



Dissolving the ‘Westphalian system’

Transnationalism in transboundary water management

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Statecraft was born in water. Ancient civilizations, such as in Mesopotamia, Egypt or Java were founded on ensuring “water security,” the skills of water resource management and the allocation of water over large geographic areas. Water management challenges stimulated innovations in management hierarchies, geometry and mathematics. Political power stemmed from the ability to control water resources and was contingent on the continued ability to provide protection from both floods and droughts.

The resulting societies were either feudal and run by landowners, theocratic and run by a priesthood or in other ways “despotic” in the sense of Aristotle, where rulers had the consent of the ruled. In his work “Oriental Despotism,” Karl August Wittfogel juxtaposes the resulting “hydraulic empires” of Asia (and Russia) with the more cooperative and democratic societies of Europe (and the West).

The “Westphalian system” was established by peace treaty in 1648, and since then has been the foundation of the current international

order and relations among nation states. However, it also cemented a feudal system of political control in Europe and an international order based on delineation, noninterference and separation. It declared nations responsible for all their internal affairs – creating remarkable difficulties in coping with governance or management challenges that cannot be confined to national boundaries. As rivers do not stop at borders, water management is, inevitably, a transboundary issue, demanding the establishment of transnational regimes.

So water diplomacy, cross-border cooperation and modern water management practices do not fit well into a Westphalian mind-set. Transnationalism is now replacing the former international order and the relations among neighboring continental countries (the situation is obviously different for archipelago states, such as Indonesia). Furthermore, the direct participation of citizens and water users has made the new order more egalitarian, and recent developments in information technology will make it more democratic. In fact, the two most advanced arrangements for democracy on a continental scale, the Constitution of the United States and the institutions created by the European Union, followed in the wake of international treaties on the shared use of water resources.

Sharing the Potomac, the US Constitution

In 1785, George Washington convened commissioners from Maryland and Virginia to negotiate at his home, in what became known as the Mount Vernon Compact. The issues they faced stemmed from a legal situation in which the entire

Potomac River was owned by Maryland, which could thus deny some uses of it. Virginia, however, had control over access from the Potomac to the sea and could thus deny Maryland the use of the river for international trade. The commissioners agreed that neither party should interfere with (sea) trade or fishing on the Potomac, the Pocomoke River or the Chesapeake Bay. They also established rules on tolls and tariffs, including the value of currencies used, the sharing of costs for developing the rivers and the bay for navigation and cooperation on naval protection in cases of piracy or aggression by a foreign power. The compact was open in that the commissioners were called upon to address additional issues that might arise in the future, and Delaware and Pennsylvania were invited to accede.

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What might have been regarded as a feat of water-related diplomacy covering an impressive range of issues has its true value not in its substance, but in the trust it helped engender among the negotiators. All of them were influential in their respective states, and the experience they shared encouraged Virginia on Jan. 21, 1786 to invite other states into negotiations on commercial issues, in what became known as

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the Annapolis Convention. The outcomes of that convention were remarkable in their own right but were overshadowed by the subsequent Philadelphia Convention of 1787, which resulted in the drafting of the US Constitution. Even though the key concepts in the US Constitution came from the Mount Vernon Compact but are not normally referenced today, the direct lineage from the compact to the Constitution is undeniable.

Navigation on the Rhine, the institutions of the EU

In contrast to the trust-building function of the negotiations at Mount Vernon, the 1868 Act of Mannheim on the Navigation on the Rhine River, which is still in force today, is an early blueprint of the institutional order of the European Union as it evolved from 1952 onwards. It paved the way not only for free movement, shipping, rafting and trade on the Rhine, but also established the principle of nondiscrimination based on nationality or “flag” of vessels, abolished various charges and simplified customs procedures. The act provided for shared responsibility for maintenance of the river and navigational aids, and the approximation – or harmonization – of laws and regulations including a unified judiciary and (Rhine) shipping courts. A commission was given the task of presiding over the implementation of

the act, and the parties agreed on a rotating presidency.

In formal terms, the Act of Mannheim filled a gap left by the Westphalian Treaty, which called for free navigation but on the basis of its principles could not provide for it. All key elements of this act were incorporated in the 1951 Treaty of Paris, establishing the European Coal and Steel Community, and subsequently in the 1957 Treaty of Rome, establishing the European Economic Community from which the European Union emanated.

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Both the US Constitution and EU Treaties are, each in their own way, responses to the shortcomings of and inherent conflicts in the Westphalian system. The United States sought disentanglement from conflicts among the nation-states of Europe but became a Westphalian state (of a sort) in turn. The EU Treaties, motivated by the horrors of World War II and the beginning of the end of the Westphalian system in Europe, established a new order among its member states based on principles focusing on shared responsibility and cooperation rather than delineation and separation.



AFP PHOTO / ARMIN WEIGEL

A river barge moves slowly down the Rhine-Main-Danube Canal in Germany.

Contrasting experiments with river basin management

A directive is an EU law that is binding among member states, which have to ensure through the adoption and effective implementation of national laws that the objectives contained within EU law are attained. Failure to do so regularly results in treaty infringement procedures at the European Court of Justice, with high fines applied for every day a member state is noncompliant. It is worth contrasting this practice in the EU with the principle of noninterference within the Westphalian system and the lack of enforcement characterizing most international agreements.

The WFD is a revolutionary piece of legislation in a number of ways. It aims to achieve strong status for all waters, to be measured by a whole range of criteria, by

installing a management cycle for water policy according to best practices in business management. The WFD inserts economic thinking and economists into a world that was previously inhabited by engineers and lawyers, with a few natural scientists among them. It also provides for the integration of water management across borders and sectors (such as shipping, fishing, hydropower and water abstraction for various uses), something never attempted before. Users of water resources – or “stakeholders” – and the general public are empowered to participate in planning and decision-making, often using modern geographic information systems, in effect weakening the power of technocrats in the field.

Furthermore, the implementation of the WFD is coordinated by the “water directors” group of high-level ministerial officials from EU member states and the European

Commission, who have adopted and now supervise the application of a “Common Implementation Strategy” of the WFD, adding two novel transnational components to the range of institutions in the EU. The unit of management no longer is the territory of a member state or an administrative region with all the “Westphalian” connotations of territoriality and sovereignty; it is now a bio-region, namely a river basin defined by hydrogeography, and management of this bio-region focuses on transboundary effects, interdependence and cooperation

This shift of responsibility for implementation towards a pan-EU coordination mechanism is a significant departure from the old rule that competence must either reside in the EU or its member states. In effect, an additional layer of transnational policy coordination is emerging, which makes EU policy significantly more “domestic” rather than “international” in character. As the example is repeated in other areas of (environmental) policy, such as marine water and coastal zone management, soil protection or the regulation of industrial emissions, the constitutional practice in the EU will shift in remarkable ways. The borders between member states are becoming less important, and that is also true for the external borders

of the EU, where non-member states participate in joint river basin management.

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Danube Day

The erosion of the Westphalian system through the practice of transboundary water management can be observed on the ground. Thousands of stakeholders and activists convene annually, both physically and virtually, on Danube Day. The region has been the last to emerge from the oppression and stagnation of the post-war order in Europe, in a process marked in part by nationalist excesses and punctuated by armed conflict. Here the ghosts of Westphalia raised their heads in Europe, and here a new generation practices post-Westphalianism.

They represent more than 80 million inhabitants from well over a dozen countries, celebrating the emergence of a transnational polity of Danubians, a people who share a history, a future and increasingly an identity defined by a river basin.