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The Helmand River within the Framework of International Law: A Legal Analysis of Iran's Water Rights under the 1973 Treaty

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Abstract: Iran's water rights over the Helmand (Hirmand) River have constituted one of the longstanding contentious issues between Afghanistan and Iran since the Treaty of Paris of 1857 and remain a significant subject in international law. This dispute has affected bilateral relations and generated political, social, and economic consequences for both states. Employing a descriptive-analytical methodology, this study examines the legal status of Iran's water rights under international law and addresses the following question: Given the 1973 Treaty between Afghanistan and Iran, international conventions concerning international watercourses, and customary international law, what is the legal status of Iran's water rights? The study finds that, under the 1973 Treaty, Iran is entitled to a fixed quantity of water during a normal hydrological year and to a variable entitlement, determined by the technical commission, during a non-normal hydrological year. The findings demonstrate that, notwithstanding Afghanistan's upstream position, its territorial sovereignty over the Helmand River is subject to limitations arising from its international obligations, particularly because the river flows into Iranian territory. Afghanistan is therefore legally obligated to deliver the quantity stipulated under the Treaty and to refrain from measures that would wholly or partially deprive Iran of its treaty-based entitlement. It must also prevent contamination through chemical substances or other pollutants that could adversely affect water quality. Regarding water exceeding the stipulated quantity, Afghanistan retains a limited right of territorial sovereignty, subject to its international obligations, and may utilize such surplus water at its discretion, even when the volume exceeds the ordinary flow.

Keywords: Helmand River; Hirmand River; Treaty, Hydrological Year, Water Rights, International Law

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INTRODUCTION

Water is indispensable to human life and constitutes one of the four fundamental elements of nature. The Earth contains approximately 1.36 billion cubic kilometers of water, of which approximately 97 percent is found in seas and oceans, while a further 2 percent is contained in glaciers, ice caps, icebergs, rivers, and lakes, leaving only about 1 percent as freshwater that is readily accessible for human use. Of this freshwater, approximately 3 percent is surface water found in lakes, wetlands, and other surface-water bodies, whereas approximately 97 percent is stored as groundwater (Mahmoudzadeh, 2010, p. 14). Although water is generally regarded as a renewable natural resource, its availability on Earth is finite. Population growth, industrial expansion, and rising standards of public health and living have placed increasing pressure on freshwater resources, thereby reducing the quantity of water available for human use and posing serious risks to human life, public health, and ecological systems. Disputes over transboundary water flows have a history spanning several centuries. The delimitation of water boundaries and the allocation of water rights among states have consequently become important and contentious issues in international law. The World Summit on Sustainable Development likewise identified water-related challenges as among the major

transboundary issues confronting the international community (Nobahar *et al.*, 2020, p. 184).

Afghanistan and Iran are neighboring states with extensive historical ties and numerous shared religious, cultural, linguistic, territorial, and hydrological connections. Despite these significant factors conducive to bilateral convergence and cooperation, the two states have also experienced longstanding disputes, dating in particular to the delineation of their common border following the Treaty of Paris of 1857. These disputes have cast a persistent shadow over bilateral relations, with disagreements concerning shared water resources constituting one of the most significant areas of contention. As population growth and water scarcity have intensified, access to water for drinking, industrial, and agricultural purposes in Iran has become increasingly constrained. The water dispute between the two states is rooted, *inter alia*, in their respective geographical positions within the Helmand River basin: Afghanistan is situated upstream, whereas Iran is located downstream. This hydrological configuration has created constraints and vulnerabilities with respect to Iran's access to its water entitlement. Despite the existence of bilateral agreements between the two countries, disputes have periodically intensified over the issue of Iran's water rights, to the extent that Iran has increasingly

framed the issue as a matter of national security (Hezbavi, Shahabi, *et al.*, 2022, p. 10).

Afghanistan is a mountainous, landlocked country in Central Asia and shares several transboundary rivers with Iran, Pakistan, and the Central Asian republics. The Helmand and Amu Darya are among Afghanistan's most important transboundary rivers. The former is shared with Iran, while the latter forms part of the shared water system involving Tajikistan, Uzbekistan, and Turkmenistan. Geographically, Iran is situated within the world's arid and semi-arid belt and receives approximately 240 millimeters of annual precipitation, less than one-third of the global average. In addition, Iran accounts for approximately 1.2 percent of the world's total land area and approximately 1 percent of the global population, while receiving only about 0.36 percent of global annual precipitation. The country has relatively few perennial rivers, and population growth, coupled with insufficient precipitation, has placed increasing pressure on its water resources. Among these resources, the Helmand River is of particular significance (Nobahar & Kabiri Rani, *supra*, p. 185).

The Helmand River is the tenth-largest river in Asia and the principal source of water for the Hamun wetlands, as well as one of the most fundamental sources of drinking and irrigation water in Sistan. It is consequently of exceptional importance to the population of the region, arguably more so than any other river. The river is situated across southwestern Afghanistan and eastern Iran, and its flow has a profound impact on the livelihoods of communities residing on both sides of the international boundary, as well as on the economic conditions of those communities. In addition, the Hamun wetlands, regarded as the third-largest freshwater lake system in the Middle East, are hydrologically dependent on the Helmand River. Iran's dependence on these transboundary water resources has generated significant political, social, and economic consequences. For instance, the dependence of the population of Sistan Province on the water resources of the Hamun wetlands has meant those reductions in, or the complete cessation of, water flows have severely disrupted the local economy, reduced agricultural and food production, exacerbated poverty among marginalized communities, and resulted in the migration of a substantial number of local residents. The reduction or cessation of Helmand River flows has also contributed to a transformation in local livelihoods, shifting communities away from agriculture and fishing toward activities such as fuel smuggling, human trafficking, and narcotics trafficking (Ataat, 2013, p. 195).

