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Paula Duarte Lopes
pdl@fe.uc.pt
Center for Social Studies, Faculty of Economics
University of Coimbra - Portugal

- Please note that this is work in progress (draft version) -

Water with Borders:

The institutional postponement of international water trade¹

Abstract

Natural resources have always been political assets, and indeed over time, many of them have also become tradable economic assets. Fresh water resources, however, have consistently resisted this transformation. Insofar as political scientists have viewed water as an issue in international relations, they have either predicted water wars or asserted the need to create international regimes to prevent such conflicts. Notwithstanding such predictions, during the last three decades, many countries have redefined water itself (and not just the services associated with it) as an economic good. From there, it may seem to be a small step to treating bulk water that is water transported in very large quantities, as a commodity to be traded. And, by the end of the 1990s, several international water trade projects were developed in Bolivia, Canada and France. By 2004, however, all projects had been interrupted by governments' intervention. In some cases, the exporting country passed legislation halting the projects; in others, the importing government changed its mind. This paper argues that, in a time of widespread economic globalization, national political actors have prevented the full incorporation of fresh water resources in the globalization process for two main reasons: Water is still tightly linked to territorial concerns about self-sufficiency; and water continues to be seen as a social good. Consequently, in the three cases analyzed institutions constitute the explanatory variable for the governments' different reactions and the privileged instrument to postpone the international commodification of bulk fresh water resources.

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Introduction

Over time, most natural resources have become tradable goods. Although several of them are essential for life itself, yet, they have become commodities. The human right to food or housing has not prevented a globalized produce and property market from existing. Fresh water resources² have not escaped this transformation. In the eighteenth century, frozen water – ice – was commercialized from the North Eastern region of the United States of America to places as far as India and Brasil (Weightman, 2003). The frozen-water market was dismantled after the invention of electricity and refrigerators. Already in the twentieth century, fresh water has been commercialized in small plastic containers all over the world, creating a global bottled water market (Gleick, 2004). Bulk fresh water resources³, however, have remained outside the market dynamics, resisting the increasing commodification pressure.

Still, the marketization of the water governance paradigm by the 1990s seemed to have created the *momentum* for bulk fresh water to finally surrender and become an international tradable good. Several companies started negotiations, bought extraction permits, drew up plans, raised investment funds, got enabling legislation approved and signed contracts to start, what seemed, at the time, a natural expansion of domestic and global dynamics: an international bulk water market. Three specific countries had bulk water export projects developed and approved: Canada, Bolivia and France. All the basic conditions for a market to flourish exist(ed): a product, sellers, buyers, and a legal framework enabling the trade. For most of the 1990s, these projects spurred debates and discussions, mostly in each country. It seemed natural and inevitable. However, by the second half of the 1990s, the Canadian authorities started back peddling and suspended the permits to be used for exports until more information was available on the implications of allowing bulk water to be exported. Soon after, the Bolivian Congress also overturned its decision to allow bulk water

² In this text ‘fresh water’ and ‘water’ are used interchangeably.

³ Bulk water is water in big quantities that is transported through pipes, canals, tankers, floating bags or containers bigger than 20 to 30 liters (Government of British Columbia, 1996; Government of Newfoundland and Labrador, 2002)

exports and passed legislation prohibiting it. And, finally, by March 2004, the French project was dropped due to a change of heart of the buyer (Spanish corporation). Suddenly, an allegedly ‘natural and inevitable’ market dynamic became a milestone on state power and bulk water trade, once again, returned to the resistance path against the increasing commodification pressure.

This postponement could be explained by different domestic and international dynamics concerning each of these states in particular. But, on close examination, all of these cases have underlying factors that, I argue, explain the overall postponement of international bulk water trade: sovereignty and the public nature of water. Water is still tightly linked to territorial concerns about self-sufficiency and property rights, triggering issues of *de facto* and *de jure* sovereignty. In addition, water continues to be managed and perceived as a social good⁴. Although all projects were suspended, each case presents a different set of dynamics: the Canadian and Bolivian governments passed legislation impeding bulk water exports whereas the French government did nothing (it was the Spanish government who intervened to suspend the project). Each government’s level of sovereignty concern along with its distinct levels of institutionalization of water’s publicness⁵ triggered diverse reactions in each case.

This paper starts by questioning the differences between bulk water and bottled water. It frames the topic of bulk water exports in the context of a water crisis and identifies an increasing commodification pressure. It then discusses several possible responses to the water crisis situation. The paper goes on to identify and discuss the evolution of water governance regimes, just before it introduces the case studies where bulk water projects were developed. The analysis of the postponement of international water markets leads to a proposed explanation to understand this postponement. The conclusion brings all the different trends together and sums up

⁴ Social goods are political public goods, which could be delivered as economic private goods, but due to their importance to society are provided as economic public goods.

⁵ Publicness is understood, in this paper, as public nature, i.e., as the political public status something has.

the main relevance of this issue, picking up the comparison with bottled water markets introduced at the beginning of the paper.

Water crisis and the increasing commodification pressure

Water has been persistently excluded from the economic sphere. For many, water is considered to be ‘God given’ or a ‘gift from nature’, just like air (Sohnle, 2002: 13), consequently not suitable to individual appropriation. In addition, the natural and renewable character of water created a perception of abundance, which excluded its management from developing within a market framework. The combination of this primordial feeling and water’s perceived abundance precluded it from being treated as an economic good. Adam Smith, although recognizing water’s extreme utility, did acknowledge that there was nothing one could buy with or exchange for water (Smith, 1993 [1776]: I.IV.13.). Similarly, Karl Marx stated that “physical forces, like steam, water, &c., when appropriated to productive processes, cost nothing” (Marx, 1906 [1867]: IV.XV.22.). As a result, water has been typically considered a social good by society, and kept under state’s jurisdiction. Historically, the state has not only been the designated but also the default actor governing water resources.

