, provide States with the best conditions for concluding agreements ...”

In Trail smelter case, the tribunal endorsed the approach of the United States supreme court by saying “Under the principles of international law, as well as the law of the united States, no state has the right to use or permit the use of Its territory in such a manner as to cause injury by fumes to the territory of another or when the case is of serious consequence and the injury is established by clear and convincing evidence”. The affected state must prove actual damage and its causation. Article 7(2) declares an obligation for the state causing harm to consult with the injured state, but qualifies even that limited obligation by requiring consultation only over whether the harmful use is significant. Also, whether the harm might be reduced or prevented by alterations to the way water is used.

60 Lac Lanoux (Spain v. France), 12 R.I.A.A.281 (Nov.16, 1957).
61 Trail smelter case (United States, Canada), UN Reports of international arbitral II RIAA, vol III, 1905-1982. (1941).
For harm to be qualified as significant it must not be trivial in nature but it need not rise to the level of being substantial; this is to be determined on a case by case basis.\footnote{UN Watercourses Convention available at http://www.unwatercoursesconvention.org/faqs/}

The scope of harm is determined by “significant” to exclude any trivial injury that States are expected to tolerate.\footnote{UN Watercourses Convention available at http://www.unwatercoursesconvention.org/documents/UNWC-Fact-Sheet-5-No-Significant-Harm-Rule.pdf}

The qualifications of the environmental and economic impacts are essential because it determines whether the results of a specific use are significant and therefore prohibited.\footnote{Axel Klaphake, The 1997 International Watercourses Convention – Background and Negotiations, (Working Paper On Management in Environmental Planning 04/2002). Available at https://www.landschaftsoekonomie.tuberlin.de/fileadmin/a0731/uploads/publikationen/workingpapers/wp00402.pdf}

The implementation of the no harm rule is a complex assessment because it is difficult to gather accurate data about environmental and economic impacts.

The process of evidence gathering is a very expensive work. The process requires the contribution of reputable experts in diverse spheres such as hydrological, economic, and technical domains. These procedures are highly subjective that aggravates water disputes rather than rebuild state cooperation. The reference to the question of compensation at the end of the article becomes highly vague, arguably limiting the obligation to pay compensation to situations where the harmful use is neither equitable nor reasonable.\footnote{Joseph W. Dellapenna, The Two Rivers and the Lands Between: Mesopotamia and the International Law of Transboundary Waters, 10 BYU J. Pub. L. 213 (1996) Available at: http://digitalcommons.law.byu.edu/jpl/vol10/iss2/4}

The general language leads to multiple interpretations. For instance, Ethiopia called for equitable use as it needs to develop socio economic aspect and their sovereign rights over water. While Egypt argues for the no harm rule by asserting its acquired rights based on the previous agreements. Several interpretation leads to a justification by both states. There is not an enforcement mechanism. The International court of Justice hears cases only with the consent of parties. Consequently, riparian states become splashed into several interpretations all move in the direction of an endless argument. It is inaccurate to argue that international law is effectively supported by solutions on controversies of all sorts.
The no harm rule is often called by downstream states to protect their existing uses. In contrast, the equitable use doctrine is generally favored by upstream states because it most effectively protects their right of development. When negative externalities occurred, injury to the downstream states considers only one factor for the determination of equitable utilization. “The principle of equitable utilization and the no harm rule are intended to be complementary on the basis that the no harm rule requires avoidance of harm in a way that is reasonable.”\textsuperscript{67} However, the vagueness of the adjectives describing the terms for implementation equitable use is a problematic issue when it comes to prioritizing the equitable utilization principle over the no harm rule.

The relationship between the principle of equitable use and the no harm rule within the text of the Convention is dictated by Article 7(2) which stipulates that any State causing harm to another must, “take all appropriate measures, having due regard to the provisions of Article 5 and Article 6 to eliminate or mitigate such harm.”\textsuperscript{68} Based on these provisions of the UN Watercourses Convention, a State must always give due regard to the principle of equitable and reasonable utilization whenever significant injury occurs.\textsuperscript{69} However, there is not a mutual obligation of due regard to the principle of no significant harm when states are determining if a use or uses are equitable and reasonable.\textsuperscript{70} This essential distinction is what has led many legal scholars to conclude that the duty not to cause significant harm is thus a secondary obligation to the primary principle of equitable and reasonable utilization.\textsuperscript{71}

\textsuperscript{67} UN Watercourses Convention
http://www.unwatercoursesconvention.org/faqs/
\textsuperscript{68} UN Watercourses Convention
http://www.unwatercoursesconvention.org/the-convention/part-ii-general-principles/
\textsuperscript{69} UN Watercourses Convention
\textsuperscript{70} UN Watercourses Convention
http://www.unwatercoursesconvention.org/the-convention/part-ii-general-principles/
\textsuperscript{71} UN Watercourses Convention
The framework of the UN watercourses convention revolves around the concept of mutual limitation of sovereign rights. The unresolved correlation between the two core principles of equitable use and no significant harm has allowed states to maintain irreconcilable positions. According to the rule of equitable utilization, States riparian are entitled to use trans-boundary Rivers in an equitable manner. What is equitable must be determined in each case and depends upon various criteria. These criteria vary from the economic, social, to geographic and existing uses or availability of alternative resources. The UN watercourses convention principles effectively 'neutralize the correlation between these two main principles without resolving the priority issue. The watercourses convention deprives each side of convincing legal arguments for the priority of their claims. Riparian states are forced to re-examine their stances and to communicate in order to find fair solutions to their disagreements. Through the open-ended equitable utilization principle, the convention provides little in the way of substantive guidance for the necessary balancing processes.

E. Time for a review of the UN watercourses convention:

In practical terms, the uncertainties embodied in the articles 5 and 7 of the United Nations 1997 Convention leaves loopholes for the political domain and bargaining between the parties the decisive role to determine the results of any dispute that may arise. The paradox of legal principles in the UN water convention institutionalizes the dispute among the upstream and downstream riparian states.

The equitable use principle implies a balancing of interests between riparian states. This entails an examination of all relevant conditions pertaining to a particular situation. Riparian states should agree on certain factors on which the can build their assessment and consult with other states. Such criteria include economic, social, geographical, and existing uses. It should be noted that these criteria are not fixed, but subject to change and alteration. As consequence, a determination of equitable use must be frequently reassessed and reviewed, sine changing conditions require modifications.

The no harm principle is linked to multiple mitigating criteria to be considered. Firstly, the UN convention requires the injury should be sufficiently significant. The determinant of what is significant may be different in each situation. Secondly, the required standard of action is one of due diligence that means it does not entail responsibility for the mere occurrence of a result. States shall take into account all measures not to cause significant harm that mostly to be
fulfilled in a domestic level, and generally involves the adoption of administrative levels as well as their enforcement. The upstream states may be deprived of its right to develop such activity by the no harm rule. The obligation to prevent harm does not permit downstream states to completely restrict the economic development of upstream states. There are two interests to reconcile; each of them involves an intervention in the exercise of absolute sovereignty of states. First, the developmental goal of a state which entails embarking on huge projects of national significance and impacts, the second and equally important interest is the prevention of any damage caused to other states. The UN watercourses convention is concerned with enabling states to demonstrate an end result of equitable use of international rivers. As a result the convention does not present directly the cause of conduct which may prevent the reasonable use from being realized. The UN convention pays attention to the outcomes of equitable water sharing. Consequently, the substantive principles are insufficiently developed to represent issues arising from the use of invisible ideological power by one state to attain control over water resources shared with other states. By presenting these issues, the framework of the UN convention should determine what defines the invisible use of power leading to inequitable water sharing.

72 Dellapenna, supra note 66.
III. The Scope of the Constructivist approach:

The ability of competition over water resources to trigger major inter-state disputes has been a pivotal topic in international relations. The strategic importance of water resources has unleashed a field of hydro politics. Water tensions between states play a principal role in national politics. In regions where there is a problem of water scarcity, competition over shared water resources could lead to war. At the same time, it is also undeniable that there are many instances of cooperation among states sharing water resources despite the existence of deep-rooted political tensions. Among the significant examples is the Indus Waters Treaty signed between India and Pakistan. In this chapter, I employ a constructivist approach to the study of water disputes. I emphasize that water disputes are embedded in wider historical and political contexts. I develop the intuition that the way competition between states over water resources evolves is not only determined by material forces, but also by interactions among the relevant actors.

A. Competition and cooperation along shared rivers:

Competition over water resources could increasingly become a source of tension among states. The stakes in disputes over the distribution of trans-boundary water resources are high. At the same time, history has often shown that the need for freshwater can drive states toward cooperation. The emerging questions of competition and cooperation on trans-boundary Rivers require seeking the dynamics of behavioral change. As a consequence, the correlation between international relations and international law become important to understand how changes from competition to cooperation could be occurred among riparian states. International relations theories provided underlying theoretical framework.

In the theoretical debate concerning the competitive and cooperative nature of international rivers, two principal approaches can be identified: the realist and liberalist approaches. According to realism approach, states always act in accordance with their national interest. Realists believe that nations are driven by self-interest and struggle for power to improve its

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military security and economic welfare in competition with other countries. Accordingly, realism approach builds its assumption on the reality that water scarcity leads to a conflictive nature. Regarding trans-boundary water issues, states cannot practice unilateral decisions and absolute sovereignty on international rivers. Therefore, there is a high possibility of competition between states. Water war notion is based on the assumption that water scarcity creates a zero sum game that inspires self-interest. A gain for one country is definitely a loss for others and thus engages in a constant struggle for survival through the fight for water.