From the perspective of its purpose, the present study is theoretical; in terms of its nature, it adopts a qualitative approach; and in terms of its methodology and research design, it employs a descriptive-analytical method. Data were collected through library-based research, drawing upon scholarly books, academic

articles, and historical documents. The study aims to examine Iran's water rights from the perspective of international law and seeks to answer the following central research question:

What is the legal status of Iran's water rights under international law in light of the 1973 bilateral treaty between Afghanistan and Iran concerning the allocation of the waters of the Helmand River?

The study proceeds from the hypothesis that, under the bilateral treaty between Afghanistan and Iran concerning the Helmand River, Afghanistan is obligated to deliver Iran's treaty-based water entitlement during a normal hydrological year in which sufficient water is available in Afghanistan's reservoirs. A review of the scholarly literature published on this subject indicates that no previous study has been identified that corresponds closely in both scope and title to the present research. Nevertheless, several studies contain relevant discussions, including the following:

1. **Javad Ataat and Ismael Varzesh**, in their article entitled "*Helmand Hydropolitics: Causes, Effects, and Consequences*," examine the theoretical foundations of hydropolitics and the factors contributing to tensions over shared water resources. Their study addresses the relationship between water and population, water and security, the Helmand River and the Sistan plains, as well as the agreements concluded between Afghanistan and Iran. The authors also discuss, *inter alia*, Afghanistan's construction of water infrastructure and dams along the Helmand River.
2. **Narges Akbari, Ali Mashhadi, and Hossein Kazemi Foroushani**, in their joint article entitled "*Legal Dimensions of the Utilization of the Helmand River*," examine the legal aspects of the exploitation and utilization of the Helmand River, drawing upon international judicial practice and customary international law. They address Afghanistan's customary obligations concerning the utilization of the river and identify a number of obligations incumbent upon Afghanistan in this regard.
3. **Reza Mousazadeh and Morteza Abbaszadeh**, in their joint article entitled "*Legal Dimensions of the Utilization of the Helmand River by Iran and Afghanistan*," examine the principles governing the utilization of the Helmand River. Emphasizing the doctrine of limited territorial sovereignty applicable to Afghanistan as an upstream riparian state, they analyze Afghanistan's obligations concerning Iran's water entitlement and argue that certain dam construction and water-development activities undertaken by Afghanistan are inconsistent with its obligations under the 1973 Treaty.
4. **Mohsen Khalili and Sedigheh Hashemi**, in their joint article entitled "*The Helmand Water Right and Its Historical Background*," examine the Helmand River from a historical perspective, addressing the

historical, social, and political factors underlying the emergence and development of the dispute over its waters.

A review of the existing literature demonstrates that the majority of studies concerning the Helmand River dispute between Afghanistan and Iran have primarily focused on its political and historical dimensions. There appears to be a paucity of research that examines the issue from the perspective of international law through a non-political and impartial legal analysis of the transboundary water dispute. Accordingly, a comprehensive examination of this issue, grounded in the bilateral treaties concluded between Afghanistan and Iran, appears both necessary and academically significant.

It should be acknowledged, however, that every research undertaking may be subject to certain limitations and shortcomings. The present study may likewise contain gaps arising from the limited availability of relevant sources and constraints of time. The authors therefore welcome constructive scholarly observations and recommendations from readers and researchers that may contribute to further developing, strengthening, and enriching this research.

MATERIALS AND METHODS

The present study is theoretical in terms of its research objective, qualitative in terms of its nature, and descriptive-analytical in terms of its methodology and research design. Data and information have been collected through library-based research, drawing upon scholarly books, academic articles, historical documents, and other relevant documentary sources.

RESULTS

Theoretical Foundations of the Study:

This section of the article first examines the significance of the Helmand River and the historical development of the legal arrangements governing its waters before addressing the legal framework and governing legal principles applicable under international law to the water rights of Iran and Afghanistan. It subsequently discusses the relevant legal theories and principles governing the allocation and utilization of the river's waters.

Characteristics and Significance of the Helmand River:

The earliest known written source referring to the river is a very ancient Zoroastrian text in which the river is identified in the *Avesta* as **Tūman**. Muslim geographers have referred to it as **Hazār-shākh** ("the Thousand Branches"), Iranian geographers have commonly called it **Hirmand**, while in Afghanistan it is known as the **Helmand** River (Khalili & Hashemi, p. 37).

The Helmand is one of Afghanistan's most important transboundary rivers. It originates in the Hindu Kush and Baba mountain ranges, approximately 40 kilometers west of Kabul. Flowing southwestward from Kabul, it is joined by another major river, the Arghandab, before entering the Dasht-e Margo region. It subsequently reaches the Kuhak area, approximately 36 kilometers southeast of Zabol, where it crosses into Iranian territory. Within Iran, its waters divide into two principal branches, known as the Sistan and Parian branches. The river's drainage basin covers approximately 50,000 square miles. Before reaching the open plains near Gereshk, the Helmand flows in a southwesterly direction through mountainous terrain. Beyond Gereshk, it enters lower-lying plains extending along the river between two broad channels. It then follows a broad arcuate course across southwestern Afghanistan toward the Kamal Khan Dam. At this point, the river turns northward and, approximately 40 miles farther north, reaches the Kuhak area on the Iranian border, where it divides into two principal channels: one flowing northward and the other northwestward. Their waters ultimately discharge into the lakes collectively known as the Hamun wetlands (Shafiei, 2005, p. 97).