Water’s role has, however, changed throughout history and the current commodification pressure is a result of several dynamics: human consumption rate, science and technology knowledge and market structures. The various industrial revolutions – steam power (18th – 19th centuries), mass production and automation (20th century) – combined with the agricultural revolutions – 18th century and the Green Revolution (1945-) – dramatically increased the water demand for productive processes. The demographic revolution and urbanization further increased the pressure on fresh water resources. As a result, major infrastructures had to be built to divert water to new and growing urban centers. The acceleration and increased range of these processes have characterized most of the twentieth century. Already in the last quarter of that century, water’s renewability became questioned by advancements

in scientific knowledge. Some sources of water are not, after all, as renewable as previously thought. For example, it has been recently established that less than one per cent of the Great Lakes' water is annually renewed (IJC, 2000: 6)⁶. Also, many aquifers have not been able to replenish due to the rate of human extraction being higher than the natural rate of replenishment, and, as a result, are on the verge of depletion or extreme pollution⁷. In several regions of the world, the rate of human consumption has surpassed water's natural replenishment rate, creating a shortage, which strengthens the claim that a global water crisis is in the making. The perception of abundance has been dramatically changed: water has become to be perceived as a scarce resource.

Moreover, science and technology have also contributed to this growing commodification pressure. On the one hand, technology has been slow in providing an economic and environmentally sustainable alternative to 'produce' fresh water resources. De-salinization is the best alternative currently available, but, for several countries, it is still too expensive an investment and it also has considerable environmental impacts. On the other hand, science has not found a substitute for water. Water is non-substitutable⁸. All other beverages need water to be produced and most production processes also need water to function. Of course there is a lot to be done on water use efficiency, but the bottom line is: there is no known substitute for fresh water resources.

⁶The Great Lakes hold around one fifth of the world's fresh water resources (IJC, 2004: 1).

⁷ The rate of extraction of water is higher than the rate of natural replenishment of aquifers. As the level of water decreases, the probability of pollution through infiltration and salinization increase.

⁸ The fact that water is non-substitutable means that one does not have a function of relative prices to reflect the utility-value of water compared to other goods and services. Consequently, and due to water's essential contribution to human life, demand is elastic up to a certain point, after which it becomes inelastic. Moreover, and in extreme cases, mainly in developing countries, after prices reach a prohibitive level, consumers opt out and obtain their survival quantity of water by other means. For further explaining see Stephen Merrett (1997) and OECD (1999).

Finally, there has also been a market pressure towards the commodification of water. From the 1970s onwards, the costs of the hydraulic state governance regime⁹ began to receive greater attention. A convergence of different factors led to this situation. On the one hand, the identification of a water crisis along with an increase of environmental public consciousness determined the need for significant investments to manage, improve, extend and guarantee a sustainable and efficient water supply. On the other hand, the traditional provider, the state, claimed (and still claims) it did(does) not have the funds to respond to the necessary demands. And, simultaneously, the economic paradigm shift that took place in the 1970s consolidated in the 1980s. From a policy paradigm where government was part of the solution, neoliberal economics claimed government was part of the problem. The neoliberal economic paradigm has (convincingly) presented private enterprise as “one of the most desirable methods of allocating resources, goods, and services.” (Trelease, 1965: 6) This desirability follows from the belief that “exclusive private property is thought to foster the well-being of the community, giving its members a medium in which resources are used, conserved and exchanged to their greatest advantage.” (Rose, 1986: 712) Consequently, the negotiation of resource allocation should unfold under the auspices of the market. And, as a result, the water sector suffered a marketization¹⁰ process. It comes as no surprise, then, that private economic actors became extremely interested in participating in such a vital and scarce resource’s exploitation and management, domestically and internationally.

⁹ The governance regime that characterized most of the water sector until the 1980s, where the state, domestically, assured universal water provision through a public service and management of water resources, and, internationally, defended restricted sovereignty to guarantee access to transboundary waters (J. A. Allan, 2004; Karen J. Bakker, 2003; Lopes, 2005).

¹⁰ In this paper, marketization, privatization and commodification are considered as different processes, albeit related. Marketization is the process by which private actors are allowed to participate in a certain economic activity and prices are charged for the product in question. Privatization is the process by which an economic activity shifts into private hands. Commodification is the process by which something becomes a tradable good in the market. In my understanding, water privatization, with the initial exception of Chile, has never occurred. Water’s property and services have never shifted into private hands, except for a certain defined period of time and with an also defined purpose. In the end, the state or community remained its legal and usage rights to the water. Consequently, marketization, in this paper, means the participation of the private sector in public-private-partnerships and the charging for water and water related services. Commodification, more than just charging for water, signifies that it becomes a full tradable good that can be sold and bought internationally. The domestic dynamic is different, since, until now, national solidarity has prevailed over water market considerations.

