CHAPTER 3

Information Acquisition and Exchange on a Regular Basis

I International Water Law and Selected Cases

A Rationale under the International Water Law

Data collection and information exchange on a regular basis for shared freshwater resources among riparian states is an initial and fundamental step towards transboundary cooperation, contributing to a more informed discussion on transboundary water issues among riparian states. As viewed by McCaffrey, without relevant data and information sharing among co-riparian states, it will be very difficult, if not impossible, for states to ensure equitable and reasonable utilisation and prevent significant harm.1 In addition to the inherent connection to the substantive principles and targets, this mechanism can be regarded as a part of the general obligation to cooperate.2 Not only can it reduce misunderstanding and build trust among basin countries, the increasing communication and the cultivation of goodwill through this process will also lead to forms of closer cooperation among states.3

The value of regular exchange and collection of hydrological and hydrogeological data and information has been recognised by a variety of international documents and has been practiced in various basin contexts. Early in 1966, riparian states were recommended by the Helsinki Rules to “furnish relevant and reasonably available information” to the other co-riparians.4 More detailed stipulations were achieved through the adoption of Article 9 of the United Nations’ (UN) Watercourses Convention and the United Nations Economic Commission for Europe’s (UNECE) Water Convention. In particular,

3 McCaffrey, above n 1, 479.
the latter represents an advanced example in this area. As a general requirement, two criteria of information exchange are highlighted under the UNECE Water Convention, namely the “widest” in terms of scope and “as early as possible” in terms of timing.\(^5\)

In order to operationalise this provision, the Convention further clarifies the range of information as “reasonably available data”, especially with respect to the environmental conditions of transboundary rivers, experience regarding best available technology and research results, emission and monitoring data, national regulations on emission limits, measures to tackle the transboundary impact and permits or regulations for waste-water discharges.\(^6\) This is combined with another requirement to ensure several types of information are made available to the public. The Convention also covers the situation when the information requested is not available and urges endeavours to comply with the request which could be conditioned upon the payment of reasonable charges. Other than framing the obligations of states on this issue, river basin organisations are also required to facilitate this process by collecting, compiling and evaluating data, providing a forum for information sharing among states and promoting the exchange of information on the best available technology.

These requirements, however, do not affect the rights and the obligations of states in relation to industrial and commercial secrecy or national security. Although this is just a normal practice in international law, similar provisions in fact could be easily subject to different interpretations on what actually falls into this category, especially those relating to national security. With more detailed elaboration and legal arrangements on what information should be shared among countries and how, it is more likely to ensure that the confidentiality of information is just the exception rather than the rule. Since all riparian states of the Rhine River are bound by this Convention, the implementation of information exchange in the Rhine basin could be an enlighten case study.

In addition, numerous transboundary water treaties also entail requirements on information exchange to varying degrees, such as the 1944 United States-Mexico Boundary Waters Agreement, the 1960 Indus Waters Treaty, the 1961 Columbia River Basin Treaty, the 1964 River Niger Treaty and the 1994


\(^6\) Information in this paragraph is based on the content of the UNECE Water Convention. Ibid. arts 8, 9, 13, 16.