The Helmand possesses an extensive drainage basin estimated at approximately 150,000 square kilometers. Its flow is regulated, in part, at the entrance to the Afghan plains through two major reservoirs constructed on the Arghandab and Kajaki Rivers, with a combined storage capacity measured in billions of cubic meters of water. These reservoirs have played a significant role in the development and irrigation of substantial areas of Afghanistan (Karamzadeh & Moradian, 2017, p. 343).

The Helmand ranks among the ten largest rivers in Asia and is of considerable importance to both Iran and Afghanistan. In practical terms, it may be regarded as the **lifeline of Sistan's water supply** and the principal source sustaining the Hamun wetlands; in terms of its hydrological capacity and significance, it has even been compared with the Nile River in Egypt (*ibid.*, p. 344). By supplying water to Sistan, the Helmand has played a fundamental role in sustaining the economic life of the region. In addition to supporting agriculture, fisheries, and related economic activities and supplying freshwater to the local population, the river has contributed substantially to the region's agricultural productivity, vegetation, and overall ecological vitality. Conversely, reductions in or interruptions to the river's flow have produced significant political, economic, and social consequences for local communities.

Furthermore, competition among states over freshwater resources and their management, beyond its economic implications, may constitute an important factor in national-security considerations. Water has become one of the significant security variables in the Middle East and is increasingly regarded as a vital and

strategic resource whose importance, in certain contexts, rivals that historically attributed to oil. Access to reliable water resources, both quantitatively and qualitatively, contributes to economic and social development, promotes political and socioeconomic stability, and strengthens the national-security capacity of states (Ataat & Varzesh, 2012, p. 198).

Legal History of the Formation of the Helmand Water Entitlement between Iran and Afghanistan:

The international boundary between Iran and Afghanistan along the main channel of the Helmand River in Sistan has been accepted by the two neighboring states for many years. Nevertheless, significant disputes have persisted concerning the manner in which the waters of the Helmand River should be apportioned and concerning other rights associated with the river, many of which remain unresolved. Despite numerous efforts undertaken over the years to settle these disputes, the situation has largely persisted. A combination of factors has contributed to the continued ambiguity surrounding the issue. It is noteworthy that the numerous agreements concluded between the two states have never been fully implemented or operationalized.

The first formal instrument addressing this issue was the **1872 agreement**, concluded under British auspices. Following the emergence of border disputes between Iran and Afghanistan during the nineteenth century, the settlement of the boundary question, in light of the bilateral arrangements between Iran and Afghanistan, was entrusted to Britain. The British authorities appointed General Frederick Goldsmid to investigate the matter. In 1871, Goldsmid issued his determination in Tehran without directly addressing the question of water allocation. In delimiting the boundary between the two countries, he divided Sistan into two areas, namely “**Outer Sistan**” and “**Inner Sistan**.” The greater portion of Outer Sistan was assigned to Afghanistan, while Inner Sistan was allocated to Iran. It is noteworthy that the principal channel of the Helmand River, at the easternmost part of the Kuhak Delta, was designated as the boundary between the two states (Hafeznia *et al.*, p. 10).

Under this arrangement, the water necessary to irrigate the lands situated on both sides of the Helmand was to be made available, and neither party was permitted to undertake measures that would diminish the other party's water supply. Nevertheless, because the boundary was not completely demarcated and conflicting interpretations emerged concerning Iran's water entitlement, the determination failed to resolve the dispute conclusively. The situation was further complicated by changes in the course of the Helmand River and the drought of 1902, prompting the parties once again to refer the matter to British arbitration. Accordingly, a British commission headed by **Colonel Henry McMahon**, following field investigations in 1905, issued an arbitral determination concerning the

allocation of the waters of Sistan. Under this determination, Iran's share was reduced to one-third of the total volume of Helmand River water flowing into Sistan. The Iranian Government refused to accept the McMahon determination on the grounds that it was inconsistent with the factual circumstances on the ground and formally communicated its detailed objections to the British Embassy. Iran's rejection of the McMahon determination meant that the dispute over the allocation of the river's waters remained unresolved.

Subsequently, in **1317 SH (1938–1939)**, the two states concluded another agreement. A treaty text, together with an annex, was submitted to Afghanistan for ratification. The principal provision of the proposed agreement concerned an arrangement for an equal, fifty-fifty division of the water measured at the Kamal Khan Dam and prohibited the construction of new canals or diversion structures affecting the established water system. The Iranian National Consultative Assembly approved the agreement; however, the Afghan National Assembly objected to the annex and declined to ratify the instrument (Ataat & Varzesh, p. 204). Following the political changes in Afghanistan in **1919**, the two states subsequently undertook efforts to resolve the dispute peacefully. With the mediation of the United States Government, they accepted a proposal to establish a neutral commission to address the issue of the allocation of the Helmand River's waters (Zarei, 2014, p. 105).

Negotiations between the two governments concerning the Helmand water entitlement resumed in **1345 SH (1966–1967)**. During these negotiations, the Iranian Government sought to pursue joint development projects and investment within the Helmand basin in order to secure the water required for Sistan. Although the region experienced a severe drought in **1349 SH (1970–1971)**, particularly in the delta area, which resulted in substantial migration from Sistan to Gorgan, Turkmen Sahra, and Mashhad, the dispute remained unresolved. During the same year, for a period of **23 days**, the flow of the Sistan River—one of the principal branches of the Helmand flowing toward Iran—was completely interrupted, and no water flowed from the Helmand River into Iran through that channel. Moreover, the volume of water entering through the Sistan River and the canals branching from the shared Parian (Helmand) River declined to approximately **189 million cubic meters**, despite the severe water scarcity prevailing throughout the river basin. Nevertheless, the two states agreed to continue negotiations and ultimately succeeded in concluding the **Helmand River Water Treaty on 22 Esfand 1351 SH (13 March 1973)** (Hafeznia *et al.*, 2007, p. 45).