Water wars, water treaties and water markets

The prospect of a water crisis, however, does not automatically imply the commodification of water. In fact, many have predicted that this water crisis will result in water wars (Annin, 2006; Ward, 2003; Villiers, 2001; Homer-Dixon and Blitt, 1998; Homer-Dixon, 1999), which will characterize the inter-state relations of this century. This prediction has been cited over and over again, after former World Bank president, Ismail Serageldin, publicly stated that the wars of the twenty-first century will be over water, as the ones from the twentieth century were over oil (Shiva, 2002). This argument became almost intuitively accepted. After all, water has all the characteristics to explain why people would choose violence to address a conflict of interests concerning water access and/or use. Water is non-substitutable. In some regions, water is scarce, affecting not only the economic survival of those regions, but also the physical survival of their population. Water resources are physically connected to territory, which automatically triggers issues of sovereignty. In addition, 263 rivers, that account for 60% of the world's water resources, cross political borders, involving 145 states, of which 54 have, at least 95% of their territory within these international water basins, which are home to 40% of the world's population (Wolf, 2003).

Several researchers have worked on this topic, but the most renowned are probably Peter H. Gleick (1998), Aaron T. Wolf (2005, 2003) and Homer-Dixon (1999). The former publishes a bi-annual water report on the world's fresh water, including a water conflict chronology, including threats to use force when facing a water conflict. Although researching a broader dynamic – environmental scarcity – Thomas Homer-Dixon work also applies to water resources. This author argues that environmental scarcity may result in or exacerbate existing violent situations (Homer-Dixon e Blitt, 1998). An increase in demand, a decrease in supply and/or an unequal distribution of environmental resources contribute to environmental scarcity (*idem*). Thus,

environmental scarcity, including water resources scarcity, can lead to endemic poverty, large scale migrations, growing social tensions and, consequently, to a weakening of social and political institutions. The author clarifies that the relation between environmental scarcity and violence is not direct, i.e., environmental scarcity is not a necessary nor even a sufficient condition to trigger organized armed violence (*idem*). Environmental scarcity interacts with economic, social and political conditions that determine the peaceful or violent development of the conflict in question.

Aaron T. Wolf deconstructs the prediction of ‘water wars’, calling them a ‘tale of hydromythology’ (2003). According to Wolf’s findings, there has not been a water war since 2000 b.c., between the Sumerian city-states of Lagash and Umma, by the river Tigris (Gleick, 2006; Wolf, 2003). Aaron T. Wolf does not deny the fact that water resources may have/had a significant role in the evolution of certain conflicts into violence, but he researched further to understand the reasons why water has not triggered regular wars and violent responses. His findings identified the institutional factor (international treaties and institutions) as decisive in addressing conflicts in a violent or peaceful manner. In other words, Aaron T. Wolf and his team observed that in cases where water conflicts did not result in violence, institutions existed or had been created to regulate, manage, dilute and/or settle these conflicts (Wolf, 2003). Moreover, it was not just the institutional factor that statically showed relevance (*idem*). Following a dynamic approach, the conclusions were that the institutions that were able to absorb and manage drastic changes constituted the crucial element determining the resort to peaceful means as opposed to violent ones, in order to address the conflict (Wolf, 2003: 118).

A third possible response to water scarcity is allowing for the scarcity to trigger the creation of water markets. Two factors have contributed to further substantiate this response: the Dublin Principles (ICWE, 1992) and the Harmonized Commodity

Description and Coding System (Harmonized System)¹¹. The crucial principle from the Dublin Statement is

Principle No. 4 - Water has an economic value in all its competing uses and should be recognized as an economic good

Within this principle, it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price. Past failure to recognize the economic value of water has led to wasteful and environmentally damaging uses of the resource. Managing water as an economic good is an important way of achieving efficient and equitable use, and of encouraging conservation and protection of water resources. (ICWE, 1992)

This single principle has been the banner for many initiatives and programs of action. Domestically, the definition of water as an economic good has strengthened the marketization trend (private sector participation and commodification) and opened new possibilities for foreign direct investment around the world. Water companies¹² extended their activities across borders into new countries and used the Dublin Principles to reinforce this expansion. Similarly, international financial institutions, such as the World Bank, other development aid banks, and also developed states in bilateral investment agreements, pushed for marketization in developing countries, using the Dublin Statement as the basis for the conditionality. Water has never been considered a commodity *per se*. The fact that one of the Dublin Principles argues in that direction gained a status of almost ‘evidence’. Furthermore, the fact that the

¹¹ The Harmonized System was established by the World Customs Organization (WCO). The system is used to classify goods traded internationally and came into force in 1988 for the WCO member countries (currently 166) (WCO, 1988). Currently, it constitutes the official classification of internationally traded goods for the World Trade Organization.

¹² The world top five water companies, rated by descending amount of water sales, are Suez-Ondeo (France), Vivendi-Veolia (France), RWE-Thames Water (Germany), Bouygues-SAUR (France) and AWG-Anglian (Great Britain) (Hall, 2002: 3).

conference was held within the UN framework and that it also substantiated the processes already under way strengthened the argument for water markets.

In addition, if any doubts persisted, according to those who defend the creation of water markets, the Harmonized System already predicts bulk water as an internationally tradable good, under the sub-heading “22 Beverages, Spirits and Vinegar”, specifically under

2201.90.00.00 Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored; ice and snow (WCO, 2005)

This sub-heading frames the bottled water trade and can easily frame bulk water trade. Consequently, there was no economic or legal reason to prevent bulk water markets from flourishing.