From realist perspective, it appears logic to expect that two enemies would not wish to cooperate upon shared water, each preferring to maintain full control over water resources. In a zero-sum game there is no point in communication or cooperation between the actors because their interests are totally opposed.

I agree with Wendt that in the logic of realism, all states become the same machines that merely follow the rule, and there is no way to assume or explain the structural change happening in the real world. For realists, interests of states are given; states know who they are and what they want before they begin to interact with other states. Hence, in realism, the given anarchic international structure in reality, which refers to the absence of the central government conducting states in order, forces states to pursue self-help and egoistic behavior permanently. Realism put material forces including power and interest as the independent variable for a structural change.

Liberalism, on the other hand, attempts to find ways of collective interests among states in order to achieve cooperation including working through international institutions. It focuses on how institutions affect the behavior of states by spreading values. Institutions in this sense mean set of rules which govern state behavior in particular policy areas. Consequently, Institutions encourage cooperative behavior, and monitoring the adhering to rules. Therefore, it seems that while realism starts from the inevitability of competition and dispute, liberalism starts from the

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78 Rourke, supra note 74 at 23-25
inevitability of cooperation. The central concepts of these theories are usually fixed and stable. Neither realism nor liberalism approaches can apparently explain the changes in the competitive and cooperative nature of trans-boundary water issues. I share the constructivist approach by looking at the value of critical approaches as a systemic level offering to understand international relations. I treat constructivist approach as broadly understood critical theories.

**B. The Framework of constructivist approach:**

Central to the constructivist approach is the question of how we come to understand what we know. Constructivist postulates that knowledge is constructed by states simultaneously, and denies the existence of a fixed reality. For example, a state who conceives a thing is situated in certain types of political, historical, economic, and social contexts. Therefore, constructivist approach believes that international relations are never objective; international relations are created in line with multiple interests. Constructivist rejects the materialist approach and the rational choice in international relations. Materialist refers to theory that states respond to material needs, and power. Whereas rationalism is the theory that states pursue individual advantage by evaluating costs and benefits. In contrast, constructivist emphasizes the social construction of what states are and what they want. Therefore, the international system is also in process, which can change by change of states. States think and behave in politics domain is determined by their own perception of the world around them, and the identities they hold about themselves and others. States rely on their experiences in those contexts when they are cognized with something. In this sense, knowledge is a thing continuously being constructed by state’s own cognition that is created through those contexts. In this way, knowledge is not fixed that becomes a historical tool which is useful for states to understand the world in their own understanding.

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81 *Id.*

82 *Rourke, supra* note 74 at 30-34


84 *Id.*
Constructivist encompasses a multiple range of approaches and assumptions; I formulated my key premise on Alexander Wendt and his *Social Theory of International Politics*. However, I avoid one of the apparent shortcomings of Wendt approach, which takes states as given. Wendt excludes the constructed nature of states that contradicts the principal goal of constructivist. My focus research deals with state relations as the main actors of trans-boundary rivers, and excludes the constructed nature of states as well.

Wendt offers one of the most comprehensive looks at constructivist. Wendt believes the behavior of state on international platform depends upon an endless process of interactions and communications between states. In this process of interaction, the interests of states are created. According to Wendt, actions of states in the international sphere are the only main concern. The examination of the international system cannot comprehend every pattern in domestic society, accordingly, the domestic and the international spheres should be separated methodologically. Wendt excludes domestic processes to focus on the effect of interaction between states. In the case of trans-boundary Rivers, domestic and international identities have an impact on the changes of identities and interests. However, states do not form a conception of themselves only through interaction. Domestic conditions of a state can change the state’s identity and interests independently of such interaction. Therefore, I implement a holistic view that integrates the domestic identity of states with the international sphere.

Wendt emphasizes the social construction of structures, the politics and interest forming role of identity, and the mutually constructed nature of agents and structures. By “agents” I mean practices of states that produce state identities, and by “structures” I mean the collective understanding and institutional norms that makeup the context of state action. Structures are not immutable but can be recast through changes of behavioral states. Consequently, the two pillars of agents and structures should be treated “simultaneously”.

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86 Id. at 397.
87 Id. at 411.
Wendt points out that there can be two types of questions on which it focuses in order to explain a social phenomenon.\textsuperscript{88} The first question is how an action is possible. The second question is why a specific action happened. For example, to explain why a state went to cooperation rather than conflict, one must know how a state’s choice was possible in the first place. State practices and their associated legal norms cannot be treated as given. Structural explanation reveals the rules of existence by looking at historical tendency. In essence, history teases out factors that lead to the dynamic nature of behavioral states.

Wendt holds that the structures of interaction are determined by shared ideas rather than material forces.\textsuperscript{89} He states that the importance of material conditions depends on interests, and interests are constructed on the basis of idea. Specifically, as soon as actors start interacting with each other, beliefs immediately become collective ideas.\textsuperscript{90} These beliefs help actors define the situation and constitute their interests.

Materials cannot have value independent from shared ideas. In the case of trans-boundary Rivers, for example, “downstream states of the Nile basin are less utilizing to the river than upstream states because of the shared understandings that underpin them.” Here, the identity formed by a historical process is the deep underlying factors of the competitive nature derived from materials, not materials themselves. Constructivist approach suggests that material forces, such as power, must be understood through the social concepts that define their meaning for human life.\textsuperscript{91}

State practices might sometimes be relatively stable, but they are never constant. As practices change over time, shared understandings that looked static may change as well.\textsuperscript{92} For example, sovereignty is a central organizing force in international relations that rests on the shared ideas of people and the practices people engage in. Sovereignty is a social institution in the sense that a state can be sovereign only when it is seen by people and other states as a corporate actor with

\textsuperscript{88} Bon Koo, A Critique of Wendt’s Social Theory of International Politics (Sep. 2006) (THESIS Submitted to KDI School of Public Policy and Management) available at http://211.253.40.86/mille/service/SAT/10000/IMG/00000005207/Koo-Thesis-for-submission.pdf


\textsuperscript{91} Wendt, supra note 85

\textsuperscript{92} Id.
rights and obligations over territory and citizens. The practice of sovereignty on trans-boundary Rivers has transformed from absolute sovereignty to regulated sovereignty over time. Identities and interests of states are constructed by shared ideas among states.\textsuperscript{93} The question arose in this context, what is meant by the social construction of identity, or that identities are constructed by shared ideas? Collective understandings are more than just the beliefs of individuals; it determines practices of states. According to constructivist, these relations generate from a distribution of ideas as states often speak of their interests.

C. The formation of identities and interests in constructivist approach:

Identities in constructivist analysis play a very significant role because they provide the basis for state interests. Identities are prescriptive representations of state actors themselves and of their relationships to each other. In general, State identity is “how a state identifies itself and others”.\textsuperscript{94} In the background, the identities perform two vital functions. Firstly it expresses to the self and others who the self is. Secondly it expresses to the self who others are.

The first function, having a certain identity, determines the set of actions that a state would prefer to take in various circumstances and when different actors are involved. That is why a state's identity generates its interests and subsequent behavior towards fellow members and situations related to the international system. The second function implies that a state perceives others according to the identities it attributes to them, while simultaneously reproducing its own identity through social interaction and practice. States “do not have a “written set” of interests that they carry around independent of social context; instead, they define their interests in accordance to an existing situation.”\textsuperscript{95} Constructivists argue that state identities generate national interests that enable and constrain state strategies. Thus, constructivist suggests that beliefs, norms, and practices are manifested by state identity.\textsuperscript{96} As Wendt argues “interests presuppose identities because an actor cannot know what it wants until it knows who it is, and since identities have varying degrees of cultural content so will interests”.\textsuperscript{97} Consequently, how do they acquire those identities? How would they define ‘self’ and ‘other’? In order to explain identity construction, Wendt differentiates

\textsuperscript{93} Wendt, supra note 85
\textsuperscript{94} Id.
\textsuperscript{95} Id.
\textsuperscript{96} Id.
\textsuperscript{97} Id.
between distinctive concepts of state identity, which are corporate identity and social identity.\(^9^8\) Firstly, “Corporate identity” refers to the distinguishing features of a state and self-organizing qualities that form the basis for its self-respect and pride. This “corporate identity” is regarded as being existent prior to the interaction with other actors. Secondly; social identities refer to categories of states. Examples of categories include major power, superpower, democracy, federation, the United Nations, the European Union. While actors have one corporate identity, they usually have several social identities. Social identities enable actors to determine ‘who they are’ in a context of relation to others. For example, “one cannot be an ‘anticommunist’ if there are no communists around, nor a ‘balancer’ if there is no one to balance”.\(^9^9\) Wendt treats social identity only as totally constructed and subject of change.\(^1^0^0\) I believe that this idea contradicts the core argument of constructivist, that is, the identities of states are not given, but are established or transformed through interactions. I contend that all state identities are entitled to change. This is because the factors in the normative framework of constructivist are not stable but inherently variable. In this thesis, I analyze how the changes in state identities, regardless of their classifications, influence the changes of cooperative or competitive behavior of states regarding trans-boundary Rivers.

