

Piotr Szwedo, *Cross-border Water Trade: Legal and Interdisciplinary Perspectives*, Brill Nijhoff, Leiden, Boston: 2018

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Water is indispensable to life on Earth. Even in the regions abundant in water sources, like New Zealand, water has historically been treated in a particular way. In 2014, Māori tribe of Whanganui in the North Island managed to negotiate a treaty in which the Whanganui river, the third biggest in New Zealand, was established as a legal entity, an ancestor of the tribe, which is afforded certain rights. The river is treated as a whole being, that starts at its source and ends in the sea. This approach comes from the Māori belief that they are united with the Universe, and are equal to the seas, the rivers and the mountains. In practice, it translates to affording the river the same legal rights as those attributed to the tribe itself.¹

Despite the common belief that water and the land grabbing that is tied to water is prevalent only in the areas in which the water is scarce, unfortunately that is not the case.² However, it must be noted that in those areas of the world deficient in water, some of which are currently the conflict zones, water trade has been an established practice borne out of the necessity unknown to countries with ample freshwater sources.

Therefore, Piotr Szwedo's complex analysis of water trade in *Cross-border Water Trade. Legal and Interdisciplinary Perspectives* is a noteworthy position that fills important gap in the existing framework on water trade. Right from the beginning the author provides us with a clear and concise structure in which he not only addresses the research problem and formulates hypothesis, but also provides the audience with concise description of the methodological tools adopted for the purpose of his analysis. The answers and conclusions reached by the author are perspicuously explained at the end of the book, leaving the reader with a feeling of satisfaction. The title of the book itself is somewhat misleading, as first and foremost the book tackles the issues of establishing what water is according to the laws of nature, and includes a comprehensive analysis of cross-border freshwater trade – an analysis aimed at reconstructing the norms determining such trade in the fragmented sources of international law. The author conducts a meticulous analysis of the international legal framework, including international law of water resources, international trade law, international environmental law, and international human rights law.

¹ Whanganui River Deed of Settlement Ruruku Whakatupua - Te Mana o Te Awa Tupua, 5 August 2014, available at: <https://www.govt.nz/dmsdocument/5947-whanganui-river-deed-of-settlement-ruruku-whakatupua-te-mana-o-te-awa-tupua-5-aug-2014>; Ruruku Whakatupua – Te Tānekaha Supplementary Deed, 27 April 2016, available at <https://www.govt.nz/dmsdocument/6526-whanganui-iwi-ruruku-whakatupua-te-tanekaha-supplementary-deed> (both accessed 30 May 2019); E.A. Roy, *New Zealand river granted same legal rights as human being*, The Guardian, 16 March 2017; E. Hsiao, *Whanganui River Agreement - Indigenous Rights and Rights of Nature*, 42(6) Environmental Policy and Law 371 (2012), pp. 371-372.

² J. Franco, L. Metha, G.J. Veldwisch, *The Global Politics of Water Grabbing*, in: M. Edelman, C. Oya, S.M. Borrás (eds.), *Global land grabs: History, theory and method*, Routledge, London: 2015, p. 139.

The book itself is divided into six chapters. Each chapter concludes with a summary, which contributes to the overall clarity of the book's structure. The first chapter deals with the preliminary questions, in which alongside the issues discussed above the author includes a subchapter on terminology, which affords the reader the comfort of both reading the book with a clear grasp of the terms related to both water and trade, as well as an understanding of how certain terms were developed. "Virtual water", which as author stresses is a comparatively new term, is altogether useful for understanding the subchapter on the trade in virtual water in the World Trade Organization (WTO) practice. The methodology the author proposes is envisaged to establish the "minimum content of natural law", using natural law methodology, so it can later on be used as a basis for the discussion embedded in the legal positivism formal-dogmatic method.