As a conclusion, water scarcity has the potential to trigger a violent reaction, following a strict realist approach. Reality has shown, however, that instances of water scarcity have actually resulted in institutional cooperation between states, illustrating a clear institutional-liberal perspective. Finally, still within a liberal framework, water scarcity has the potential to trigger the creation of markets to address the scarcity issue and efficiently decide on resource allocation (neoliberal economics). This last possibility involves a multi-level and inclusive stakeholders' approach, where water access and allocation is decided by the market at the local, regional, national and international levels, having all stakeholders the (theoretical) possibility to participate. Bolivia, Canada and France were pioneers in allowing for the conditions for an international water market to grow.

Water Governance Regimes

The above mentioned dynamics do not take place in a vacuum. The governance of water resources has followed certain patterns more or less institutionalized through legislation and regulation or through mere practice. Historically, “[f]or a variety of reasons, society has not chosen the use of markets to balance water supply and demand or to allocate supplies.” (Gibbons, 1986: 2) The state has had that mandate both domestically and internationally. Domestically, the terms of the mandate have depended on each country’s history, culture and water availability, but overall “there has been an evident tendency towards [the] socialization of water resources of general interest” (Popov, 2001: 2). This means that, domestically, water governance followed two basic principles: supply was guaranteed based on social equity and both water resources and its associated services were managed by public actors. Domestic water transfers were a matter of national solidarity planned and implemented by the state. Internationally, water resources have been a prerogative of states’ negotiations and, therefore, have been governed by international treaties among riparians. International water transfers and sharing were a result of riparian solidarity¹³ (and customary rights). Two main issues arise from this hydraulic state water governance regime, which are relevant to this paper’s argument: first, water’s public nature is assumed and not even remotely questioned; and second, water’s stakeholders, domestically, are national residents and, internationally, water basin inhabitants. Water’s property rights rested with the state or the people, but water’s use rights remained territorially bounded.

As stated above, the hydraulic state governance regime increasing costs, the economic paradigm shift, and the Dublin Principles created a conducive environment for a new water governance regime to consolidate. The shift from a perception of water

¹³ A riparian is an owner of property on a riverbank. The application of the term has been widened to include not only rivers, but also lakes and aquifers. Riparian solidarity is based on the principle that water basin stakeholders live in the basin. Consequently, they share and are entitled to access the water from that basin.

abundance to one of water scarcity and the economic shift from market failure to state failure (Bakker, 2003)¹⁴ changed the instrument settings for water governance.

Moreover, the mechanism to achieve the overall goals of the governance regime changed from social equity guaranteed by the state to economic equity facilitated by the market. The Dublin Principles were fundamental for these changes to occur. The water governance regime goals also suffered modifications. During the hydraulic state governance regime, the overall goal was universal provision whereas the neoliberal market governance regime seeks efficiency. The paradigm shift led to a marketization process which questioned water resources' publicness.

The political economy paradigm shift initiated in the late 1970s towards neoliberal economics elevated the market as the preferred mechanism for the distribution of goods and services. Internationally, this economic shift pushed for liberalization; whereas domestically, it implied the opening of economic sectors to private enterprise, especially, services and utilities. Water governance accompanied this economic paradigm shift, creating a transfer of water's production and delivery from the public sector to the market sector. This situation created challenges to the previous principles of governance. Private actors follow a principle of economic equity (ability to pay), instead of one of social equity (benefit principle), undermining the universal provision principle. Internationally, the possibility for private actors to negotiate directly with foreign companies added yet another challenge to the public nature of water resources. Bulk water export projects created the possibility for an international commodification process of water resources, allowing non-riparians to benefit from water resources in exchange for money. This basically ends up creating use rights outside the water basin and/or national borders.

¹⁴ According to market promoters, public utilities lack good utility management practices; they are open to political interference; they suffer from overstaffing; their tariff structures are distorted; and they lack incentives and performance-monitoring mechanisms (IFC, n/a: 1).

Creating International Water Markets...

The potential for the creation of international water markets is here analyzed based on three different case-studies. The cases selected were the only recorded cases in the world where non-central state actors engaged in bulk water export projects using domestic legislation and international legal possibilities to promote their business interests, up to 2004. Consequently, this study does not include cases where bulk water exports occur/red between sovereign states via an international treaty¹⁵. There have been extremely rare instances of bulk water exports between countries, negotiated at the state level. The water treaty between Turkey and Israel (Vidal, 2004) is a good recent example, still waiting to be implemented, of selling/buying of bulk water between countries at the state level. Although all projects were suspended, the dynamics leading to that ending were quite different. Bolivian and Canadian governments were responsible for suspending the bulk water projects associated with their waters whereas the French project was suspended by the Spanish government. Despite these overall differences, territoriality and water's publicness constitute the main reasons behind these different paths to the same outcome.

Bolivia: Territory and the Specter of Cochabamba

An American-Bolivian citizen proposed in the late 1990s to export bulk water from Bolivia to Northern Chilean mining companies. Territory and water are both sensitive issues between the Bolivian and Chilean governments due to historical disputes over a Pacific Ocean access and water rights and jurisdictions. Consequently, the private plan of delivering bulk water to private Chilean mining companies not only triggered sovereignty concerns but it also triggered organized civilian contestation fueled both by the Cochabamba water war and the debate concerning the Bolivian gas resources. This only occurred, however, on a second moment. On a first moment, the Bolivian Congress and government became more interested in the alleged monetary benefits to all in favor of the project than on sovereignty or local indigenous rights. Thus, in 2001, legislation was passed to frame the bulk water export project, since Bolivia did

¹⁵ In this category one can find cases such as the one between Lesotho and South Africa (1986).

not have an updated water law at that time. Only on a second moment, three years later, and after a change in government, organized contestation, and political and non-governmental hearings, did the Bolivian Congress and government decide to reverse the initial decision and approve legislation prohibiting bulk water exports.