The Treaty was signed by **Amir-Abbas Hoveyda**, the then Prime Minister of Iran, and **Musa Shafiq**, the then Prime Minister of Afghanistan. Under the Treaty, Afghanistan undertook to deliver to Iran a flow of **26 cubic meters per second**, equivalent to

approximately **820 million cubic meters annually**, for use in Sistan and the Hamun wetlands.

Theories Governing the Utilization of the Helmand River's Waters

The aquatic domain of states may, in a general classification, be divided into **internal waters, international waters, and coastal waters**. The internal waters of a state include lakes and canals situated wholly or substantially within the territory of that state. Certain maritime areas may likewise fall within the legal category of internal waters. With respect to rivers as territorial spaces, a distinction is traditionally drawn between **national rivers** and **international rivers**. National rivers are those located entirely within the territory of a single state, with their sources and mouths situated within the territory subject to that state's sovereignty. By contrast, international rivers are generally understood as rivers that either constitute a boundary between two or more states or traverse the territories of several states and are navigable. State sovereignty over international waters is subject to limitations from two principal perspectives. First, riparian states must respect the freedom of navigation of other riparian states; second, a riparian state may not utilize the portion of an international watercourse situated within its territory in a manner that causes injury to another state (Safi, 2020, pp. 81–82).

In light of the foregoing, an important preliminary question arises: **into which of these legal categories does the Helmand River fall**. Determining the legal character of the Helmand River is logically prior to examining the doctrines and theories governing the utilization of its waters.

Determining whether the Helmand River should be classified as an internal or international watercourse is a complex and technically specialized issue and has been a matter of disagreement between Afghanistan and Iran. Its proper characterization may nevertheless provide an important basis for understanding the doctrines governing states' entitlement to transboundary water resources and may constitute a starting point for resolving the water dispute between the two countries.

The concept of **internal waters** has both geographical and legal dimensions. From a legal perspective, internal waters refer to waters situated between the coastline of a state and the baseline from which the breadth of the territorial sea is measured. Accordingly, ports, adjacent roadsteads, coasts, bays, estuaries, and the mouths of major rivers flowing into the sea may fall within the category of internal waters (Ziaei Bigdeli, 2013, p. 285). Afghanistan, relying on the proposition that the Helmand is an entirely domestic watercourse within its territory, maintains that it exercises comprehensive jurisdiction over the river. Iran, by contrast, regards the Helmand as an international watercourse and considers its utilization subject to the

relevant rules and principles of international law governing transboundary watercourses.

A **national river** is generally understood as a river that flows entirely within the territory of a single state, with both its source and terminus located within that state's territory. In other words, its waters do not flow beyond the political boundaries of the state. An **international river**, by contrast, is a river that traverses the territories of two or more states or forms part of the boundary separating them. Charles Rousseau defines an international river in the following terms: "In doctrine and practice, any major navigable watercourse that traverses the territory of several states or separates their territories is generally regarded as an international river" (Mashhadi & Akbari, 2019, p. 313). Accordingly, it may be inferred that the classification of a river as international traditionally rests upon three characteristics: **first**, it traverses the territory of two or more states; **second**, it separates two or more states; and **third**, it possesses economic significance (Akbari *et al.*, 2020, p. 302). On this basis, Iran classifies the Helmand as an international river, whereas Afghanistan regards it as a domestic or transboundary river falling within its territorial jurisdiction.

Four principal theories have historically been advanced concerning the utilization of international rivers, which are examined below.

The Theory of Absolute Territorial Sovereignty

The sovereignty of states over their respective territories constitutes one of the fundamental principles of general international law. Other states are therefore required to respect the territorial sovereignty of states over their land and airspace, territorial seas, protectorates, and trust territories and to refrain from encroaching upon their territorial domains (Chicago Convention, Arts. 1–2).

The theory of **absolute territorial sovereignty**, commonly known as the **Harmon Doctrine**, recognizes the right of a state to make unrestricted and unconditional use of natural resources located within its territory, irrespective of the transboundary consequences that such utilization may produce (Mahmoudzadeh, p. 59). In essence, the theory defines territorial sovereignty in maximalist terms, viewing sovereignty as the aggregate of powers exercised by a state within its domestic territory over persons, property, and activities situated therein (Mousazadeh, 2010, p. 43).

This theory emerged primarily in support of the interests of **upstream states** and has consequently received relatively limited acceptance and reliance in contemporary state practice. Moreover, a number of international legal scholars have criticized the doctrine on the grounds that it is inconsistent with considerations of equity and fairness (Mashhadi & Akbari, 2019, pp. 313–314).

The Theory of Limited Territorial Integrity

In contrast to the Harmon Doctrine, the theory of **limited territorial integrity** has traditionally been invoked in support of the interests of downstream states. Under this theory, a downstream state is entitled to receive the natural flow of water entering its territory from an upstream state; however, the upstream state may not undertake activities within its territory that substantially interfere with or restrict the natural flow of the water toward downstream territories.