Constructivists assume that state interests are influenced by the identities and strategies in several ways.\(^1^0^1\) Firstly, specific beliefs embodied in the identities of actors determine which action takes place to fulfill these interests. This in turn helps shape state preferences regarding particular actions.\(^1^0^2\) Secondly, identities consolidate specific principles and practices that determine which strategies are legitimate and acceptable in a given situation.\(^1^0^3\) This may have constraints or incentives, in particular, foreign policy options that differ based upon various situations.


\(^1^0^0\) *Id.*

\(^1^0^1\) *Id.*

\(^1^0^2\) *Id.*

\(^1^0^3\) *Id.*
While identities determine what states are, interests denote what states desire. The social construction of interests includes all the ways that states preferences might be influenced by their interactions with others such as political, economic, and social environments. This includes the implication of social norms on behavioral state, including the desire to create norms that legitimize state’s behavior. Interests may differ from state to state in accordance with their identities, but their underlying needs are common to all states. The shared interests include the preservation of state territorial property. In the same vein, without the freedom to exercise control over their natural resources, states will not be able to address their internal needs. In addition, the remarkable national interest is economic well-being that is achieved by the effective “maintenance of the mode of production in a society and, by extension, the state’s resource base.

Shared identities among states not only show the positive identification of state actors with the role of cooperation but also refer to the passive identification with the role of hostility. These in turn created partly on the basis of relationships with other state actors. Taking the perspective of the other is a kind of tolerance to the difference between the self and the other. It is a process of identity socialization of the self and its result is the emergence of international collective identity. The relationship between states based on shared identities may be competitive or cooperative. By changing actors’ identities, change of socially constructed realities is possible. As Wendt puts it, “identities may be hard to change, but they are not carved in stone”.

**D. the impact of international principles in the constructivist paradigm:**
The relationship between strategic behavior and international norms raises more general questions about the effect of norms in the legal context. Constructivist approach informs us that norms are embedded in the international system as principles and rules by which actors are identified. The embedded principles allow states to understand what acceptable behavior is and transform this behavior into the system. The states redefine acceptable practices in the international system. In this manner, the behavioral change of states may be transformed.

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104 ALEXANDER WENDT, SOCIAL THEORY OF INTERNATIONAL POLITICS (Cambridge University Press 1999). at 236
105 *Id.*
106 *Id.*
107 *Id.*
For example, Turkey used the Euphrates water resources as a trump card in solving the Kurdish issue in the region. At the same time, Turkey seeks European Union membership; accordingly, Turkey introduced new language toward cooperation in water sharing. The argument that water is an absolute sovereignty definitely out of place for a society approached to democratic norms of behavior.

In addition, international organizations were instrumental promoting international principles. They can socialize states to accept new norms values and perceptions of interest. For example, The World Bank plays a pivotal role in solving trans-boundary water disputes. Not only international organizations are able to affect state’s national interest, but also integrate new interests into the state. States can define their situation and decide what will they do based upon the situation by referring to the international norms. International norms promoted by international organizations can decisively influence national guidelines by pushing states to adopt these norms in their policies.
IV. Case Studies of trans-boundary Rivers: Division or water sharing in the Euphrates and Indus rivers:
The chapter draws on an empirical study of how constructivist approach contributes to the understanding of the dynamics of state identities and interests regarding trans-boundary rivers. For the sake of the discussion, I selected two case studies that demonstrate changes of state relations between competition and cooperation regarding trans-boundary rivers. The Indus River and the Euphrates basin serve as two case studies that show how identities and interests of states determine the scope of state behaviour regarding trans-boundary rivers.

In the Euphrates case, I represent various interests that have interacted to reshape the identities of state actors in a historical context between 1920s till 2000s. These variables are represented in geographic, economic, and political domains. In the first place, the analysis of a historical period assists to understand how trans-boundary rivers have been represented over time and space. From the economic context, water resources are essential to meet the basic need of industry, and agriculture. On the other hand, geographical and political aspects have an important impact in assessing the potential value of trans-boundary flows. Physical geography formulates a degree of similarity or difference of interests. Along the same lines, I explore how state relations between India and Pakistan changed over time into a cooperative behavior. I focused on the historical period between 1920s till 1960s. Although the Indus River was considered one of the most difficult water disputes in the nineteenth century, the dispute was ended up by a successful agreement. I formulate my core premise on the basis of constructivist approach. Consequently, I argue that relations among riparian states are intertwined with the inter-subjective process related to the concepts of state identities and interests.

A. Why the Euphrates and Indus rivers:
The Euphrates and Indus basins are primarily common in the literature of trans-boundary rivers and they represent the hegemony of the upstream riparian states upon the waters. However, they are theorized quite differently. The Indus River is broadly considered to have been one of the most successful resolved cases in the nineteenth century, while the case of the Euphrates basin may be perceived as ongoing negotiations of water sharing. Parties of the case studies have reached agreements at differing degrees. Despite water scarcity is considered the main drive force for competing or cooperating upon natural resources, various variables interact to
determine the degree of cooperation or competition. Without the understanding of political relations, economic context, social pattern, and geographical variables, it is not possible to discuss the role of the UN Water Convention. Still, the UN convention is the umbrella that governs all the underling variables.

In the Euphrates case, the development of trans-boundary water relations has witnessed several different stages. Since 1960, this period has witnessed the advent of competitive trans-boundary water politics shaped by the construction of uncoordinated water projects, particularly the upstream riparian of Turkey that controlled a large quantity of the basin. This case presents the hegemony of the upstream riparian upon water resources. Turkey has developed strategic schemes in water resources utilization in the Euphrates basin since the 1960. The Southern Anatolia Project has impacted negatively water resources throughout the basin. The third stage was the most complex, given the link between trans-boundary water issues and instability of political relations. In the early 1997, water relations have shifted from conflictive to a degree of cooperative negotiations. The underlying interests of behavioral change of Turkey can be related to bilateral and regional incentives. On the other hand, the Indus River is a unique water dispute where quantity was never addressed among states; rather the geographic nature in the basin was taken into consideration for division of the waters. Consequently, the principal variable in the Indus case is the economic variable coupled with governance and legal domains. These factors can be used to describe the successful case of the Indus agreement.

B. Water relations and Issues of scarcity:

The implication of water scarcity upon human relation supposes that the limited resource of fresh water emerges tremendous stress upon states. Water scarcity is more than a matter of increased population, and climate change. I argue that the politics of inequitable distribution of water is more crucial than the absolute geographical scarcity of water resources. Water scarcity can emerge from excessive water development projects such as hydropower projects and canals. Water scarcity is influenced by a variety of factors, including, climate, economic activities, population growth, perceptions and traditions, and the unbalanced allocation. Arun Elhance writes that the multiple use of trans-boundary water resources, combined with the certainty of growing water scarcities in several dried and semi arid regions, makes hydro politics among riparian states that share international rivers one of the most crucial and complex issues that the
developing states and the international community will have to face and resolve in the future.\textsuperscript{109} It is believed that increasing scarcity of water intensifies the desire among nations to control water resources, which often forces them to engage in war.\textsuperscript{110} However, even authors who expect dispute concede that a scarce resource of water does not frequently result in violence.\textsuperscript{111} Wolf points out that “war over water seems neither strategically rational, nor hydrographically effective, or economically viable”.\textsuperscript{112} Since water is essential to sustain communities; it becomes a security theme for political parties. A water policy is primarily drafted by ad hoc agreements with general norms involved in decision making. Since negotiation, conflict and cooperation over water are a dominant part of the international relations among states, studying the manner in which negotiations come about, the facilitating variables and the options and strategies that are available is crucial. The Indus Waters Treaty was appreciated by the international community and considered as a good example of water conflict management. The immediate result of the treaty was that the Indus basin became politically and economically viable for India and Pakistan. It has opened new ways for independent development of the water of the Indus Basin.

C. The case study of Euphrates Tigris Basin:

In the Euphrates basin, states perception does not determine one-sided competition or cooperation. However, water relations in the Euphrates basin evolved through multiple stages varying from competition toward a fluctuated degree of cooperation. The main interests which can explain the fluctuated water relations among states can be summarized in geographical nature, economic pattern, and political issues. I contend that the competitive and cooperative nature of trans-boundary rivers is really the result of the issues of state identities and interests. Therefore, I represent three major historical periods of state relations regarding trans-boundary rivers.

1. Physical pattern of the Tigris Euphrates river system:

The Tigris Euphrates is a trans-boundary river exists in parts of Iraq, Turkey, Iran, Syria, Saudi Arabia, and Jordan. Tigris is the eastern member of the two great rivers that define Mesopotamia,

\textsuperscript{109} Arun Elhance, Hydro Politics in the 3rd World: Conflict and Cooperation in International River Basins United, (US Institute of Peace Press 1999).at 48-52
\textsuperscript{110} Id.
\textsuperscript{111} Id.
\textsuperscript{112} Aaron Wolf, Conflict and Cooperation along International Waterways, IWA Journals, Water Policy 1, 251-265 (1998).
the other being the Euphrates. The river flows south from the mountains of southeastern Turkey through Iraq. The Tigris joins the Euphrates near al-Qurnah, a small town in Iraq, to form the Shatt-al-Arab before emptying into the Persian Gulf. However, Saudi Arabia and Iran are not major riparian states in this basin. Iran is a riparian state solely to the Tigris, and Jordan and Saudi Arabia are riparian only to the Euphrates.