Canada: waters between provincial and federal authorities

Water is always an emotive topic, but in Canada, for many, water is more than that. Water constitutes part of the national identity. Canada is the fourth water-richest country in the world¹⁶. This ranking has led several business men to envision exporting bulk water from Canada to countries' in need of water. In the late 1990s, one of such projects was proposed to export bulk water from the Canadian side of the Great Lakes (Ontario) to Asia. The Canadian bulk water export projects made it into the headlines of national and international newspapers, professional conferences, and non-governmental organizations' campaigns. The debates engaged Canadians from all trades and places, politicians, business people, environmentalists, lawyers, religious groups and academia. Reactions and positions varied, but overall, the debate was framed as a free trade issue within the scope of the North-American Free Trade Agreement (NAFTA). Treating these projects within triggered strong sovereignty concerns from Ottawa and, consequently, the federal government insisted in framing the issue as an environmental one, rebutting and refuting every instance where the free trade case was presented or argued.

Between the late 1980s and the late 1990s, Canada dealt with three independent bulk water export projects. The ones from the Provinces of British Columbia and Newfoundland and Labrador were the most problematic, because the projects were well advanced, and the waters in question were under provincial jurisdiction. Two private companies applied for and obtained exporting permits to sell water to American companies for human consumption. The British Columbia project initiated

¹⁶ The three water-richest countries in the world are, in descending order, Brasil, Russia and the United States of America.

in the late 1980s, and the Newfoundland and Labrador project began in the mid 1990s. Both projects were prohibited in 1996 and in 1999, respectively, by provincial environmental protection legislation. The third project (1998) involved the export of water from the Great Lakes to undefined customers, although Asia was mentioned as one of the destinations. Because it was extremely controversial, the project was actually killed before it had a chance to develop. Federal legislation (2002) based on a Report (2000) by the International Joint Commission for the Great Lakes prohibited bulk water exports.

France: Trans-European Hydro-Networks and Spain

The French Bas-Rhone and Languedoc Regional Company (BRL), in association with the Spanish Catalan government, developed a project to supply the city of Barcelona with water from the Rhone River. The '21st Century Aqueduct', as it was called, entailed the construction of a 330 kilometers underground pipe connecting the French city of Arles with the Spanish city of Barcelona (BRL, 2003a). The possibility that a city of 4.5 million people would choose to buy its water supply from a foreign (or any other) source suggests a path breaking 'business as usual' approach to water resources. On the French side, the project was received as a welcoming business opportunity. The BRL became extremely interested in this opportunity to expand its activities and increase its concession utilization (BRL, 2003). In Paris, the project was accepted as an interesting inter-regional initiative. In fact, the French State Council considered the project a service of public utility (Conseil d'État Français, 1997). This inter-regional international project was also promoted at the European level, specifically at the European Parliament, through its Technological Assessment Unit. A study on "The Feasibility of Trans-European Hydro-Networks" included the Rhone-Barcelona project as an example (Collado, 1997).

The Rhone-Barcelona project, unlike the previous two case-studies, had a stronger and decisive participation from the buying side – the Spanish government, the

Catalan government, and the *Aigües Ter Llobregat*¹⁷. In reality, it was the Spanish who suggested the idea to their French counterparts. Barcelona, with 2 extra million inhabitants during summer season, was facing water problems. For the Catalans, this alternative not only would solve their problem, but would also avoid a fierce dispute with other Spanish communities and the strong agriculture lobby to obtain extra water within Spain. In 2004, after general elections, the new Spanish government intervened in order to suspend the project. Madrid claimed it considered it preoccupying to have a city such as Barcelona dependant on a foreign supply of fresh water resources.

Postponing water markets

Analyzing the commodification pressure in each of these countries, one can observe a growing tension between states/the public and markets. During the hydraulic governance regime, universal public provision, public service and management, along with international restricted sovereignty were the main characteristics. Public ownership and management of the water resources were either explicitly established or assumed by default in constitutions and additional legislation. In these three instances, what is seen is that in the face of a strong push towards commodification of bulk water resources, especially with the already existing bottled water market, governments stepped in rowing against the neoliberal tide in which they not only participated but contributed to. In all three cases, territoriality issues and water's publicness constituted key factors to better understand the paths each government took, even though resulting in the suspension of all projects.

