



Summer 1982

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Recommended Citation

Ved P. Nanda, *International Groundwater Law, Ludwik A. Teclaff and Albert E. Utton, Editors*, 22 Nat. Resources J. 725 (1982).

Available at: <https://digitalrepository.unm.edu/nrj/vol22/iss3/21>

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INTERNATIONAL GROUNDWATER LAW

LUDWIK A. TECLAFF and ALBERT E. UTTON.
New York: Oceana Publications Inc., 1981. Pp. xvii, 490.

Notwithstanding a growing awareness of the need for developing, conserving, and prudently managing global water resources,¹ scholars and policymakers alike have paid scant attention to international groundwater law which, consequently, has remained an undeveloped field. The editors of this important compilation deserve credit for providing a comprehensive treatment of both normative and institutional aspects of this critical resource.

International Groundwater Law fills a void by (1) identifying the inadequacies of the existing laws and institutions both for the management of groundwater and for the resolution of disputes concerning questions of international groundwater quality and quantity,² (2) providing several case studies of international aquifer management,³ (3) suggesting alternatives for the development of laws and institutions of transboundary aquifers,⁴ and (4) providing 300 pages of pertinent documentary materials which include treaties, interstate compacts, and some selective municipal law materials which have a potential bearing on transboundary groundwater issues.⁵

In his introductory chapter, "The Development of International Groundwater Law,"⁶ Professor Utton succinctly outlines the problem by describing the recent trends in both national groundwater law and transboundary groundwater law, including international and interstate practices. He draws attention to the growing recognition of the need to protect groundwaters from pollution and the problems posed by political boundaries which divide many aquifers. He suggests that the problem is exacerbated because of "the increasing demand and competition for groundwater resources in view of increasing populations and increasing economic development."⁷

The editors and the contributors find the existing laws and institutions inadequate and offer several alternatives with the objective of strengthening the existing mechanisms. Professor Utton provides a useful summary of many of the recommendations for the management of transboundary

1. See generally A. BISWAS, U.N. WATER CONFERENCE (1979); WATER NEEDS FOR THE FUTURE (V. Nanda ed. 1977).

2. See INTERNATIONAL GROUNDWATER LAW (L. Teclaff & A. Utton eds. 1981), at 1, 25, 57, 77.

3. See *id.* at 117, 157.

4. See *id.* at 135, 147.

5. See *id.* at 189-490.

6. See *id.* at 1-24.

7. *Id.* at 18.

groundwaters:⁸ from broad policy considerations with suggestions that “[t]here must be conjunctive management of surface and groundwater in areas where supplies are interrelated,”⁹ and that “[m]anagement should be placed in an international agency with authority which is broad enough to carry out the policies of the countries concerned and strong enough to enforce the policies designed for particular groundwater areas along and near the border,”¹⁰ to specific management alternatives (equitable apportionment, case-by-case negotiations, and comprehensive management), the allocation process, and water quality standards and regulations.

The next chapter, “Principles for International Groundwater Law,” by Drs. Caponera and Alheritiere (which was initially published as a United Nations study), is an inquiry into the emerging principles of international law which are applicable to groundwater resources. The authors attribute the current shortcomings to “the fact that international law may not have developed principles which are flexible, yet specific enough to foster the necessary cooperation or to reduce conflict over ground water.”¹¹ They conclude that “[i]f, under international law, we may speak of new emerging principles regarding underground water, these should be construed not so much as general principles of law enjoying recognition by nations nor even as international customary principles, but rather as ‘systematic’ or ‘interpretative’ principles deriving from the acknowledgment of a given hydrologic management unit.”¹²

In his discussion of the “groundwater legal regime,” Professor Robert Hayton makes a plea for the fashioning of “a legal regime and a management machinery best calculated to achieve the desired results, that is, the realization of *all* the policy objectives of the country, and not merely the ground water resources utilization objectives.”¹³ Ludwik and Eileen Teclaff study the trends in treaty law regarding transboundary groundwater pollution and conclude that “[a] heavy responsibility lies on all countries to preserve the quality of underground waters and to prevent harm to human health and the environment that could be more horrendous than any surface water contamination yet known. Ground water, because of the nature of its occurrence and its association with that sovereignty which has always attached to land in international law, may be the very last element of the environment to be considered a ‘commons.’ Yet perhaps the concept of international trust should be applied to it in view of the

8. *Id.* at 18–24.

9. *Id.* at 18.

10. *Id.* at 19.

11. *Id.* at 27.

12. *Id.* at 55.

13. *Id.* at 75.

irreversible damage that may be done. . . .”¹⁴ The United States-Mexican frontier provides the focus of inquiry for four studies pertaining to international groundwater management.¹⁵ These studies describe the existing problems pertaining to pollution and development of the water resources shared by the United States and Mexico and they make an eloquent case for cooperative management measures.

The selected documents fall in the following categories: international agreements concerning the use of wells and springs in frontier areas,¹⁶ frontier waters agreements indirectly protecting groundwaters,¹⁷ comprehensive agreements specifically including groundwaters within their scope,¹⁸ agreements recognizing the effects of surface water development on groundwaters and of groundwater development upon surface waters,¹⁹ directives and proposals for directives of the Council of the European Communities and examples of community practice,²⁰ and national and regional strategies for groundwater protection and for the management of large transboundary aquifers.²¹

International Groundwater Law is a significant contribution which should be carefully studied by policymakers as well as academicians.

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14. *Id.* at 114–15 (footnote omitted).

15. *See id.* at 117, 131, 147, 157.

16. *Id.* at 193.

17. *Id.* at 213.

18. *Id.* at 221.

19. *Id.* at 247.

20. *Id.* at 283.

21. *Id.* at 441.