Moreover, the Saudi Arabia stretches of the Euphrates dries in summer, and due to unfavorable geographic and climatic conditions Iran cannot use the waters of the Tigris for agriculture or hydropower. Therefore, these countries have generally been ignored in studies of the basin.

Both rivers originate in Turkey and flow along Syrian territory before intersecting Iraq. Turkey is located in the upper stream riparian on both rivers. Turkey is a unique state in the Middle East that can fairly be described to have surplus water.

Approximately ninety percent of the Euphrates River is emerged in Turkey while the remaining ten percent generates in Syria. Iraqi territory does not make any contribution to the run off. On the other hand, Turkey contributes approximately forty percent of the total annual flow of the Tigris River while Iraq contributes by fifty one percent.

There is not Syrian water drains into the Tigris. The amount of water flow in the Euphrates Tigris basin can be said to be reasonable for various utilization by the shared riparian states. However in recent times, the creation of major projects by Turkey has put excessive pressure on the supply of the basin river.

The Euphrates basin shows a great variation in flow. In the past, the natural annual flow of the Euphrates at the Syrian Turkish borders was approximately thirty billion cubic meters. Recently, it was shown a negative trend, indicating a decrease in mean annual flow to approximately twenty five billion cubic meters.

A major concern between the neighboring riparian states is the question of whether Euphrates and Tigris can be considered as a unified system. Syria and Iraq considers that the Euphrates and Tigris are two separate rivers. Turkey does not share this approach. Turkey argues that the two

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113 Product of the Transboundary Freshwater Dispute Database, Department of Geosciences, Oregon State University. Additional information about the TFDD available at http://www.transboundarywaters.orst.edu/research/case_studies/Tigris-Euphrates_New.htm
114 Id.
115 Della Penna, supra note 66.
116 Id.
117 Id.
rivers connect together at *Shatt-al-Arab* before emptying into the Persian Gulf. As a consequence, the Tigris and Euphrates rivers are often described as forming one basin river.\(^{119}\) The conflictive claims are explained by the fact that the riparian states hope to gain the ultimate profits from their respective claims. The downstream states doubt that if they were to consider the Tigris and Euphrates River as an integrated system, this in turn would affect their rights to an adequate share of the river. At the same time, Turkey is trying to protect its water storage projects in the Euphrates River. The Euphrates River is more suitable for water storage projects than the Tigris River due to proper geographic conditions.

I share the view that the Tigris-Euphrates River is a single basin system. According to the UN watercourses convention, a drainage basin is considered an integrated system if two or more rivers share a common terminus and their waters by virtue of their relationship a unitary whole. Apparently, the Tigris and Euphrates rivers flow into a common terminus at the *shatt-al-Arab*, and both rivers are interconnected. Due to the excessive Turkish dam projects that located in the Euphrates borders, I focus on the Keban dam and the southern Anatolian projects that affected negatively the water sharing of downstream states.

I employ the management of the Euphrates River is an extreme model of how state intervention can impact the geographical nature of international rivers. With the construction of major hydropower projects in upstream Turkey, the Euphrates flow regime has shifted towards less pronounced seasonal variation. Not only the riparian states, but also scientists, have disagreed about the mean annual discharge of both rivers, mainly due to their seasonal fluctuations.

2. **The economic ambition in the Euphrates Basin: historical period between 1920s – 1980s:**

The breakup of the Ottoman Empire after the World War One created a number of modern nation states. Iraq was governed as mandate by the United Kingdom until 1932, after independence; it had to focus on state stability.\(^{120}\) At the same vein, Syria concentrated on building its nation state and stabilization, after it had gained independence from France in 1932. During that period of identity modification, Turkey focused on the development of the Eastern Anatolia after the collapse of the Ottoman Empire.

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See also, Turkey’s Policy on Water Issues, Ministry of Foreign Affairs Republic of Turkey Available at [www.mfa.gov.tr/turkey_s-policy-on-water-issues.en.mfa+&cd=6&hl=ar&ct=clnk&gl=eg](http://www.mfa.gov.tr/turkey_s-policy-on-water-issues.en.mfa+&cd=6&hl=ar&ct=clnk&gl=eg)

\(^{120}\) Dellapenna, *supra* note 66.
On the whole, the main derived interest was domestic evolution in the Mesopotamia region. The Euphrates riparian states focused on building their newly nations and identities rather than the development of foreign water policies. Primarily, water has not been one of the dimensions of state building and, therefore, water tensions were not witnessed among riparian states in the initial periods of state building within the Euphrates basin. The Euphrates water resources was adequate to satisfy the needs of the three riparian of Turkey, Syria, and Iraq due to the less developed hydropower projects and irrigated system of the states.

Overall, water tensions were not experienced between riparian states in the initial periods of state building in the basin. However, the developmental stage has witnessed a turning point towards a competitive manner by initiating a large number of uncoordinated water projects inside the Euphrates Basin. According to Wolf, the red line for water disputes among states are not water shortage but rather unilateral attempts to create an international river, usually by a regional power.  

Notably, the period between 1960s and early 1980s were marked by major water storage developments. Turkey has put forward ambitious plans to utilize the water of the Euphrates basin for energy and irrigation uses by building enormous water storage facilities. As this development activity and planning took place in the 1960s and early 1980s, it soon became evident that there was not going to be enough water available in the basin to satisfy the planned needs of the three major states located in the basin.

Without doubt, Turkey is in the strongest position with regard to its potential control of a large part of the water resources of the Tigris-Euphrates basin. It can develop its water management schemes, and the two downstream countries of Syria and Iraq will have to suffer the consequences of lower flow conditions. The numerous amounts of dams would seriously reduce downstream water resources, which would affect seriously their economic activities. Specifically, the agricultural policies of Syria and Iraq mainly depend on the Euphrates River.

121 Wolf, supra note 112.
Particularly, agriculture has always been a predominant variable in the Syrian economy, relying significantly on irrigation supplied from the Euphrates River. Syria increasingly depends on the waters of the Euphrates and from Tabqa dam. Approximately ninety percent of Euphrates water withdrawn in Syria goes to agriculture. The main cash crops are water demanding such as wheat. Syrian utilization of the Euphrates River has shifted over time drastically, and couple of tributaries lost their flow into Syria.

In the same vein, agriculture has been the primary economic activity of Iraq. Agricultural products contributed to forty two percent between 1970 to 1980 of Iraq’s Growth domestic. Recently, it has become a net importer of agricultural goods, importing up to eighty percent in the late 1990. The shift was due to reduction of government spending on agriculture, and loss of soil productivity in poorly drained areas to the downstream rapid. Both Syria and Iraq demand considerable amounts of water for their less fertile lands in the Euphrates river basin where there exists a water scarcity problem.

The Keban dam was the first of several large-scale dams to be built on the Euphrates River by Turkey. Since Turkey made the decision to establish the dam in the Euphrates basin, the relations between riparian states shifted toward conflictive nature. The United States Agency for International Development was the financing institution of the Keban Dam.

In order to provide Syria and Iraq with information concerning the Keban Dam, copies of the feasibility studies of the project were submitted to technicians of the downstream riparian states.

In the late of 1964, it was held a meeting with the participation of experts from the riparian states. During this meeting, the Turkish delegation argued that it was difficult to reach a final equation for water to be released from the reservoir prior to impounding the dam. This is due to natural circumstances that would prevail during the filling, and on the particular assessment of

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126 Id.
127 Id.
129 Id.
the concerned states’ needs.\textsuperscript{129}

In the early 1974, Turkey began filling the Keban reservoir resulting in a reduction of the amount flow. There was not reached an agreement at the end of several technical meetings, whereas the three riparian states went their own ways in determining filling system for the two reservoirs. This period was full of hassle and congestion out of the dispute among the riparian states of different political directions. Iraq accused Syria of decreasing the water flow, whereas Syrian government placed the accusation on Turkish side. Finally, Syria agreed to allow an additional flow to Iraq.\textsuperscript{130}

The following year, Iraq argued that the normal flow had been decreased and asked for the intervention of the Arab league. Prior to mutual arguments, technical committee was formed to mediate the dispute. Syria provided that the normal amount flow did not reach its borders during this year due to continuous dry weather. Iraq was not convinced with the Syrian argument and accumulating blames resulted in mutual threats.\textsuperscript{131} The mediation of Saudi Arabia was succeeded to breakdown the increasing cognition reaching an agreement that forbidden the impending violence and concluded that fifty eight percent of the Euphrates waters coming from Turkey would be released to Iraq by Syria.

The rapid implementation of the Turkey’s Southeast Anatolia Project (known as Guneydogu Anadolu Projesi “GAP” in Turkish) accelerated the debates of conflictive nature among the Euphrates basin. The GAP Project is a multi sector that includes irrigation, hydraulic energy, agriculture, urban infrastructure, education and health sectors.\textsuperscript{132} The water resources development dimension of the project consists of the construction of twenty two dams, fourteen hydropower projects on the Euphrates basin, and nineteen hydraulic power plants.\textsuperscript{133} In the late of 1970, Turkey started to implement the Southeastern Anatolian Project that border Syria and Iraq.\textsuperscript{134} According to the GAP administration, the dams that form part of the GAP project would

\textsuperscript{129} Kibaroglu & Unver, supra note 122.
\textsuperscript{130} Aaron Wolf& Joshua Newton, (Case Study of Transboundary Dispute Resolution: the Tigris-Euphrates basinTransboundary Freshwater Dispute Database, Oregon State University2007). Available at http://transboundarywaters.orst.edu
\textsuperscript{131} See, BBC, “Turkish Dam Controversy, (January 2000). Available at http://news.bbc.co.uk/2/hi/europe/614235.stm#top.
\textsuperscript{133} Id.
\textsuperscript{134} Id.
be used to irrigate a total of 1.7 million hectares of land. The first dam to be built under GAP was the Karakaya Dam (constructed 1976-1987) on the Euphrates. Other dams have quickly followed - the Ataturk Dam (1983-92), the Karkamis Dam (1996-1999) and most recently the Birecik Dam (1993-2000). The World Bank and the International Monetary Fund have supported such large-budget projects.