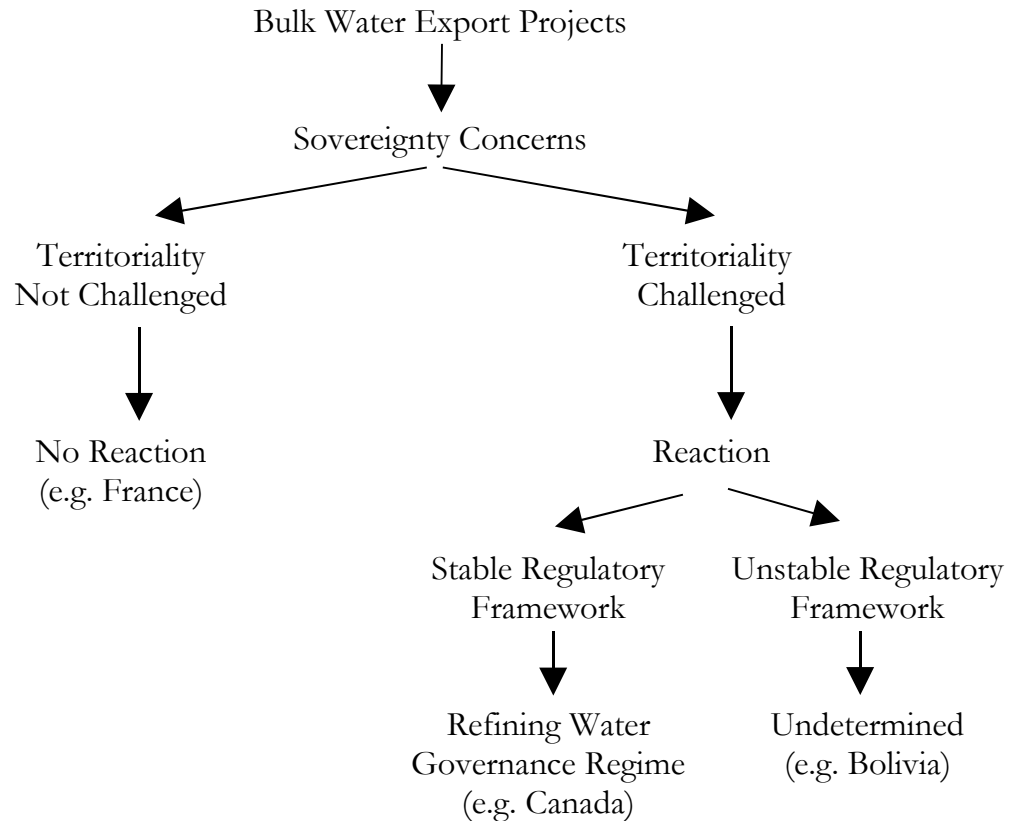
Territoriality here is not about the traditional realist perspective of controlling territory. Although linked to sovereignty concerns, territoriality in this context is used to highlight the strong link water resources have with territory. The issues relating to

¹⁷ The ATLL is responsible for providing drinking water to Barcelona. ATLL was created in 1990 and is a public company owned by the Catalan Department of Environment and Lodging. ATLL, however, does not supply Barcelona directly. It sells its water to the private company *Aguas de Barcelona* (AGBAR, 2003), who then supplies it to the city. AGBAR has its origins in 1867. Information available at ATLL's website.

territoriality are associated with concerns of self-sufficiency (very realist element) and property rights issues. Both Canada and Spain were concerned, among other issues, with the question of self-sufficiency. Once one starts buying foreign bulk water to supply a city, a business, what happens if the water crisis intensifies? Within a neoliberal World Trade Organization and regional free trade agreements framework, can the 'selling' countries interrupt the trade? If so, then Barcelona would be in trouble; if not, then Canada would be in trouble.

Property rights, besides triggering issues of sovereignty, are also related to the level of institutionalization of water's publicness. But before addressing water's publicness relevance, the link between property rights and sovereignty should be further explained. Property rights concerns speak directly to the control of water resources. Who owns water resources? How is ownership and use regulated? The situation, in these countries, and still in most countries in the world, is that the existing water legislation (when it exists) omits any reference to bulk water exports. There is regulation for water extraction and usage, but without stipulating where this water has to be consumed. Consequently, with the commodification pressure, this helped to create the conditions for bulk water export projects. Companies followed the existing legal procedures in regard to extraction permits, quantities and use, but the end users were outside national borders. These two elements of territoriality trigger, respectively, concerns of *de facto* and *de jure* sovereignty (Jackson and Rosberg, 1982). Self-sufficiency is about who controls the water and property rights is about who owns the water, both are inter-related and together they shape this territoriality factor. Of course, one can observe that in certain cases, such as Bolivia, traditional sovereignty concerns associated with territory itself also play a role, but in most countries without border disputes, sovereignty, when it comes to water, is triggered by the answers to who controls or will control and/or owns or will own the water.

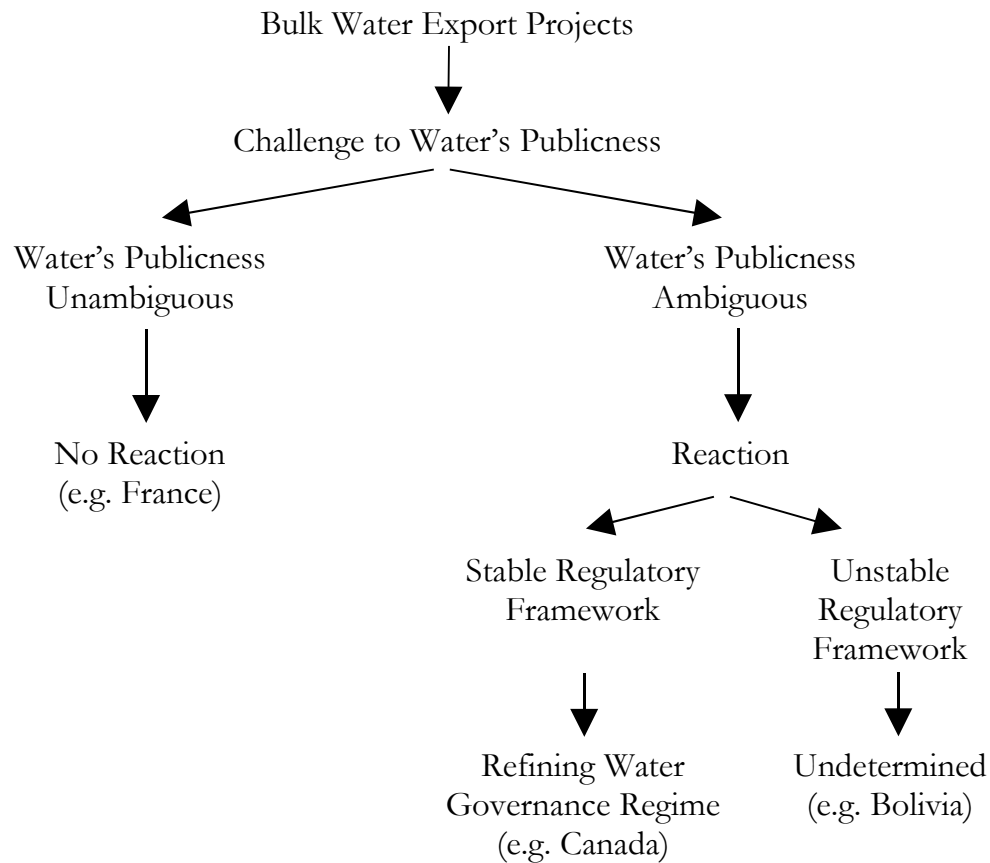
Figure 1 – States *versus* Markets: Territoriality



