

Book Review

The World Bank Policy for Projects on International Waterways: An Historical and Legal Analysis by S. M. A. Salman, 2009, paperback, 288 pages. ISBN 978-0-8213-7953-0

Kenneth K. Mwenda

*The World Bank, Washington DC, USA and Faculty of Law of the University of Pretoria, South Africa and American University Washington College of Law in Washington DC, USA.
E-mail: KMwenda@worldbank.org; KMwenda@yahoo.com*

The book, *The World Bank Policy for Projects on International Waterways: An Historical and Legal Analysis*, written by Dr Salman M. A. Salman, a Lead Counsel at the World Bank¹, is a timely publication on the historical, legal and policy aspects of the riparian rights of states under World Bank-funded or supported projects affecting international waterways. Pitted against World Bank safeguard policies relating to international waterways and drawing heavily on the principles of public international law, the book focuses on the cooperative management of the aforesaid riparian rights. It should be noted, however, that to a large extent, World Bank safeguard policies on international waterways are reflective of customary international law (Salman, 2009). Closely related to this, Dellapenna observes as follows:

The past three decades have seen the emergence of a significant body of international environmental law centering on the concepts of sustainable development, the precautionary principle and integrated management. At the same time, the United Nations undertook to codify the law relating to internationally shared watercourses through the work of the International Law Commission. The principles in these two bodies of law, while not directly inconsistent, proceed on different bases towards different ends, creating a significant risk of conflict between what ought to be closely related bodies of law. The principles involved are not directly antithetical, but nothing in the recently approved UN Convention assures that they will be applied consistently or even similarly. (Dellapenna, 2001: 243)

According to Dellapenna, international water law traditionally has focused on the development of water resources for consumptive uses, while the emerging international environmental law focuses on protecting the resource from development in favor of ecological and aesthetical concerns (Dellapenna, 2001). Dr Salman's book, *The World Bank Policy for Projects on International Waterways: An Historical and*

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Legal Analysis, tackles the first of the two threads highlighted by Dellapenna, that is, international water law and its focus on the development of water resources for consumptive uses. Dr Salman draws on his rich experience as Lead Counsel of the World Bank working on international waterways. In this book, he critically examines World Bank practice pertaining to international waterways. He marshals persuasive arguments and integrates them expertly with relevant theoretical and conceptual frameworks for international water law. Dr Salman's book adds to the existing body of knowledge on international water law by bringing on board the position and role of the World Bank regarding World Bank projects that affect the riparian rights of different consumptive users in international waterways. To this end, the book fills an important gap in critical legal scholarship on international waterways and should not be treated lightly as a mere academic treatise or a simple practitioner manual. Rather, this is a book that provides a fine and well-reasoned blend of theory and practice.

Often, as I contend, good theory is reflective of and a culmination of evidence of best practice. There tends to be a symbiotic relationship between sound theory and best practice. As such, there is no substitute for research. Yet, there are some pessimists and superficial cynics that claim, and proudly too, to have many years of practical experience in doing the same thing over and over again, with minimal or no engagement whatsoever in intellectual leadership, forgetting that they could have been doing that same thing wrongly for much of their life. Such human failings, predicated on robotic and dogmatic intuitions, are often a result of treating lightly, or paying insufficient attention to, valuable and useful theories or ideas in a relevant discipline. Through this book, Dr Salman has shown that there can be no substitute for erudition.

Arranged in ten chapters, the book opens up with a discussion of the challenges facing international waterways. Chapter 1 examines the World Bank's treatment of legal and policy issues relating to international waterways during the early years of the World Bank. Dr Salman observes that in the early 1950s the World Bank had no clear policy on the cooperative management of riparian rights of states affected by World Bank projects (Salman, 2009). By contrast, developments in Europe proceeded mainly on the basis of customary and conventional international law. But, even there, state practice was not entirely uniform.

Faced with a growing number of projects that involved riparian rights of states in international waterways, the World Bank had to develop its own policy on the cooperative management of such rights as early as 1956. The current World Bank policy has evolved over the last 50 years, benefitting from the emerging principles of international water law and, in turn, contributing to the evolution of such principles (Salman, 2009).

Chapter 2 delves more into the intricate aspects of the World Bank's policy on international waterways, highlighting *inter alia* competing interests of riparian states concerning international waterways affected by World Bank-funded or supported projects. The chapter also examines the approach that the World Bank has taken to deal with such competing interests.