The **Atemberg v. Baden** dispute, reportedly recognized by the German Federal Supreme Court in 1957, has been cited by some proponents of this theory as an illustrative example (Mousazadeh & Abbaszadeh, 2015, p. 165). A related issue arose in a dispute between Swiss cantons concerning the application of federal law. In a dispute between the cantons of Zurich and Schaffhausen, the Swiss Federal Court, in its judgment of 12 January 1878, declared the diversion of river water unlawful. The Federal Court affirmed the equal rights of the cantons to utilize water resources and held, with respect to watercourses traversing the territories of several cantons, that no canton was entitled to undertake measures within its territory that would cause harm to another canton, including the diversion of river water or the construction of dams in a manner that infringed the territorial rights of another canton (Mousazadeh & Abbaszadeh, 2015, p. 165).

The doctrine of **absolute territorial integrity** is likewise considered inequitable because it would permit a downstream state to demand the absolute continuation of water flows from an upstream state and, through its veto, potentially obstruct any upstream measures affecting the quantity or quality of the water. Moreover, where a downstream state fails to make efficient and beneficial use of available water, such a doctrine could lead to unnecessary wastage and therefore produce inequitable and unreasonable outcomes. Consequently, neither domestic courts nor international arbitral tribunals have generally accepted the doctrine in its absolute form (Mashadi & Akbari, 2020, p. 315).

As noted above, both the doctrines of **absolute territorial sovereignty** and **absolute territorial integrity** are rooted in states' attempts to maximize their respective interests. In their absolute forms, neither doctrine provides an adequate basis for a balanced legal regime governing transboundary watercourses. Moreover, the irreconcilable nature of these two doctrines can render effective negotiations and the peaceful settlement of disputes either impossible or excessively protracted.

The Principle of Limited Territorial Sovereignty

This principle is also described as the principle of **equal sovereignty and territorial unity**. It seeks to place legal limitations on states' freedom to utilize international watercourses in accordance with relevant

international legal instruments and principles governing transboundary waters. Under international law, the territorial sea forms part of the territory of the coastal state and is subject to its sovereignty (Mirabassi & Keykhosravi, 2017, p. 904).

The doctrine of limited territorial sovereignty recognizes that a state possesses sovereignty over persons, property, natural resources, and other matters located within its territorial boundaries; however, such sovereignty does not confer unlimited jurisdiction where the exercise of that sovereignty produces transboundary effects. Accordingly, the utilization of international watercourses is subject to certain legal constraints, including the obligation of an upstream state to refrain from using shared water resources in a manner that causes injury to downstream states. In this sense, the exercise of rights over water resources may be characterized as relative rather than absolute (Mousazadeh & Abbaszadeh, 2015, p. 167).

Under this approach, the rights and obligations of riparian states require them to make reasonable and equitable use of shared water resources, observe the principle of good-neighborliness, and take environmental considerations into account, as reflected, inter alia, in Principle 21 of the 1972 Stockholm Declaration and Principle 2 of the 1992 Rio Declaration. In other words, an upstream state cannot exercise exclusive control over a watercourse merely because its source or headwaters are located within its territory when the watercourse subsequently flows into the territory of another state.

Von Bar is among the scholars associated with this approach. The **Madrid Declaration of 1911**, adopted by the Institute of International Law and reflecting principles associated with this doctrine, incorporated the following propositions:

- A watercourse traversing the territories of two states should not be altered without the consent of the states concerned.
- Any act causing harm to the waters of a shared watercourse is prohibited; likewise, hydrological uses that alter or delay the natural flow of the water are prohibited where they cause legally relevant injury.
- The right of navigation on watercourses extending across multiple territories shall be preserved.
- Any activity capable of causing flooding in another state or states is prohibited (Farshadgozar, p. 51).

Furthermore, in **1929**, the Permanent Court of International Justice, in the case concerning the **Territorial Jurisdiction of the International Commission of the River Oder**, affirmed that states possess common and legally protected rights concerning resources located in shared international rivers, and that such rights are not limited merely to freedom of passage. A particularly significant feature of the Court's reasoning

was the recognition of the common utilization of the River Oder by the riparian states and the prohibition of discriminatory privileges in favor of any one of them (Mashhadi & Akbari, 2019, p. 316). The relative superiority of this doctrine over the two foregoing approaches has led a substantial number of international legal scholars to support it and to regard its core principles as reflecting customary international law (Mahmoudzadeh, *supra*, p. 69).

The **1973 Helmand River Water Treaty** concluded between Afghanistan and Iran reflects, in significant respects, the principle of **limited territorial sovereignty over shared water resources**. Article 5 of the Treaty provides:

“Afghanistan agrees that no action will be taken which would deprive Iran, wholly or partially, of its water right from the Helmand (Hirmand) River, as established and limited in accordance with the provisions of Articles 2, 3, and 4 of this Treaty.”

The provision demonstrates that Afghanistan’s authority to utilize the waters of the Helmand is neither absolute nor exclusive; rather, its exercise is constrained by its obligation to deliver Iran’s treaty-defined entitlement. At the same time, Article 5 expressly provides that:

“Afghanistan retains all rights over the remainder of the Helmand (Hirmand) River waters and may use and dispose of such waters in any manner it wishes. Iran shall have no claim to the Helmand (Hirmand) waters in excess of the quantities established under this Treaty, even if additional quantities of water become available in the Lower Helmand Delta and could be utilized by Iran.”

Accordingly, Afghanistan retains discretion over the utilization of water exceeding Iran’s treaty entitlement, provided that its exercise of that right remains consistent with its treaty obligations and does not result in the deprivation of Iran’s established entitlement.