Water’s publicness is related to the level of institutionalization of the public nature of water. The public nature of water corresponds to its classification as a political public good or a social good, i.e., a good that in fact is an economic private one, and could be managed as such, but due to its vital importance to society, and life itself, it is politically decided to supply it as if it were an economic public good. This can be established by law and/or by custom. When market pressures, and especially commodification pressures, start playing a role, the fact that the public nature of water is part or not of the domestic regulatory system is a key element. That is why in Bolivia there was so much pressure to pass legislation explicitly enabling the bulk water exports. As stated above, water’s publicness is related to property rights – who owns the water – but also to the principles of the supply system – who can have access to the water. When it comes to fresh water resources, the public nature is associated with an hydraulic governance regime, where universal provision is guaranteed (or aimed at), where public actors exploit and manage water services and

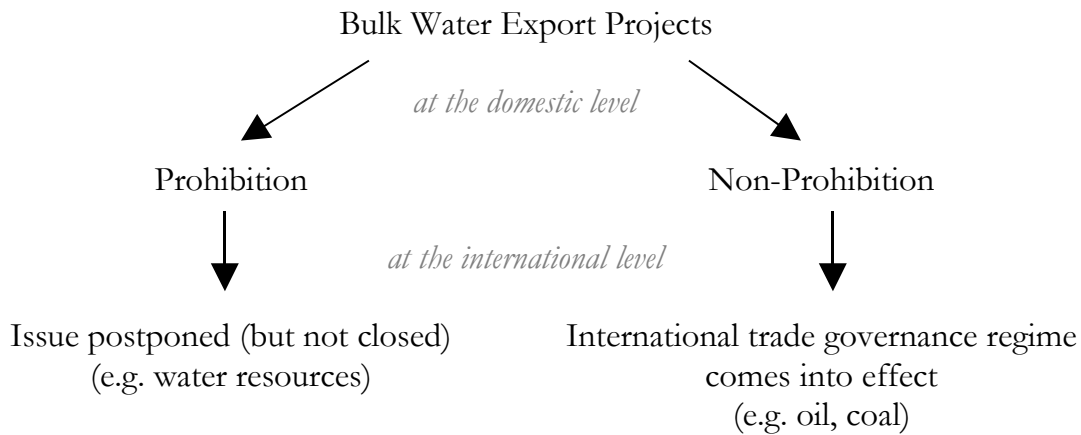
where, internationally, there is restricted sovereignty concerning sharing transboundary waters. This publicness can be more or less institutionalized through legislation, regulation, and actual institutions. Depending on the level of its institutionalization, commodification is perceived in different ways. In France, where private actors have participated in the water sector for centuries, the project was seen as a natural development. However, commodification was never considered. The proponents and supporters of the project were always very careful to frame it as a service trade and within the trans-European networks, such as transportation, energy, and now hydro. Water's publicness is well-established in France. On the other extreme, Bolivia, at the time, had no updated water law and was undergoing a nationwide discussion on how to protect its natural resources, mainly gas. In addition, the society was still not over the Cochabamba upheaval. A multinational water company won the bid to manage Cochabamba's water supply system, which resulted in an unsustainable increase in consumer prices. This led to massive popular protest that ended up in a siege of the city, spread violence and the intervention of the military. Finally, in Canada it was not that water's publicness was not established, but that it was split between the federal authorities and the provincial ones, in the sense that federal authorities regulated international trade, but water was under each province's jurisdiction.

Figure 2 – States *versus* Markets: Water’s Publicness



Internationally, the challenge commodification poses is enormous, since, as in many international issues, it is a lot harder for any one single country to ‘eliminate the challenge’. If one country would allow for bulk water trade then, in light of the trade commitments most countries have made, no-one country could easily prevent its water from being traded. As a result, this analysis suggests that if a country decides to domestically prevent international water trade from developing, then the issue is postponed, but not eliminated. Conversely, if one country decided to allow international water trade to grow, then, water’s governance regime would probably shift into the existing international trade governance regime.