Chapter 3 advances the discussion to the current World Bank policy on international waterways, drawing on some historical anecdotes of the World Bank's Operational Manual Statement (OMS) 2.32, issued on April 10, 1985, that dealt with "Projects on International Waterways". A number of World Bank projects involving the riparian rights of states in international waterways are also discussed. And issues are raised, for example, where a project in international waters would cause no adverse effects on any of the other riparian states, should such other riparian states still be notified? Or, should downstream riparian states be required to notify upstream riparian states? Who, exactly, should undertake the notification process? The discussion in Chapter 3 demonstrates how OMS 2.32 was refined, how it evolved over the years and how this policy statement was reissued at different points up to the time of the current Operational Policy of the World Bank (OP/BP 7.50) on international waterways. Chapter 3 also examines the approaches of other financial institutions with regard to projects that affect the riparian rights of states in international waterways.

Chapter 4 turns to look at the main features of the current World Bank policy on international waterways, OP/BP 7.50. Dr Salman raises interesting questions here. He asks, for example, in the case where a pipeline to be financed by the World Bank that runs over land, but connects to another pipeline already under construction and about to be completed (though not financed by the World Bank) that runs across an international waterway: should the riparians of the waterway be notified although the World Bank project only runs through land? Similarly, Dr Salman argues, what if the World Bank is financing a water treatment plant project on one international waterway and the borrower is financing separately another water treatment plant which is not part of the project on another international waterway and both plants would use the water distribution network financed under the project? Should notification be limited to the riparians of the waterway under the first treatment plant, or should it include the riparians of the waterways of both treatment plants? According to Dr Salman, these are difficult questions upon which the World Bank policy, OP/BP 7.50, does not provide direct and explicit guidance.

Chapter 5 sets out the procedures and processes for notifying the affected riparian states under OP/BP 7.50. The duty to notify is spelt out, postulating that, under a World Bank project, the beneficiary state should notify the other riparian states and provide them with details of the project. However, where a prospective beneficiary is reluctant to issue the notification, the World Bank can issue such notification on behalf of the beneficiary, as long as the said beneficiary has no objection to the World Bank doing so. The chapter also examines possible responses that could come from the affected/notified riparian states and how these responses should be managed under OP/BP 7.50.

Chapter 6 examines situations where a riparian state objects to a World Bank-funded or supported project, outlining instances where the opinion of an independent expert can be sought. Chapter 7 deals with exceptions to the notification requirement under OP/BP 7.50, listing such exceptions as: (i) the rehabilitation of existing schemes; (ii) water resources surveys and feasibility studies; and (iii) projects in a tributary exclusively in the lowest downstream riparian state.

Chapter 8 looks at World Bank policy regarding transboundary groundwater. The World Bank was first faced with a challenge, regarding transboundary groundwater on one of its Projects, in 1990. Under World Bank policy, transboundary groundwater is now well recognized as a shared resource and the practice of notifying other riparian states that may be affected is now clearly established. Chapter 9 seeks to link OP/BP 7.50 with other World Bank safeguard policies involving, say, land acquisition or environmental concerns on World Bank-funded or supported projects. Chapter 10 concludes the study by highlighting a number of unique features of OP/BP 7.50. In summary, the book is well-researched and well-written and it contributes tremendously to the evolving regime of international water law.

Disclaimer

The interpretations and conclusions expressed in this review are entirely those of the author of the review.

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Salman SMA (2009) The World Bank policy for projects on international waterways " an historical and legal analysis. Martinus Nijhoff, The HagueGoogle Scholar. Salman SMA (2010a) Downstream riparians can also harm upstream riparians: the concept of foreclosure of future uses. Water Int 35:1CrossRefGoogle Scholar. Salman SMA (2010b) The World Bank and the Gezira scheme in the Sudan - political economy of irrigation reforms. The World Bank. <http://www.salmanmasalman.org/wp-content/uploads/2014/06/GeziraSchemeReportSalman2June2010.pdf>. Accessed Sept 2017. Salman SMA (2013) The Nile Basin Cooperati 'The World Bank Policy for Projects on International Waterways: An Historical and Legal Analysis' discusses the evolution and context of the Bank policy for projects on international waterways. It starts with a brief description of how the Bank faced the challenges stemming from such projects and analyzes the different approaches deliberated by the Bank that led to the iss 'The World Bank Policy for Projects on International Waterways: An Historical and Legal Analysis' discusses the evolution and context of the Bank policy for projects on international waterways. Paperback, 288 pages. Published June 10th 2009 by World Bank Publications (first published June 1st 2009). More Details ISBN. The World Bank policy for projects on international waterways : an historical and legal analysis / Salman M.A. Salman. By: Salman, Salman M. A, 1948- . Contributor(s): World Bank . and legislation | Waterways -- International cooperation. Tags from this library: No tags from this library for this title. Log in to add tags. average rating: 0.0 (0 votes). Holdings (1). Title notes.