Article 6 of the Treaty further provides:

“Afghanistan shall take no action which would render the water right of Iran for agricultural purposes wholly unsuitable or pollute the water with chemical substances resulting from industrial effluents to such an extent that it cannot be treated by the latest customary technical methods and the use of the water for agricultural purposes becomes impossible or harmful.”

The foregoing provisions demonstrate that the legal regime established by the 1973 Treaty substantially reflects the principle of **limited territorial sovereignty**, under which Afghanistan retains sovereign authority over the waters within its territory while that authority is legally constrained by its treaty obligations toward Iran.

The Principle of Joint Participation of Beneficiary States in the Waters of an International River

Under this theory, all riparian states are entitled to participate jointly in and benefit from the waters of an international river. The principle, initially associated with the concept of “**innocent passage**”, was developed around the proposition that states may utilize shared waters without causing injury to one another.

Hugo Grotius maintained that rivers could not be regarded as entirely free in the same manner as the seas and that they should instead be subject to the common sovereignty of the states concerned. **Fareham** similarly characterized the principle on the basis that a river traversing several territories is subject to the common rights of those territories.

The Permanent Court of International Justice, in its judgment concerning the **Territorial Jurisdiction of the International Commission of the River Oder**, in addressing the application of the Treaty of Versailles to the navigable tributaries of the Oder, stated in substance that, where a single river traverses the territories of one or more states or forms the boundary between two or more states, the appropriate solution, consistent with equitable conditions and the interests of utilization, is not merely to recognize a right of passage for upstream states, but rather to recognize the **community of interests of the riparian states** in the watercourse (Mousazadeh & Abbaszadeh, 2015, p. 166).

The practical application of this theory would require the management of shared water resources to be treated, at least in part, as a matter distinct from unilateral state sovereignty and entrusted to an appropriate **joint or specialized institutional mechanism** capable of regulating the equitable utilization and management of the shared watercourse.

The Legal Regime of the Helmand (Hirmand) River Water Right and the Principles Governing the Utilization of the Helmand River

In this section, the legal regime governing the water rights of the Helmand River and the obligations arising therefrom for the Governments of Afghanistan and Iran are examined under two main headings. The first section addresses the legal regime governing the Helmand water right and the manner in which the allocated water is to be delivered, while the second examines the general principles governing the utilization of international rivers.

The Legal Regime Governing the Helmand (Hirmand) River Water Right

Mohammad Musa Shafiq, Prime Minister of Afghanistan, sought to find a solution to the dispute between Afghanistan and Iran and, by improving Afghanistan’s foreign relations with Iran and the Arab states, to reduce the country’s dependence on the Soviet Union. In this context, he paid particular attention to

Afghanistan's water-related issues with Iran and sought to resolve the dispute between the two countries. Prior to Musa Shafiq's tenure, during the reign of Amir Habibullah Khan, a British arbitration mission headed by McMahon determined that two-thirds of the water should be allocated to Afghanistan and one-third to Iran. However, this arrangement failed to satisfy either country. During the premiership of Mohammad Hashim Khan, and concurrently with the visit of the Iranian Foreign Minister to Afghanistan, an agreement was concluded with the Afghan Foreign Minister under which the amount of water reaching the border point at Kamal Khan Dam was to be divided equally and fairly between the two countries. Following the rejection of the annexes to this agreement by the Afghan National Assembly, the dispute over water rights remained unresolved. Eventually, in 1351 SH (1973), during the premiership of Mohammad Musa Shafiq, an agreement was concluded between Iran and Afghanistan under which the amount of water guaranteed to be delivered by Afghanistan to Iran at the designated border point was reduced from one-half and one-third to less than 20 percent. Despite considerable opposition from various groups, the agreement was ultimately approved by the National Assembly (Farhang, 1385, p. 832).

The enjoyment of Iran's water right in the Helmand River is primarily governed by the bilateral treaty concluded between Iran and Afghanistan and, where applicable, by the general principles and customary rules of international watercourse law. Accordingly, both parties are bound by the 1973 Helmand River Treaty, and Afghanistan's obligation to deliver water to Iran must be assessed in accordance with the provisions and mechanisms established by that treaty.

Under Article 2 of the Treaty, "the total quantity of water delivered by Afghanistan to Iran from the Helmand River in a normal or above-normal water year shall be limited to an average flow of 22 cubic metres per second." In addition to this amount, Afghanistan subsequently granted an additional four cubic metres per second to Iran as a gesture of good neighbourliness. Accordingly, the total amount commonly referred to in bilateral and political discourse is 26 cubic metres per second during a normal or above-normal water year. However, from a strict legal perspective, a distinction should be maintained between the 22 cubic metres per second expressly stipulated in the Treaty and the additional four cubic metres per second granted as a gesture of good neighborliness.

Under the Treaty, a "water year" is defined as the period beginning on 1 October and ending on 30 September of the following year (Articles 1 and 2 of the Helmand Treaty). The determination of the water year and the manner in which hydrological conditions are assessed are particularly significant. The principal question is therefore how the applicable legal regime operates when natural events such as drought, flooding,

or other extraordinary circumstances affect the flow of the river.

Under paragraph (c) of Article 1 of the Treaty between Iran and Afghanistan concerning the Helmand River, a water year is defined by reference to the aggregate flow of water measured and calculated from 1 October through the end of September of the following year at the Dehrawud hydrometric station on the Helmand River, upstream of the entrance to the Kajaki Dam. The Treaty establishes a specific hydrological threshold for determining the relevant category of the water year. The legal significance of this provision becomes particularly apparent where climatic or other factors cause the flow of the river to fall below the prescribed threshold. In such circumstances, the question arises as to the conditions under which Iran's water allocation is to be delivered.