The analysis of popular journals can give plausible explanation about the conflictive relations over trans-boundary rives and the zero sum game of the concerning debates. While Turkey sources reflect that this project is important for the whole region, both Syria and Iraq represent their water rights.

Both Iraq and Syria argue that in the light of the UN watercourses convention, Turkey should have informed them before developing such a huge project that impacts the Euphrates basin. Additionally, they have raised concerns over reduced flows that will lead to increased salination levels in formerly irrigated areas, as was observed after the completion of the Karakaya dam. Downstream food security and water supplies will be negatively affected by new dams and reservoirs.

Syria and Iraq demanded more water to be released, while Turkey declined their demands in order to form the dam reservoirs. Syrian officials estimate that the downstream flow of the Euphrates as it crosses the Syrian boundaries will be reduced from thirty to sixty percent.

According to the Iraqi authorities “Such a big shortage in the Euphrates river resources will have grave repercussions for Iraq. The majority of Iraq's population depends on the river to meet their water needs, agricultural requirements and others”.


A delegation from three UK non-governmental organizations - the Ilisu Dam Campaign, the Kurdish Human Rights Project and The Corner House - travelled to Syria and Iraq from29th January to 4th February 2002 on a Fact-Finding Mission, to conduct research and interviews on the potential downstream impacts of the proposed Ilisu Dam, scheduled for construction near the ancient town of Hasankeyf in southeast Turkey

137 Id.

138 Id.

139 Id.
In addition, the reduced flow also will be negatively affected on power generation. In the light of the facts, Turkey cannot validly argue the dominant share of the Euphrates River. To conclude this part, the dynamics of changes in water rights reflects the behavioral changes in state relations. I observed that state interactions and the explanation for behavioral changes of riparian states cannot be revealed without the analysis of state identities and national interest of economic development. Confictive meanings have been intertwined to trans-boundary rivers, which in turn have become a source of tension between independent upstream and downstream states.

3. The implication of political atmosphere upon water rights: The historical period between 1980s and 1990s:

The impact of political tension between riparian states is a significant component in freshwater disputes. A number of water disputes have occurred among the riparian states during the period of 1980 and 1990 that was linked to political tensions among riparian states. Since the first half of the 1990, the relation between the riparian states has witnessed a potential link between water issues and instability of political relations. Tensions between Turkey, Syria and Iraq were raised due to the GAP project. The construction of dozens of hydropower projects in the Euphrates basin has given Turkey the ability to unilaterally control most water flow of the Euphrates. A conflict did suddenly become a very real possibility in 1990. Turkey decided to intervene temporarily the flow of the Euphrates water in order to impound the Ataturk reservoir, which considers a central project in the Southeastern Anatolian Project.

In 1996, Turkey began the construction of the Birecik dam, a part of the Anatolian Project, in the Euphrates basin. Both Syria and Iraq sent official notes to the Turkish government in 1996. They indicate their objection to the project because it would affect the quantity and quality of waters flowing to Syrian and Iraqi territory.140

As well, the issues of water and Kurdish issue linkage marked political relations between Syria, Iraq, and Turkey. Turkey used the GAP project as a trump card to solve the Kurdish issue in the region. In the recent history, the Kurdish question becomes a key issue of hostility.141 As the largest minority ethnic group, they have been struggling for more rights. The Kurdish people are major populations in Iraq, Syria, as well as Turkey. The power vacuum of the Kurdish rebels in

Northern Iraq after the Gulf War emerged serious drawbacks for the Turkish struggle with the Kurdistan Workers’ Party “PKK”, which is the largest Kurdish party in Turkey. Military tensions rose between Turkey and Iraq as Turkey invaded northern Iraq to attack Kurdish rebels in 1997.\textsuperscript{142} On the other hand, Turkey has accused Syria for supporting the PKK, which is fighting for Kurdish rights in the region. Turkey and Syria were at the edge of war when Turkey threatened military action if Syria continued to support the Kurdish rebels.

The political impact behind the GAP project has been influential on Turkey’s relations with Syria and Iraq. Turkey has made a number of statements that asserting the principle of “first come, first served” in the Euphrates basin. In 1992, Turkey’s Prime Minister stated: "Neither Syria nor Iraq can lay claim to Turkey's rivers any more than Ankara could claim their oil. This is a matter of sovereignty. We have a right to do anything we like. The water resources are Turkey's; the oil resources are theirs. We do not say we share their oil resources, and they cannot share our water resources."\textsuperscript{143} However, the analogy made by Turkey does not work effectively as it denies the obligation of reasonable use imposed upon shared oil fields. In the light of these conditions the Turkish approach must not be the right track. Turkey has multiple sources other than the Euphrates River that comprises approximately forty five percent of the total water resources available to turkey. On the other side, the Euphrates River compromise about eighty percent of water resources of Syrian territory and ninety five percent of the water surface to Iraq.\textsuperscript{144}

4. The catalyst of political issues and its impact upon water rights: the historical period between 1990s-2000s:

Since the second half of the 1990, relations between riparian states in the Euphrates basin have been dominated by peaceful resolution of disputes. Since the end of 1998, there was a major change from hostile to cooperation in the external policies of the bilateral relations between Turkey, Syria and Iraq. The underlying reasons of political change can be related to bilateral and regional incentives. At the bilateral relations level, the most important turning point in Turkish external policies towards Syria and Iraq in general was the capture of Kurdistan Workers’ Party


leader Ocalan in 1999.\textsuperscript{145} Syria abandoned the support for Ocalan. There was a new shift toward a degree of cooperation between Syria and Turkey as a result it was signed a new cooperative treaty. Adana treaty ended the Syrian support for the Kurdish repels and removed one of the greatest burdens in the Turkish-Syrian relations and enhanced relations concerning water issues.\textsuperscript{146}

Despite Turkey reluctance, in the past, from having direct contacts with Kurdish authorities in Iraq, the contacts between Turkey and Kurdish authorities have increased. Turkey realized that in order to achieve its external policies ambition, it should start to act in line with the current reality within Iraqi territory.\textsuperscript{147} Instead of relying on military means to overcome the threat of terrorism from northern Iraq, Turkey has intensified its contacts with Kurdish authorities in Iraq.\textsuperscript{148} Political incentives translated into adopting a number of cooperative shared water agreements between the riparian states.

According to regional level, Turkey has conflicted between its development desires and its needs to appear to be peaceful neighbor. Turkey aimed to pursue an identity that would connect it to Turkey aimed to join the European Union. The continuous refusals of the European Union made Turkey to search for other ways to connect it to the European communities. As a part of this campaign, Turkish government made an offer to sell electricity to both Syrian and Iraqi territory.\textsuperscript{149}

The behavioral change of Turkey was expressed by signing cooperative agreements regarding Euphrates basin. However, these bilateral accords were interim measures, which were largely products of the fluctuated political atmosphere in the Euphrates basin. These agreements have not served the aim of applying equitable use and water sharing.\textsuperscript{150} The cooperative accords have shortcomings in engaging political, economic, and geographic reality. Water flow in the Euphrates basin has been subject to severe fluctuations.

The changing geographical conditions were not taken into consideration in either accord. Moreover, these bilateral agreements did not comprise terms to deal with the growing social and economic needs that engage the whole Euphrates states. Additionally, Turkey requires

\begin{flushright}
\textsuperscript{145} Dellapenna, \textit{supra} note 66.
\textsuperscript{146} Dellapenna, \textit{supra} note 66.
\textsuperscript{147} Id.
\textsuperscript{148} Id.
\textsuperscript{149} Id.
\textsuperscript{150} Id.
\end{flushright}
external funds in order to finalize the Southern Anatolia Project. Turkey’s own investment in Southern Anatolia project has damaged its economy contributing to severe inflation and massive public debt. Following the economic crisis in 2001 and a planned expansion of the project, Turkey cannot longer internally fund the project.

The World Bank and the International Monetary Fund decided not to fund any part of Southern Anatolia Project due to concerns of the conflict among states and environmental impacts. However, potential external funding agencies, such as the European Union and World Bank, require an agreement with downstream riparian states before they will offer fund.

5. The impact of the legal domain in water politics: The historical period between 1940s and 2000s:

The legal context of the Euphrates basin is shaped by several bilateral agreements. The principal ones are an accord between Syria and Turkey specifies the minimum average flow at the Syrian-Turkish border; and an agreement between Iraq and Syria determines the allocation of Euphrates water between those two states. Riparian states hold conflictive positions on legal principles of the UN water convention.

a. Bilateral agreements between the riparian states:

The Euphrates is subject to bilateral agreements between the three riparian states. After Iraq gained independence from the Ottoman Empire, Turkey and Iraq signed a comprehensive agreement in 1946, which aimed at strengthening the neighborly cooperation between the two states.151 The agreement acknowledges the importance of cooperation, sharing of information and the need for consultation for mutual benefits of both states. This period is characterized by general state mutual relations. In the meantime, there was not an extensive development of the Euphrates basin. The historical agreements signed during that period determined state boundaries and general state mutual relations between Syria and Turkey. On the whole, state relations over the Euphrates basin were not competitive.

