

# Gábor Baranyai, *European Water Law and Hydropolitics: An Inquiry Into the Resilience of Transboundary Water Governance in the European Union* (Book Review)

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Gábor Baranyai's book provides a unique and comprehensive overview of European (more precisely EU-based)<sup>1</sup> water law and politics, which is one of the most topical issues of our times. The interconnectedness of climate change issues with sustainable development, resilience and sovereignty over natural resources (such as water) have led us into new fields of policies regarding global commons under the aegis of multilateralism and regional integrations. Thus, the topicality and relevance of water law and hydropolitics cannot be underestimated in our challenging times, even in a time dominated by pandemics and global health issues.

It is important to note that the water issue is not only one of the many contemporary hot topics, it will be one of the leading challenges in the 21st century as the two previous UN Secretary Generals have made it very clear decades ago.<sup>2</sup>

The monograph has four parts, with analyses covering three separate, contentious aspects and one part containing convincing conclusions and recommendations. The book is unique in its ambition to investigate EU water

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1 As the author properly notes that in the 'Introduction' part, "The term 'Europe' and 'European Union' will not be used interchangeably: Europe will refer to the European continent, while the European Union will denote the territory of the European Union or the EU as supranational legal and political entity. In turn, 'European water law' will be used to encompass four regulatory layers of transboundary water governance: (i) the treaty framework of the United Nations Economic Commission for Europe (UNECE); (ii) the European Union's *sui generis* legislative framework as well as (iii) multilateral and (iv) bilateral water treaties to which at least one EU member state is a party. Although these regulatory regimes do not form a comprehensive *corpus* of law, they nonetheless have to be applied by national water managers even against occasional internal collisions."

2 "Fierce competition for fresh water may well become a source of conflict and wars in the future." (Kofi Annan, 2001); and "The consequences for humanity are grave. Water scarcity threatens economic and social gains and is a potent fuel for wars and conflict." (Ban Ki Moon, 2007). See at <https://unu.edu/media-relations/releases/water-called-a-global-security-issue.html>.

governance in its entirety;<sup>3</sup> therefore, all the relevant primary law (founding treaties) and secondary law sources (directives, in particular, the Water Directive) are touched upon in the first three parts. The author's extensive and meticulous research activity is supplemented by his extensive and solid practical, policy-making experiences from the previous years. This practical perspective is not dominant but gives a very special 'insider' point of view, particularly in Part III, Chapter 10.

The book covers four main parts, the (i) general questions of transboundary water governance; (ii) an overview of transboundary water governance in the EU; (iii) a critical assessment of the resilience of transboundary water governance in the EU; and (iv) conclusions and recommendations.

The main global and classical multilateral approaches are addressed within the first part (such as geography, geographical typology and wider transboundary water governance issues) as the general context of the narrower field. This part strives to give a global consideration of the "analysis of the challenges posed by the *Anthropocene* to co-riparian relations and introduces the notions of water security and hydropolitical resilience."<sup>4</sup> Within this very interesting theoretical and (natural) science focused part (the other parts are more descriptive, based on broad evaluation in light of relevant EU norms), the author discusses the geography of transboundary river basins, the well-argued theories of conflict and cooperation, the typical and model laws, the institutions and emerging challenges of transboundary water governance.<sup>5</sup>

The second and third parts are based on an in-depth analysis of all the relevant EU norms and policies. The reviewer found the subchapter entitled "The Interplay Among the Various Layers of European Transboundary Water Governance: Cross-Fertilisation or Cannibalisation"<sup>6</sup> very thought-provoking, leading the reader into the issues of crossroads and several options, based on which the European water regime shall be evaluated and which shall guide the policy-makers in making a decision going forward. This is one of the most interesting parts of the text, it highlights the possibility of a dominant EU-regime (based on the Water Framework Directive, WFD)<sup>7</sup> and the nature of interplays between the various regimes and layers of water governance (either globally or regionally, or sub-regionally within the EU, including separate regimes for single minor transboundary rivers or bilateral measures). The author points out that "by now all river commissions in Europe placed the basin-wide planning, coordination and monitoring tasks flowing from the WFD at the core of their work

3 However, there are some forerunners, see e.g. Elli Louka, *Water Law & Policy. Governance without Frontiers*, Oxford University Press, Oxford, 2008; or Chad Staddon, *Managing Europe's Water Resources. Twenty-First Century Challenges*, Routledge, London, 2016.

4 Gábor Baranyai, *European Water Law and Hydropolitics. An Inquiry Into the Resilience of Transboundary Water Governance in the European Union*, Springer, Basel, 2019, p. 4.