In the broader context of international watercourse law, situations of emergency may arise as a result of natural events or human activities affecting a water resource or system of water resources and exposing other States to an imminent risk of serious harm. In such circumstances, States whose activities or circumstances give rise to the risk are expected to take appropriate measures, including the following:

- Promptly informing the potentially affected States and relevant international organizations of the occurrence of the emergency situation;
- Cooperating with States exposed to the risk and with relevant international organizations in adopting appropriate measures to prevent or mitigate the danger; and
- Cooperating with other States in technical, scientific, logistical, and related matters necessary to address the emergency.

An emergency situation may arise in two principal forms. The first results from natural events, such as severe droughts, floods, or other natural disasters. The second may result from human activities, including industrial, chemical, nuclear, or other hazardous activities (Mahmoudzadeh, 1389, pp. 172–173).

The Helmand Treaty reflects the principle that the upstream State must refrain from causing harm to the downstream State. Article 6, particularly in relation to harm resulting from human activities, provides that Afghanistan shall not take any action that would render the water allocated to Iran generally unsuitable for agricultural purposes or contaminate it with chemicals resulting from industrial wastewater to such an extent that it could not be treated by the latest customary technical methods and its use for essential purposes would become impossible or harmful (Article 6 of the Helmand Treaty). Accordingly, water pollution that substantially alters the quality and usability of the water

and causes serious harm to agricultural activities is prohibited within the framework of the Treaty.

Furthermore, Article 11 of the Treaty provides that “whenever a severe drought or the occurrence of force majeure temporarily renders the delivery of water to the Helmand Delta impossible, the Commissioners of the two Parties shall immediately consult with one another and prepare the necessary emergency plan for the purpose of remedying or mitigating the difficulties encountered and submit it to their respective Governments” (Article 11 of the Helmand Treaty).

Accordingly, Article 11 establishes a mechanism of consultation and coordinated action in situations of severe drought or force majeure. The assessment of the hydrological conditions and the quantity of available water must therefore be carried out through the technical mechanisms established under the Treaty and its protocols. In this regard, the Dehrawud hydrometric station constitutes an important technical reference for measuring the flow of the Helmand River (paragraph (d) of Article 1 of the Helmand Treaty).

Under the relevant protocol to the Helmand Treaty, where the flow measured by the hydrometric station is lower than the flow corresponding to a normal water year, the figures recorded for the relevant months are compared with the corresponding months of a normal water year. The quantities applicable to the remaining months of the same water year may then be adjusted, and the adjusted quantities are to be delivered to Iran in accordance with the mechanism prescribed by the protocol (Article 4 of the Protocol to the Helmand Treaty). Consequently, the determination of the quantity of water to be delivered is not based solely on a unilateral political assessment but is connected to the technical measurements and procedures established by the Treaty and its protocol.

The Treaty also specifies the locations at which water is to be delivered. At the first location, the required quantity of water is to be delivered at the point where the international boundary intersects the Helmand River. The second category consists of two additional locations situated between boundary markers 51 and 52. These locations were to be determined by the Commissioners of the two Parties within three months following the entry into force of the Treaty, by establishing the distance and direction of each location from one of the relevant boundary markers at the point where the boundary line lies within the bed of the Helmand River.

Accordingly, both Afghanistan and Iran have rights and obligations concerning the utilization of the Helmand River. At the same time, the delivery of the quantity of water stipulated under the Treaty constitutes one of the principal obligations assumed by Afghanistan. The scope and manner of implementing this obligation, however, must be determined in accordance with the

hydrological conditions and the specific mechanisms established by the Treaty and its protocols.

Principles Governing the Utilization of International Rivers

As a general matter, States sharing a transboundary river or international watercourse—that is, States within whose territories portions of an international river are situated—should cooperate and coordinate their activities and, where appropriate, conclude international agreements establishing a specific legal regime for the management and utilization of the shared watercourse (Ziaei Bigdeli, 1392, p. 343).

The general rules and principles applicable to international rivers may be summarized as follows:

1. The recognition of the right of States to utilize an international watercourse is subject to the following conditions:
 - Such utilization must be harmless, equitable, and reasonable.
 - The utilization must not cause significant harm to other States sharing the watercourse.
 - States intending to undertake new projects or activities that may affect the watercourse should notify and inform the other riparian States.
 - Environmental protection and the prevention of water pollution must be observed.
2. No State may alter the course or flow of an international river in a manner that violates the rights of other riparian States or applicable treaty obligations.
3. The allocation and distribution of the waters of an international watercourse should be determined through agreement among the relevant riparian States, subject to the applicable rules of international law.
4. Joint commissions and other institutional mechanisms for monitoring and administering the affairs of an international watercourse may be established by agreement among the riparian States.

An examination of the Helmand Treaty and its related protocols between Afghanistan and Iran demonstrates that many of the fundamental principles governing international watercourses are reflected in the bilateral legal regime. For example, Afghanistan has undertaken to refrain from causing harm to the quality and usability of the water by contaminating it with chemicals resulting from industrial wastewater or other substances to the extent that the water becomes wholly or partially unusable. This obligation reflects the principle of prevention of significant transboundary harm.