In the second chapter, the author embarks on a search for a regulatory model. He starts with the axiology of water, beginning his analytical journey in philosophy and religion, moving through Roman law, water as an object of ownership, to the liberation and institutionalization of trade in water rights and interstate trade, focusing in this regard mostly on the practices of the United States and Australia, and then moves on to analysis of water conservation and its economic mechanisms. The author discusses the views of the Catholic Church and Islam, both Shia and Sunni, mentions the Talmud only in passing, and forsakes Buddhism and Hinduism altogether. This maneuver leaves the reader wanting for more, as the discussion presented is very engaging. As regards the analysis concerning the approach to water in indigenous and/or aboriginal lands, this is a thread that is woven into and throughout the book, although it would be very helpful to the audience if the author made a reference in each instance to which exact area of the world the discussion relates.

The third chapter examines the WTO practice, starting with analysis of the classification of water as a good or product under the General Agreement on Tariffs and Trade (GATT). It would be beneficial to this part of the book, if the discussion included in footnotes regarding goods and product was to be moved to the main body text of this subchapter. Subsequently, the author moves to the GATT ban on export restrictions, then on to the General Agreement on Trade in Services (GATS), GATT, and the WTO agreement analysis of water supply as a service. The chapter concludes with the aforementioned exploration of trade in virtual water, which includes an interesting discussion on the impact of land-grabbing tied to water trade.

The following fourth chapter is dedicated to the international practice of states concerning water trade. It examines the *secundum-legem practice* in the forms of water export and barter and exchange of water rights, the *praeter legem practice* – both complementary and alternative – and concludes with an analysis of the *contra-legem practice* on persistent and subsequent objectors. The most interesting discussion concerns the persistent objector and its development in the Canadian practice in its relations with United States. This allows the author to reach a conclusion regarding the existence of a persistent objector in the customary norm according to which water is an object of cross-border trade, through the Canadian practice that consistently refuses to treat water as a commodity. Slovakia

also refuses to treat water as an economic good, but in this case the author finds the state practice to be subsequent and as such in violation of international law.

The fifth and last chapter, before the ending notes, discusses the principles and institutions of international law as conditions and restrictions on water trade. It is the longest chapter in the book, consisting of over one hundred pages and divided into four main subchapters, which address: state sovereignty and natural resources; the issue of solidarity; water and ice as a common heritage of mankind; and finally the right to water as a human right. The chapter discusses at lengths the status of water as a commodity. The author concludes that the human right to water places an obstacle to states' freedom in water trade in such a manner that it hinders trading initiatives. Moreover, the author finds that such factors as the "principle of equitable and reasonable use of water resources, the co-operation principle, and the principle of sustainable development" are vague, albeit crucial in delineating the boundaries to managing the water resources, and as such they have a significant impact on states' freedom.

The author is indecisive in determining whether the right to water is a binding norm of international custom. In his deliberations he leans towards affording it such status, while at the same time he states that no state practice can constitute a persistent objector to this right. In this subchapter, as well as in the subchapter discussing the common heritage of mankind in relation to state territory, the discussion would again benefit from moving some of the contents of footnotes into the main text, particularly when discussing the relevant case law. One of the things that should probably be clarified is in how the author sees the human right to water as "anchored" in humanitarian law.

The author delivers on his promise to reconstruct the norm allowing for international water trade in a formal-dogmatic way and establishing its relation to the "minimum content of natural law", and finds that there is "a certain lack of overlap" from which he derives the genesis of conflicts, i.e. in the Middle East and Bolivia. As regards water as a commodity, he reaches the conclusion that it can be both a public good and at the same be an economical good subjected to trade across borders.

The *Cross-border Water Trade. Legal and Interdisciplinary Perspectives* is without doubt a great read for anyone interested in water trade. In addition, it is an interesting position for anyone in water in any aspect, as a natural resource, or a commodity, or in the international practice of states. The book is very well researched and cites an abundance of sources, including French and Arabic literature on the subject, which are illustrated by rich case law. For those who are just embarking on the journey of discovery of the issue of water trade in international law this book may constitute not only interesting but also useful introductory guide.

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