5 Id. pp. 17-27.

6 Id. pp. 106-108.

7 Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

programme.”<sup>8</sup> This finding substantiates without a doubt that the WFD’s dominance would explicitly support the EU-wide uniformization of water laws and policies (while of course taking into consideration the differing geographical and state interests). At the same time, in the next paragraph the author poses the question whether the “European transboundary governance scene leads to a mutually beneficial reinforcement of all affected regimes or to the gradual erosion of the weaker ones.”<sup>9</sup> The answer is clear: the WFD already outdated and annulled or modified and reformed the earlier, decades old and ‘weaker’ former agreements within the EU countries. Therefore, within the context of the WFD, the specific need for unification and harmonization is no longer a salient question.

Another important issue raised is the relationship between the WFD and the UN Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention). Of course, while the WFD is only a directive (a secondary law source, where implementation is necessary), the international convention is binding in its entirety for all the contracting parties (the EU as an international organization is also a party to the convention). The chapter points out that the

“Preamble to the WFD explicitly defines the Directive as one of the implementing measures of the Convention. The approach of the European Commission, however, suggests that it largely ignores or downplays the importance of the UNECE Water Convention as an instrument whose practical value has, supposedly, been superseded by the Water Framework Directive.”<sup>10</sup>

The reviewer agrees with the statement that

“given that the EU is the single biggest bloc of parties in the Convention’s system, a more active presence of the European Commission in the Convention’s activities and bodies could multiply the global impact of the EU’s own internal water policy. If nothing else, the potential of global political benefits is likely to trigger a more substantial engagement of EU institutions in the implementation of the UNECE Water Convention.”<sup>11</sup>

It is very important that the author pays considerable attention to the newly emerging, social sciences *phenomena*, the issue of resilience and the adaptive capacity of EU water governance.<sup>12</sup> This unique part of the volume provides exciting cutting-edge research findings within the overall topic of water law. The author identifies the main elements of adaptive capacities, such as (i) the indicators; (ii) the coordination among the different levels and actors of

8 Baranyai 2019, p. 107.

9 Id. p. 107.

10 Id.

11 Id. p. 108.

12 Id. pp. 169-178.

transboundary water governance; (iii) the transfer of information and feedback; (iv) authority and flexibility in decision-making and problem-solving as well as (v) evaluation. Identifying the main vulnerabilities of EU water governance, the author lists “lack of water quantity management and allocation, limited tools for the management of hydrological variability and the limited availability of adequate dispute resolution mechanisms.”<sup>13</sup> Yet it should be noted that most of these topics are the mere consequences of general (and not strictly water-related) political differences among the EU Member States, which predominantly influence all policy-based EU domains, including water governance.<sup>14</sup>

While some criticism at the ‘overuse’ and over-multiplication of chapters and subchapters (some of them very short) is justified, the author’s aim and methodology is clear, the logic and comprehensive nature of the analysis explains Baranyai’s approach to structuring the volume.

The author convincingly substantiates the main findings analyzed in the first 180 pages of the book, moreover the conclusions and recommendations fit perfectly into the ongoing debate of our water scarcity-affected and pandemic-driven, vulnerable, contemporary societies. The conclusions<sup>15</sup> equate the EU’s water governance with “one of the most extensive and elaborate system of transboundary water governance in the world”. The author nevertheless identifies seven deficiencies of the regime, such as the absence of water quantity management; the absence of a water allocation mechanism; the limited management of hydrological variability in a transboundary context; the inadequate mechanisms of dispute settlement; the weak horizontal coordination among the different levels and actors of transboundary water governance; the fragmented flow of information and feedback and the limited authority and flexibility in decision-making and problem-solving.

The recommendations<sup>16</sup> center around the six-fold need for (i) addressing hydro-political vulnerability in a comprehensive manner; (ii) transboundary water quantity management and water allocation; (iii) the expansion of the scope of vulnerability management; (iv) the revision of dispute settlement and enforcement mechanisms in the EU; (v) the need to reinforce the effectiveness of the existing co-riparian cooperation mechanisms; and (vi) strengthening the cooperation between the different levels and actors of transboundary water governance.

To summarize, the monograph is highly recommended for students, practitioners and in particular, policy-makers and stakeholders working in the field of water law and politics.

13 Id. p. 177.

14 As the author aptly points out, “EU’s own constitutional system prevents member states to have recourse to established international judicial forums without offering suitable alternative mechanisms. Since this condition relates to the core of the EU’s legal architecture member states will remain deprived of external water dispute mechanisms probably indefinitely.” Id. p. 177.

15 Id. pp. 181-183.

16 Id. pp. 185-186.