

TRANSBOUNDARY WATER DISPUTES

One of the most challenging aspects of climate change has been the increased pressure on water resources limited by droughts and new rain patterns, exacerbated by rapid modernization. Due to these realities, disputes across national borders over use and access to water have now become more commonplace. This study analyzes the history and adjudication of North American transboundary water disputes in five international courts and tribunals, three US Supreme Court cases, and boundary water disputes between the United States and Canada and the United States and Mexico. Explaining the circumstances and outcomes of these cases, Kornfeld asks how effective courts and tribunals have been in adjudicating them. What kind of remedies have they fashioned and how have they dealt with polycentric and sovereignty issues? This timely work examines the doctrine of equitable allocation of transboundary water resources and how this norm can be incorporated into international law.

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STATE CONFLICT AND THE ASSESSMENT OF
THEIR ADJUDICATION

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The Adjudication of Transboundary Disputes

This work makes the following findings and contributions to international water law and to international dispute resolution:

- (1) This is the very first study of its kind in any geographic venue/location.
- (2) Transboundary water disputes are resolved by courts and tribunals' use of equity, or equitable remedies, such as *equitable apportionment* and the *equitable and reasonable utilization* of international watercourses. The present research finds that this is the first study of its kind that definitively demonstrates this fact.
- (3) State sovereignty is a hallmark of transboundary water disputes.
- (4) The apportionment of water is best done by treaty or compact between states in the United States.
- (5) In one respect, *ad hoc* international tribunals are more effective than international courts in adjudicating transboundary disputes because they are more adept at addressing polycentric issues.
- (6) The results yielded in this volume demonstrate that within the universe of disputes *ad hoc* tribunals adjudicate disputes quicker – than do courts.
- (7) I also compare the length of time from the execution of the *compromis* until the issuance of the arbitral awards for the three arbitrations analyzed herein: the *Chamizal Dispute* the *Gut Dam Arbitration*; and the *Bayview Irrigation District Case*, with the *Bering Sea Arbitration* (*Fur Seals*), the *Trail Smelter Case*, The *San Juan River Case* and the *Lac Lanoux Arbitration*, and found that the average time for resolution of these disputes is between 1.9 years and 2.2 years, while most court cases, particularly those of the United States Supreme Court whose cases are analysed herein take much longer – for two SCOTUS disputes analyzed here it took 86 years and 102 years respectively to resolve. Thus, I

argue that arbitral tribunals are more effective, in resolving these types of case.

- (8) The use of precedents and the development of norms is one major thread that runs through the cases that are analyzed herein, particularly to fill lacunae. The use of precedents, which I term “cross-pollination,” leads to greater coherence in international law, and helps the development of new norms; regardless of whether an adjudicative body employs its own case law or imports it from another jurisdiction. Thus, if we think of the use of precedents as pieces of a puzzle that fit together to provide a fully integrated archetype, we can comprehend and envisage the building of a system of international law.

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