MEWIN

(Middle East Water Information Network)

A Selected Bibliography of Sources On The International Law of Fresh Water Resources

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Preface

This bibliography has been prepared as a service to MEWIN members. The titles have been selected mainly from the AMER (Associates for Middle East Research) Middle East Water Database. As the title and length of the list indicate, it is not meant to be a comprehensive bibliography. Rather, it is intended as a handy, quick reference

and source guide to the complex issue of international fresh water law in general and to the Middle East in particular.

Because international fresh water law is not region-specific, the majority of titles (which are compiled under categories I and III) do not necessarily refer to the Middle East, but are entirely applicable to the area as law *qua* law. The items appearing under the heading of Middle Eastern basins may be considered as case studies. Those Islamic law titles that are treatises on the general principles of Islamic law are listed under category I because they deal with the underlying theories and prescripts of sharia rather than to specific regional basin issues. Several titles that appertain to other world regions have been included because the particular legal issue involved is pertinent to the Middle East as well, and because they constitute useful comparative cases. Treaties and conventions are cited because they are in themselves international law (as legal scholars are at pains to point out). Some items that are published in books that are collective works are cited individually - even through the book itself is also listed - for convenience and because they have a particular importance; the redundancy is deliberate.

Specialists whose focus is on the legal dimensions of water resources will undoubtedly notice the absence of items they consider should have been included in such a collection of sources. I would be grateful if they would bring them to my attention and I will add them to any future editions of the bibliography.

Since this is a relatively short bibliography—some 365 titles—its organization has been kept simple. There are three parts: general references, Middle East basins, and UN documents and treaties, arranged in alphabetical order for users of the hard copy version. For those who wish to have a copy on a disk, titles may be searched by author, subject, basin, or other key words. For further information on the AMER Middle East Water Database, please contact Professor Naff.

Thomas Naff University of Pennsylvania May 2, 1997

Introduction

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Few topics are more perplexing to participants in (or students of) international conflict than the role of international law in channeling, preventing or resolving such conflicts. In part this simply reflects a misguided set of expectations. Persons not familiar with international legal processes generally look for close analogues to domestic legal processes, with apparently definite rules applied routinely and rigorously by well established and effective court systems, with the rules subject to change only through orderly formal procedures. None of these features exist in international law. In this

sense only, international law is a rather primative legal system. Saying that does not suggest that international is not law, or that it is ineffective. Most people through history, and many people today, have lived under legal systems that are similarly institutionally underdeveloped, or perhaps we should say informal, without feeling that the system is not legal or is ineffective. To a greater extent than critics of international law realize, that is equally true of the international legal system. As a result, international legal processes are more diffuse and open than domestic legal processes. In such a system, the distinction between law and politics (usually so carefully guarded in modern domestic legal systems) diminishes considerably, although it never quite disappears entirely. The challenge to the international law is to retain a legal perspective even while dealing with, in large measure, non-legal materials.

Increasingly, the international law of the environment and of resources, is becoming more developed and more effective. This is no less true of the international law of transboundary water resources. Because of the tendency towards exaggerated expectations, however, even a select bibliography of legal sources on the international law of transboundary water resources must include items that will help to orient a researcher to international law generally, as well as items specifically directed at transboundary waters. Readers will note the mixing of the two types of sources in Part I of this bibliography, and might choose to focus their research accordingly. It would be a mistake, however, assume that one can simply disregard the general items unless one is genuinely familiar with international law in general. Too much is written by persons who betray in their work products their profound misunderstanding of what international law is and how it operates. If persons not familiar with international law generally (including lawyers who do not practice internationally) were to take the time to learn about and consider these general questions, the utility of international legal materials to them would be greatly enhanced.

Part I also contains several references to Islamic law generally, and to Islamic theories of international law in particular. Islamic law forms a legal tradition distinct from those of Europe which largely have shaped general international law. There is considerable disagreement regarding whether the general Islamic legal tradition gives rise to a distinct and different body of international law. The question deserves careful consideration particularly as most nations in the Middle East shared the Islamic faith and legal tradition. The listed sources will provide a solid introduction to the topic, as well as to questions of the Islamic legal traditions regarding the sharing of water.

Part II of this bibliography also mixes two apparently distinct research categories. These are case studies on specific legal (and political) disputes over internationally shared waters. The water disputes relating to the Jordan Valley are inextricably intertwined with legal issues relating to the Israeli occupation regime. Thus one will also find a number of items that relate to the law of the belligerent occupation rather than to water as such. Some of these items address water issues directly, while others do not.

Finally, perhaps the most important part of the bibliography are the actual treaties included in Part III of the bibliography. These items create real law, and the better of them create effective mechanisms for monitoring and enforcing compliance. The listed treaties on the Nile and the Indus are entirely focused on waters. The several agreements relating to the Jordan Valley are not exclusively water treatise, but in each treaty water has been given a prominent and, indeed, central role in the attempt to craft peace between the several communities sharing the valley.

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