Furthermore, the Treaty provides for cooperation concerning the establishment of certain technical works and structures intended to improve the stability and management of the river. Although the

relevant provision focuses on technical works and does not expressly refer to all forms of dams or water-control structures, the interpretation of such provisions should be undertaken in light of the broader principles of international watercourse law and customary international law. Accordingly, the construction or operation of dams and other hydraulic structures cannot be assessed solely on the basis of territorial sovereignty; rather, their legality depends on their consistency with treaty obligations and the applicable principles of international water law, particularly the principles of equitable and reasonable utilization and the prevention of significant transboundary harm.

In addition, each Party is required to appoint one Commissioner and one Deputy Commissioner from among its nationals to represent its Government in the implementation of the Treaty (Article 8 of the Helmand Treaty). The establishment of this bilateral institutional mechanism demonstrates the importance attached by the Parties to cooperation, technical coordination, supervision, and the implementation of their respective obligations.

Consequently, the legal regime governing the Helmand River incorporates several central principles of international watercourse law, including equitable and reasonable utilization, prevention of significant harm, environmental protection, cooperation, exchange of information, consultation, and the establishment of joint institutional mechanisms. The Helmand Treaty therefore constitutes not merely an agreement concerning the allocation of a specific quantity of water, but a broader bilateral legal framework governing the utilization and management of a shared international watercourse.

CONCLUSION

The Helmand River has historically been a source of legal, boundary, political, and water-related disputes between Afghanistan and Iran. The persistence of these disputes cannot be attributed to a single factor. Rather, they have resulted from a combination of geographical, hydrological, demographic, economic, environmental, political, and regional factors. Afghanistan and Iran are neighboring States with extensive historical, cultural, linguistic, religious, economic, and geographical ties. Nevertheless, despite these significant factors favoring cooperation and convergence, disputes over shared water resources have periodically placed considerable strain on bilateral relations.

The water dispute is substantially influenced by the geographical position of the two States: Afghanistan is situated upstream of the Helmand River, whereas Iran is situated downstream. This geographical configuration creates an inherent asymmetry in the capacity of the two States to access and regulate the river's waters. At the same time, population growth, increasing agricultural and domestic demand, recurrent droughts, and declining

water availability have intensified the significance of the Helmand water dispute.

Despite the existence of bilateral arrangements predating the 1973 Treaty, the 1973 Helmand River Treaty constitutes the principal bilateral legal instrument governing the allocation and utilization of the river's waters between Afghanistan and Iran. Therefore, the rights and obligations of the Parties must primarily be interpreted in accordance with the provisions of that Treaty and its associated protocols, together with the applicable general principles and customary rules of international watercourse law.

The assertion that the law of the sea governs Iran's entitlement to the Helmand waters is not legally precise. The Helmand is an international watercourse, and its legal regime is therefore principally governed by the bilateral treaty between Afghanistan and Iran, supplemented, where applicable, by the general principles and customary rules of international watercourse law. The law of the sea does not constitute the primary legal framework governing the allocation of the waters of a non-navigational international river such as the Helmand.

Under the 1973 Treaty, Afghanistan undertakes to deliver to Iran the quantity of water specified by the Treaty, subject to the hydrological conditions and mechanisms established therein. The frequently cited figure of 26 cubic meters per second requires a legal qualification: 22 cubic meters per second constitutes the quantity expressly stipulated in Article 2, while the additional four cubic meters per second was granted by Afghanistan as a gesture of good neighborliness'. Therefore, the two amounts should not automatically be treated as having identical legal status.

The determination of the applicable water regime is also dependent upon the definition of the water year and the hydrological data obtained through the mechanisms identified in the Treaty. The Dehrawud hydrometric station plays a significant role in measuring the flow of the Helmand River and assessing the hydrological circumstances relevant to the implementation of the Treaty. Consequently, the existence or absence of an alleged violation cannot properly be determined solely by comparing a fixed quantity with the amount of water observed at a particular moment; rather, the relevant provisions of the Treaty, the applicable water year, hydrological data, and the mechanisms provided for exceptional circumstances must all be taken into account.

In cases of severe drought, force majeure, or other extraordinary circumstances, the Treaty requires the Parties to engage in consultation and to develop appropriate emergency measures. Such circumstances do not necessarily extinguish the treaty relationship between the Parties; rather, they activate specific mechanisms

intended to mitigate the consequences of extraordinary hydrological conditions.

At the same time, Afghanistan's position as the upstream State does not confer an unlimited right of territorial sovereignty over the waters of the Helmand. Territorial sovereignty must be exercised consistently with Afghanistan's treaty obligations and the relevant principles of international watercourse law. Likewise, Iran's rights as the downstream State must be exercised within the limits and conditions established by the Treaty and the applicable rules of international law.

Accordingly, neither of the two extreme positions—that Afghanistan possesses an absolute and unrestricted right to utilize the Helmand waters because the river originates and flows through its territory, or that Iran is entitled to a fixed quantity of water irrespective of hydrological circumstances—is fully consistent with the legal structure of the 1973 Helmand Treaty. A legally sound assessment requires consideration of the entire treaty framework, including the quantity of water stipulated, the definition of the water year, the hydrological measurement mechanisms, the provisions concerning severe drought and force majeure, the obligations relating to water quality, and the institutional mechanisms established by the Parties.

Ultimately, the sustainable resolution of the Helmand water dispute requires strict implementation of the existing treaty framework, regular exchange of hydrological information, strengthening of the institutional mechanisms established by the Treaty, technical cooperation, joint management of drought conditions, protection of water quality, and interpretation of the Parties' obligations in accordance with the principles of international watercourse law. Such an approach can contribute to the peaceful management of the shared Helmand River and reduce the legal and political tensions that have historically characterized relations between Afghanistan and Iran.

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