During the period between 1960 to the early of 1980, it was marked by political instability and unilateral developments of hydropower projects among the Euphrates basin states. The rare cooperative schemes of this period were not translated into comprehensive agreements. Several agreements were signed about water regulations since 1987. Syria signed the Protocol on

Economic Cooperation with Turkey specifying the minimum average flow at the Syrian-Turkish border in 1987.\textsuperscript{152} It is an interim agreement on water quantity which states that an annual 16 BCM (500 m$^3$/s) is to be released at the Syrian-Turkish border. This protocol established a fixed minimum water flow that should be allowed to Syria. In contrast to the preceding protocol, Iraq and Syria signed an agreement in 1990 that determines the allocation of Euphrates water between those two states according to a fixed ratio of Forty-two percent to Syria and fifty-eight percent to Iraq. Therefore, if there is less water available in Syria, Iraq receives less.\textsuperscript{153} Cooperation over water was expressed in several accords since 1990. Turkey and Iraq signed several agreements to strengthen their political ties. The Memorandum of Understanding on water signed in 2009 is one of forty eight Memorandum of Understanding signed between Turkey and Iraq.\textsuperscript{154} Both sides agreed to share hydrological and technical information and exchange expertise regarding the Euphrates River. On the other hand, several steps for increasing cooperation in Turkish relations with Syrian government were introduced in 2009.\textsuperscript{155} The Turkey Syrian Strategic Cooperation Council agreement addresses collective activities in the field of water such as the improvement of water quality, the construction of water pumping stations and joint dams as well as the development of joint water policies.\textsuperscript{156} Tensions did not end with the signing of the bilateral agreements. Although these attempt to reach a degree of cooperation, the three riparian states still need to conclude a shared convention. The controversy concerned the basin flow is still a cornerstone in negotiations a shared convention among the three riparian states. In addition, it should be noted that a shared understanding of the respective duties and obligations of the riparian states as well as objective definitions of such needs are a prerequisite for sustaining the negotiation development. Consequently, the main guidance for the Euphrates riparian states is the UN water courses convention.

\textsuperscript{154} Memorandum of Understanding Between The Government Of The Republic Of Iraq And The Government Of The Republic Of Turkey (07 August 2007).
\textsuperscript{155} Kibaroglu & Scheumann & Kramer, supra note 152.
\textsuperscript{156} Id.
b. States position toward legal norms of the UN watercourses convention:
Although specific geographical, political, and economic contexts no doubt shape the legal discourse, the equitable principle is advanced by the Euphrates riparian states. However, the three riparian states hold conflictive positions on how to weight the different criteria when determining an equitable use. Both Syria and Iraq argue that they have acquired rights pertaining to prior uses. In addition, the downstream states argue that the right of equitable use finds its limitation in the duty not cause significant harm to the neighboring riparian states. In contrast, Turkey claims that water should be allocated according to the needs of each riparian state. In fact, Turkey wanted to safeguard the successful completion of the GAP project. Riparian states pursue an approach that they expect the utmost benefits from their situations. Apparently, there is no norm to follow in determining the priority of uses. The UN water courses convention leaves up to riparian states to agree on criteria of water sharing. No doubt that the underlying problem is not in the legal domain solely, but states are insisting on their respective positions. A convention among the three countries is needed to deal properly with the water distribution. This stage requires an external intervention to the parties together because the countries have thus far failed to initiate successful convention among all the riparian states. On occasion, States have initiated bilateral talks, but that is insufficient to begin discussions for a regional agreement. A mediator, on the other hand, can often work more directly to create conditions of ripeness and can convince the parties that the path to achieving their preferred unilateral solutions is blocked, and, at the same time, offer them a credible, mutually beneficial alternative solution.
It should be determined the actual needs of all the riparian states of the Euphrates basin within a comprehensive institutional setting. Growing networks of water dialogue at both the governmental and nongovernmental levels should continue to serve as open channels for easing the tensions due to the fluctuation of political relations among the riparian states in recent times.

To sum up, I conclude that the Euphrates case reveals that identities as rooted perceptions about self and others constitute national interests. I explored how states have sought to perceive trans-boundary rivers that undermine economic domain, political relations, and geographical demarcation. I argue that linkage between state relations, identities and national interests can give deeper insight about the cooperative and competitive nature of trans-boundary rivers. While realism views the Euphrates case as inherently competitive, liberalism focuses on the cooperative opportunities offered by the perceived common national interests of the states. Materialist approaches cannot explain why states in the Euphrates case decided to prioritize common interests in some periods and why they turned to competitive pursuit of national interests in other periods.

There is a main distinction in the understanding of state interests between materialist approaches and constructivist. In essence, constructivist approach does not take state interests as given. From a constructivist viewpoint, national interests are constructed on the basis of identities. National interests in the constructivist approach are the product requirements of state identities. With this conclusion, the case of the Euphrates River supports my main argument that a constructivist approach determines the behavioral changes attached to trans-boundary rivers. To get deep evidence about whether the constructivist approach can give plausible explanations about behavioral change of state relations, I present the Indus basin in the following section.

**D. The case of Indus River:**

Historically, Increasing water demands, irrigation, and political instability were the core issues represented in the Indus basin. The roots of water dispute can be traced to the independence of India and Pakistan in 1947. Prior to partition of Indus states, the Indus River was evolved by the British to function as an integrated unit; but the intensive water uses by the independent states of India and Pakistan have since been split in two. I argue that state relations between India and Pakistan are determined by structures of irrigation economies, geographical demarcation, and political boundaries. These patterns are deeply rooted in relative stable but not static relations. I explore how the interaction between these static variables can lead to changing behavior. The Indus Waters Treaty illustrates the importance of effective mechanisms for water allocation to have the flexibility in responding to social and environmental changes. In that sense it considered as a success.

**1. The geographical feature of the Indus case:**
The Indus River is a major river in North West India and Pakistan. The river originates from the southwestern Tibet Autonomous Region of China, and crosses the southeastern boundary of Kashmir region through Pakistani territory in the south and finally flows out into the Arabian Sea. The Indus River has two main tributaries, the Kabul on the west bank and the Punjab on the east. Still, the Indus receives its most notable tributaries from the Eastern Punjab Plain in India. These tributaries are often referred to the name of Punjab, which means Five Rivers of Jhelum, Chenab, Ravi, Beas, and Sutlej. These rivers rises in Indian Punjab and run into Pakistan.

On the whole, after receiving the waters of Punjab Rivers, the Indus becomes much wider, which cross the plain in western and southern Punjab province. The west bank of Kabul rises in Afghanistan and flows through the Peshawar valley to join Indus at Attock. The Indus basin drains the highlands of Afghanistan, India, Pakistan, and the autonomous Region of Tibet in the people’s republic of China. The main states interested in the river basin development are India and Pakistan. China had not at that time withdrawn any water from the Indus River. Within India, the Indus Basin lies in Kashmir and Eastern Punjab.

In the case of Pakistan, the Indus basin lies in Western Punjab and Sind. The competition between India and Pakistan was over the Punjab waters, mainly, the Sutlej river located in Kashmir. The Sutlej River provides the main drainage system for Pakistan. The Sutlej River flows through India crossing a small pocket of Pakistan before re-entering India. The Indus basin is principally fed by the melting of snow in the Himalayan catchment areas as well as precipitation in the mountains regions.

Approximately sixty-nine percent of the Indus River is originated in India compared to nineteen percent for Pakistan and twelve percent for Tibet and Afghanistan. On general speaking, the Indus Basin is characterized by a major fluctuation on seasonal basis.

2. The economic pattern in the Indus case:

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159 Id.
161 Id.
162 Id.
163 Id.
Although irrigation in the Indus valley has been practiced since time immortal, it is mainly with the arrival of British that irrigation took another stage. Techniques of irrigation were modernized and large scale irrigation was captured the waters of the Indus River. During the British administration, the Indus River, mainly the most cultivated area of Punjab province, was seen as an economic path to expand British control over the region against the growing empire of Russia in central Asia. The expansion of irrigation extended into an immense network of canals. The resulting revenue from agricultural products proved sufficient incentive to overcome the high costs of canals construction.

Although the provinces were controlled by the British, there was not an integrated development policy. The increasing development of the Indus region raised the competition between Punjab and other provinces. The Punjab considered being the main area of canal building. During that period, there was not water storage that leads to little hydro-electric development. Each province built its own works independently, despite their reliance upon the same source of water, principally the Sutlej River.