Figure 3 – International Scenarios of Domestic Water Decisions



This analytical framework also has the state as its focal point, but allows for non-state actors domestic-international interactions to be identified and analyzed, by switching the focus of study. The core focus becomes the struggle between states and markets analyzed at the regulatory level. Changes at these levels challenge existing regulatory frameworks and put the state under pressure to either strengthen or change the good's publicness. These decisions have effects not only domestically, but also internationally, since they lay down the foundations for economic transactions within and beyond borders.

Conclusion

The evolution of water governance analyzed in this paper highlights three main points. First, the domestic and international politics of water governance are intertwined, and cannot be studied separately. The neoliberal economic shift of the 1970s in conjunction with the increasing costs of the hydraulic state paradigm and public awareness of those costs set the stage for the water sector marketization (private sector participation and commodification). The approval of the Dublin Principles (1992) strengthened and supported the marketization process; and the World Water Council, the World Bank, the International Monetary Fund and several United Nations agencies promoted and enforced the domestic implementation of the

Dublin Principles, therefore of water marketization. The development aid conditionality led many developing countries to open their water sectors to private sector participation, without further thought on that decision's social implications. Soon enough water charges were implemented or increased, and coverage expansion was, in many cases, not contemplated in the private-public contracts. Social, political and activist protest ensued, with different intensities, depending on the level of water publicness in each society. The multinational companies, which had invested when the water sectors were marketized, faced boycotts, threats and annulments of contracts. Concomitantly, private actors exploited the market opportunity in order to export bulk water. The threat of sovereignty loss increased the social, political and activist protest. In several cases, anti-free trade organizations joined the protests and put pressure on the governments to take action. The water marketization also triggered the creation of several organizations, which oppose water commodification and endorse the human right to water, in different countries, but organized as a transnational advocacy network (Keck and Sikkink, 1998). Their work has framed the debate in extreme terms, and some countries, such as Uruguay have stood up to the dilemma and decided to constitutionally protect the human right to water and the public responsibility to supply it to all citizens. Both the domestic and international mobilization have led several governments to reconfigure "the nature of the [their] interaction with citizens and corporations" (Bakker, 2003: 37).

Second, the shift from the hydraulic state paradigm to the neoliberal market paradigm seems to have taken a different path, from 2004 onwards, when all three bulk exporting projects were suspended. In effect, a neoliberal market paradigm suggests "a reduction in the number and scope of rules and regulations applied to commercial activity" (Bakker, 2003: 37). But the latest developments indicate "the oversight role of the state may intensify" (Bakker, 2003: 37). The state seems to be increasing its presence through regulation rather than through the delivery of goods and services (Pierson *in* Bakker, 2003: 37). As a result, governments passed legislation and

regulation to check and balance the existing commodification pressure. Some of the changes associated with the neoliberal market paradigm shift were, in fact, circumscribed to certain countries and areas within those countries. In many cases those changes were more challenges to the hydraulic state paradigm elements than actual modifications. The principle of social equity, even when it was initially altered, it was quickly reinstated, due to popular demand. Nevertheless, the mere possibility of those changes gaining strength or generalizing across borders fueled social, political and activist protests around the globe. The perception of a retreat of the state from the water sector strengthened the mobilization in several countries. The commodification of water is the most contested issue. Some protesters have demanded their governments to legally recognize the human right to water. Others have focused their activities in fighting water multinational companies, and demanding a roll-back on private sector participation in water services. The intensity and kind (popular or elitist) of mobilization has been influenced by the level of publicness assured by each country's domestic legislation. The movement against the neoliberal market water governance regime is leading governments to clarify water's publicness scope and depth. As a result, a new water governance paradigm seems to be taking shape, where one of the main characteristics is the postponement of bulk water trade.

Still, why is bulk water dynamics so different from bottled water? Four main reasons should be considered. First, the consumption of bottled water is supposed to be, from its creation, a complement to the regular supply of public water. Of course, in several countries, paradoxically in developing ones, bottled water has become a main source of potable water. Nevertheless, there is never the acknowledgement that it is the source of potable water. There is always the recognition that when it is so, due to a certain context, it is still the state responsibility to provide potable water to its population. Second, as a result, the supply of bottled water does not create an obligation to a regular supply. It is available according to market rules and to the

situation at the extraction point. There is the notion that bulk water trade would presuppose a regularity of supply, especially if the consumers were urban centers or companies that absolutely depended on that supply to survive and produce, respectively.

Third, bottled water does not create use rights. In other words the consumers will pay for the bottled water if it is in the market, and when it is not, the fact that they have money to buy it does not imply that the market has, legally and/or morally, to provide it. Bulk water trade suggests that, since according to international trade rules, national consumers and foreign consumers should be treated as equals, once bulk water starts being traded, then consumers outside the water basin and/or national borders will become stakeholders in the way those water resources are exploited and managed. Finally, bottled water trade can more easily be managed than bulk water trade, exactly because of the issues discussed above. If a bottled water company has to reduce its water extraction quota due to, for instance, a drought, that is manageable. Jobs may be lost, compensation may be paid to the company, but the government can intervene. If a company exporting bulk water to human consumption has to reduce its exports, because of that same drought, based on the fact that national consumers should have priority over foreign consumers, then, both foreign governments and civil society as well as international trade organizations can intervene, arguing that it is not possible to compulsorily reduce or abolish bulk water exports. The World Trade Organization agreements as well as several of the existing free trade agreements include exceptions to these general rules, but, so far, they have not had a lot of clout and, almost every time, the general rules were superimposed.

Although the cases presented here suggest the state has not resigned from its role in the water sector, one should not disregard what is at stake when the next round of commodification pressures comes up and attempts to create international water markets.

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