At the same vein, the British administration constructed a rotational system, whereby, when a canal was closed for any temporarily reasons, any available water could be transferred to another canal. The entire canals were dependent on the varying natural flow of the Indus River. The arbitrariness construction of irrigation facilities led to an increased competition between upstream Punjab and other provinces mainly Sind. Despite there were attempts for negotiations during British administration, the provinces could not reach common ground resolutions. The British involvement in the Second World War has weakened its power on its provinces. Water negotiations were continued till the independence of Pakistan and India in the late 1940. The new states of India and Pakistan struggled to define not only their new national identity, but also to demarcate their national territory, the question of territory rose to the forefront of Indus dispute negotiations. Difficulties in deciding where the international demarcation between Eastern and western Punjab would lie were linked to the

http://etheses.dur.ac.uk/1053/1/1053.pdf
165 Id.
166 Id.
168 Alam, supra note164.
integrated nature of the canal system and the high dependence of agriculture in the two halves of Punjab on the irrigation system. The root reasons of the Indian-Pakistan dispute really emerge from the way that British had managed the Indus River.

Since independence, the new frontiers cut across the Punjab Rivers ended up being allocated to Pakistan. The international demarcation pays little attention for the constructed irrigation canals. India could gain control over the water of Pakistan’s canals by diverting water to its own territory. Therefore, the reduction of the quantity of water in the Indus River had a severe implication upon the economy of Pakistan. Following partition, approximately two thirds of the irrigated areas located in Pakistan.\textsuperscript{169}

The demarcation of borders left ten of the canal system in Pakistan and two in India.\textsuperscript{170} Nevertheless, the demarcation gave Indian Territory control over the headwaters. Consequently, the inequitable distribution of development in the Indus basin become a main cause of hostile between the newly nation states.\textsuperscript{171}

In addition, urban water supply and floods was a matter of contention in the two riparian states. Based on these findings, State sovereignty and nation building have become the major concern of Pakistan and India. The emerging interests of the competing new nations have been perceived competitive and irreconcilable. I contend that state relations during this era are intertwined with the inter-subjective processes related to the concepts of state identity and economic concern. A number of Pakistan newspaper emphasized that the historical legal rights of Pakistan.\textsuperscript{172} For example, Pakistan Times believed that Pakistan involvement to negotiations was a foregone of historic rights. This process had essential consequences on the formation of citizens’ perception, which in turn had very significant implication at the international levels. Thus, I argue that domestic and international identities should not be treated separately.

3. The political domain of the Indus Basin:

since the independence of the sub-continent into India and Pakistan, the relationship between these neighbors had shadowed with a feeling of “mutual distrust”.\textsuperscript{173} A number of factors,

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\textsuperscript{170} Id.

\textsuperscript{171} Id.

\textsuperscript{172} Id.

including a bitter partition that deeply seated in ideological distinction, and the continuing conflict in Kashmir were threatened the stability of the newly nation states. The two-nation theory was the engine behind the partition of India and Pakistan in 1947. This theory, at its core, refers to the religious, and nationalism differences between the two major nations are.\textsuperscript{174}

The two nation- theory supported the proposal that Muslims and Hindus should be two separate nations. These dissimilarities largely were instrumental in giving rise to distinct political ideologies, which were responsible for the partition of Indian continent into two independent states.

Kashmir has been another source of tension between India and Pakistan since independence.\textsuperscript{175} After Hindu Maharaja Hari Singh, ruler of the Muslim majority state decided to integrate Kashmir as part of India. His decision led to an Indo-Pakistani war in 1948 and to the division of the province after the 1949 ceasefire.\textsuperscript{176} The Kashmir dispute is frequently analyzed through the dimension of conflicting ideologies, the underlying perception being that India and Pakistan both consider Kashmir as an inherent part of their identity.

The Kashmir problem revolved around three forces: religious nationalism represented by Pakistan, secular nationalism articulated by India, and ethnic nationalism embodied in perception of Kashmiri. Pakistan perceived that Hindus and Muslims were not only two different religious communities, but also two separate nations.\textsuperscript{177} Pakistan perceived that Kashmir, being a Muslim majority state, should have integrated to it at the time of partition.

On the other hand, India ensured a secular polity since independence. India's national movement did not accept the two-nation theory, where Hindus and Muslims had separate religions but they were not different nations. In particular, the assassination of Mahatma Gandhi in 1948 by a Hindu fanatic emphasized the approach of secularists within the government. From Kashmiri state view, Kashmiri nationalism is not based on religion but on a separate Kashmiri ethnicity. Kashmir composed of three ethnically separable geographical regions.\textsuperscript{178} The ethnic groups are Dogra Hindu-majority Jammu, a Muslim-major Kashmir, and a Tibetan Buddhist-majority


\textsuperscript{175} Id.

\textsuperscript{176} Id.

\textsuperscript{177} Id.

\textsuperscript{178} Id.
However, this view is internally inconsistent because non-Kashmiri groups might not wish to join such a state.

Another dimension of the dispute is that Kashmir contains water resources water reservoir which both nations rely on. Consequently, it is not only the territory itself, but the water resources that include. All in all, the examined period was featured by identity construction. The process of constructing the perception of “self” and “other” are of the core importance, therefore, state building process that encompassed the interests of Pakistan and Indian raised the competition between them.

4. The implication of conflictive perceptions between India and Pakistan:

I contend that excessive development never exists outside politics. Rather, these extensive developments always produced within ongoing political conflicts. To portray the issue of conflictive identities in terms of water dispute, India stopped water flow to Pakistan in 1948.180 This action was criticized by Pakistani government and started negotiations with India on water supply.

India agreed upon a provisional treaty called Inter Dominion agreement with Pakistan by mid 1948. The agreement allowed for reopening the canals of Eastern Rivers for irrigation purposes until the Pakistan regulated new alternative water resources.181 Therefore, Pakistan would make annual payments to Indian Territory and would not claim any sovereign rights upon water.182 Soon, the legal status of the document signed on 4 May 1948 became a contentious issue. Pakistan formally terminated the agreement and proposed that the dispute be referred to the International Court of Justice, but India refused legal resolution of arbitration because India will lose its international reputation.183

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179 Jauhari, supra note 174.
180 Inter-Dominion Agreement Between the Government of India and the Government of Pakistan, on the Canal Water Dispute Between East and West Punjab, Signed at New Delhi (4 May 1948).
182 Id.
183 Id.
With tensions rising between India and Pakistan, the need for impartial third party intervention was apparent. Despite a legal third party was rejected by India, an alternative intervener was becoming crucial.\textsuperscript{184}

In October 1949, the Indian Prime Minister had invited David Lilienthal, who was public official best known for leading the the Atomic Energy Commission, states that “India and Pakistan were on the verge of war over Kashmir. There seemed to be no possibility of negotiating this issue until tensions abated. One way to reduce hostility…. Would be to concentrate on other important issues where cooperation was possible. Progress in these areas would promote a sense of community between the two nations, which might, in time, lead to a Kashmir settlement.

Accordingly, I proposed that India and Pakistan would work out a program jointly to develop and jointly to operate the Indus Basin river system, upon which both nations were dependent for irrigation water. With new dams and irrigation canals, the Indus and its tributaries could be made to yield the additional water each country needed for increased food production. In the article, I had suggested that the World Bank might use its good offices to bring the parties to agreement, and help in the financing of an Indus Development program.”\textsuperscript{185}

5. The Path for a successful resolution:

Following David Lilienthal’s proposal plan to solve the dispute between India and Pakistan, Eugene Black, the World Bank President, offered the good offices of the bank to settle the dispute. The available evidence seems to suggest that if the distribution of water resources between India and Pakistan was remained unresolved. It would hinder the development of irrigation, and contribute to reduction of agriculture, which was the backbone of the region’s economy. With this intention, both India and Pakistan accepted the assistance of the World Bank. The interests of both states to engage into negotiations can be summarized as follows: While India’s motivation was to expand water uses; Pakistan interest was to safeguard its existing uses. In the first place, the World Bank suggested that a working group appointed by each state to jointly prepare a comprehensive plan for the integrated management of the Indus Basin.\textsuperscript{186}

The World Bank called each party to present its version of a plan. In the years 1952-1954, India and Pakistan was reluctant to accept that the Indus Basin should be developed as an integrated

\textsuperscript{184} Kakakhe, supra note 181.  
\textsuperscript{185} Id.  
\textsuperscript{186} Id.
unit. In the late of 1953, the mistrust between the two states made it clear that the dream of integral management of the Indus Basin was simply not functional.

In February 1954, the World Bank presented its own proposal in order to overcome the impasse.\textsuperscript{187} It comprised three main suggestions. Firstly, historic withdrawals must be continued, but not necessarily from the same sources.\textsuperscript{188} Secondly, the three eastern rivers were assigned to India and the three western rivers to Pakistan.\textsuperscript{189} Thirdly, Pakistan would have a transition period of ten years to construct link canals to allow replacement of water supplies from the eastern rivers.\textsuperscript{190} Finally, Pakistan accepted the Bank’s proposals in July 1954 but added a suggestion that it would be possible to effect reasonable adjustments.\textsuperscript{191} The Bank recognized Pakistan’s limited storage and the need for the maximum utilization of the waters of the western rivers. The economic incentives were the drive force for converging identities.

By dividing the Indus River, economic domain was not perceived anymore as a threat. By applying the constructivist approach, state relations between India and Pakistan were cooperative based on their common national interests. I evaluated how the changes in state relations are intertwined with economic interests and the perception of state identity. I found that relations between India and Pakistan shifted toward cooperation after they became independent economically. The underlying interests in the Indus case represent mainly in the economic dimension. Because of this perception, concepts of cooperation became attached to the meanings of trans-boundary waters.

6. **Indus Waters Treaty: dividing or sharing the Indus Basin system:**

According to the Indus Water Treaty, the basin would be allocated not according to quantity, but in terms of streams. Therefore, Pakistan had the right to use the Indus main-stream and the two western tributaries, while India had an exclusive right to use of the three eastern tributaries. In contrast to the integral management principle, this division did not require a cooperative scheme between the riparian states in the management of the river. There is a rapidly growing literature on the success of the Indus Waters Treaty.

I put forward the view that the peaceful settlement was reached by changing the factual reality of

\textsuperscript{187} Shafqat Kakakhe, supra note 199.
\textsuperscript{188} Id.
\textsuperscript{189} Id.
\textsuperscript{190} Id.
\textsuperscript{191} Id.
the Indus basin. To illustrate this idea, I employ the ground incentives of the distribution formula. At first glance, not only the Indus dispute was a matter of the Western rivers only, but also included the whole Indus Basin. Aside from a matter of quantity, Pakistan insisted to maintain supplies to existing uses with its territory. The most developed areas of Western Punjab were mainly supplied from the Eastern Rivers. To transform the source of the water supply would require expensive costs to construct replacement water infrastructure from the Western Rivers. Along similar lines, Pakistan was not keen to afford additional expenses, as Pakistan claims that it has a legal right to protect its existing uses.

On the other hand, while India strived to contribute to the least possible costs to Pakistan’s canals infrastructure, India aimed to expand the irrigated area in the Sutlej River. The Bank recognized the practical reality of the Indus Basin.

The World Bank aimed to change Pakistan’s perception regarding its dependence on the Eastern Rivers. In doing so, the World Bank offered financial assistance to construct new water storage facilities. The World Bank sponsored several rounds of negotiations until reaching an agreement. The Indus Waters Treaty was signed between Pakistan and India in 1960. At the same time, the World Bank agreed to create an Indus Basin Development in collaboration with Australia, Canada, Germany, New Zealand, Pakistan, the United Kingdom, the United States. The Indus Basin Fund would assist of almost US$900 million to finance the construction water canals in Pakistan.  

I admit that the Indus Waters Treaty was practically a successful resolution. However, the treaty has strengthened the distinctive location of Kashmir since the western rivers flowed through the disputed province and considered a threat to Pakistan independence. The Indus waters Treaty illustrate a good start point towards cooperation between states. On the basis of the evidence currently available, I confirm that the World Bank was able to overturn the competitive relations between India and Pakistan, regarding Indus River through two significant solutions. The Bank aimed to directly mitigate the negotiation process to manage the water resources, as well as to offer economic incentives to resolve the water allocation dilemma. The Indus system was not an
integrated management; it formulates a means for information sharing, a joint commission with equal representation, and a conflict resolution mechanism.

This provision entitles a balance between the construction of development projects and state independence. Nevertheless, the provisions in Indus Waters Treaty are broadly adopted and granted India the right to construct water storage facilities in its territorial of Eastern rivers. In recent times, such projects would restrain natural flow of Indus River. Although I am aware of this shortcoming of the Indus Water Treaty provisions, my objective is to tease out factors that lead to the behavioral change of state relations during that time. It is inconsistent to think of current-day society as primarily static over time. In fact, history has a significant role in the polarization of state identities and their interests. Consequently, I assume that the identified state interests can mitigate any future scenarios in the international relations basin.

The consequence can be drawn that the constructivist approach can make a contribution in the understanding of state relations by analyzing different historical periods. Prior independence of Indian nations, the perceptions of India and Pakistan were conflictive. It was a period of transition, and even the physical partition of the states was in question. In the lack of a common narrative about “the self” and “others” in the international system, state relations between India and Pakistan were competitive. Consequently, conflictive state relations were accompanied with competitive behavior attached to international rivers as well. In the second period, the main derived interest was the economic domain. Therefore, in spite of the conflictive identities of India and Pakistan, neutral state relations prevailed regarding trans-boundary rivers. There is a potential link between state identities, national interests, and state relations. Given the centrality of this issue to my claim, I contend that the constructivist approach can make an added value in identifying the behavioral change of states regarding international rivers.
V. Synopsis of experience: Toward a peaceful resolution:

In the first place, water disputes are settled through various diplomatic means such as negotiations, consultation, good offices, mediation, the use of joint bodies and institutions. Legal means of arbitration and adjudication is the last channel to resolve international water disputes. Principally, mediation is the optimum track to resolving disputes of international rivers because engaged parties determine the shape and nature of the outcome of mediation process. For instance, it seems that India's political will was formulated by the perception that the International Court of Justice would damage its position in the dispute, and the World Bank could potentially benefit it. This is useful because it increases the chances of reaching an agreement that satisfies the disputing parties' interests. Or at least, it will decrease tensions among riparian states.

In the Indus case, the mediation of third party raise states will for a peaceful resolution of the water disputes. As Jacob Bercovitch has pointed out “The reality of mediation is that of a complex, changing and dynamic interaction mediator who does have some resources and an interest in the dispute or its outcome and disputing parties and their representatives.”

Obviously, the whole process of mediation is voluntary. Once the third party is allowed to intervene, attention is focused upon the issues underlying the dispute. In order to keep the talks on track, all parties needed to know what issues in a dispute are. Not only was it crucial for the mediator to understand the underlying reasons of a dispute, but the riparian states themselves needed to be aware of each other's perceptions.

The most important variable in the Indus case is the economic dimension that leads to successful road toward the Indus agreement. The mediator made an effort to determine interests of India and Pakistan clearly. The essential variable in the Indus case is the economic factor. The Political instability between India and Pakistan did not constrain the cooperative scheme. By determining interests of riparian states, they can reach a degree of cooperation. This factor can be used to describe the successful case of the Indus Waters Treaty. This approach can be applied successful

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in the case of Euphrates basin. According to the Euphrates case, the development of hydro power projects on the two rivers has been a source of growing tension between the riparian states. By allowing the disputing parties the chance to cooperate, or at least to weight the costs of cooperation, it can change the disputing parties' perceptions of each sufficiently to reach an acceptable solution. Disputing parties have agendas, which they wish to satisfy. Mediation is an effective process in which disputing states can start directly in discussing their agendas without having to return to dispute.\textsuperscript{194} In addition, mediation assists the parties in reaching a common ground that fits these agendas.\textsuperscript{195}

In practical terms, mediation process should be impartial and only assess the situation for the benefit of the disputing parties.\textsuperscript{196} By peaceful settlement, it offers a development diplomacy, which expands economic growth without regard to the political needs and agendas of any one given state. This is not to say that the mediator does not have reasons for having entered in the process, and then staying. However, these reasons should not be imposed upon the final treaty, if one arises.

The national interests of states in question are willing to explore common ground of incentives, particularly economic incentives between riparian states, then cooperation will be more likely. The development incentive helped in resolving the Indus dispute. Moreover, The Public participation played a central role in resolving the dispute to build up shared understandings. These negotiators were able to balance different interests. Participation should include a variety of interest groups. The availability of both scientific and experiential knowledge was useful in achieving a mutually acceptable resolution.

There is a common path for degree of cooperation is left between competitive parties based upon economic approach. The economic principle of the distribution of water resources according to its economic value could be a suitable resolution.\textsuperscript{197} It should be differentiated between the efficient allocation of water to its highest value use and equity the distribution of gains from an

\textsuperscript{194} JACOB BERCOWITCH, SCOTT SIGMUND GARTNER, INTERNATIONAL CONFLICT MEDIATION: NEW APPROACHES AND Findings (Routledge 2008).

\textsuperscript{195} Id.
\textsuperscript{196} Id.
\textsuperscript{197} Id.
allocation.\textsuperscript{198} Water sharing should take into consideration the possibility of increasing the overall efficiency of water utilization by re-allocating the water according to these values. This principle alone may not be accepted as equitable, or fair, by the parties involved. However, inclusion of economic aspects in water resource allocation may enhance better cooperation and future collaboration among riparian states. Beneficial uses describe the efficient allocation of scarce water resources among competing users.\textsuperscript{199} For instance, water pricing policy can play a major role in effective allocation.

The cost of using water in the production of food or industrial goods can be measured in economic scheme.\textsuperscript{200} In addition, the cost of providing water to produce a certain product can be compared across sectors, mainly agriculture and industry. This could encourage their allocation of water away from low value water products either by changing sectors or, for instance, by planting crops that demand a higher price on the market. The high cost of producing certain low value foods such as grains could encourage governments to buy the food on the international market rather than produce it locally.


\textsuperscript{199} Id.

\textsuperscript{200} Id.
VI. Conclusion:
The flow behavior of international rivers has been altered by the major projects of hydropower projects. Competition over water resources has prompted fears that water issues contain the seeds of violent dispute. This thesis has evaluated the constructivist approach regarding trans-boundary rivers. The thesis has revealed that the competitive and cooperative nature of international rivers is really the outcome of the issues of state identities and interests and social construction of public participation. State relations are deeply inherited in relatively stable but not static structures of history, geographical features, political relations, and economic development. These factors have assisted to reshape both the identities and interests of state actors moving them toward cooperative behavior. This thesis admitted that the economic dimension can be used in settling competition over international rivers. It can be used as a means to set the conflicting players in a mode of cooperation and coordination. In essence, the economic aspect can help states to address their shared water needs peacefully. This approach assumes that the economic identity of states represents a window of opportunity and cooperation among riparian states.