

# INSTITUTIONAL MECHANISMS FOR THE DEVELOPMENT OF INTERNATIONAL WATER RESOURCES

by

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## INTRODUCTION

The development of water resources of a drainage basin, whether for a consumptive use such as irrigation or a non-consumptive use such as power generation, necessitates a modification of its natural features. The problem thereupon arises within what legal limits and conditions a basin state or group of basin states undertake such development projects.

According to the traditional concept, every territorial state exercises sovereign authority and is therefore entitled to exclusive development, administration, and control in its part of the basin<sup>1</sup>. In view of the peculiar characteristics of a drainage basin<sup>2</sup>, the claim of absolute sovereignty over part of an international river raises problems. These problems are different from the sovereignty over land territory or territorial waters. Such territory is static and the sovereignty of a state is more readily defined. But in the case of the waters of a drainage basin, the water is in continuous motion forming the boundary or crossing boundaries from one state to another and any change in its natural condition or use in one state may cause or threaten injury to a cobasin state. This

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<sup>1</sup> See OPPENHEIM, L., *International Law*, Lauterpacht ed., 8th ed., London (Longmans Green & Co), 1955, p. 464.

<sup>2</sup> See generally GARRETSON, A.H., HAYTON, R.D., and OLMSTEAD, C.J., *The Law of International Drainage Basins*, New York (Oceana), 1967.

inherent difference between the national rights over a static area and a moving mass has tended towards a gradual dwindling of the claim of territorial sovereignty over inland waters<sup>3</sup>.

Territorial sovereign rights, leaving aside the question whether they are ever absolutely enjoyed in this area, are being increasingly abandoned by treaty or arrangement to international commissions who exercise varying powers of administrative control as, for example, on the Rhine, the Elbe, the Oder, and the Danube in Europe<sup>4</sup>. In the Americas, international commissions have been set up for the American-Canadian and the American-Mexican rivers.

Admittedly, of the large number of conventions and treaties dealing with international rivers, only a few of them provide for the establishment of river commissions or committees which have responsibility for the development of water resources<sup>5</sup>. The purpose, functions, size, and responsibilities of these organizations vary from one case to another. In general, they bring all the basin states together to cooperate in planning for comprehensive water resources development. Typically, they are authorised to undertake studies, coordinate investigation, and make recommendations to the basin states. Since the commissions are represented by top level governmental officials, their decisions are normally adopted by the states concerned. Controversial policy decisions which have political overtones are however settled by the states through diplomatic negotiations.

The importance of a river commission consisting of representatives of the basin states cannot be overemphasized. It appears to be the ideal institutional framework for the planning, construction, operation, and maintenance of an integrated basin development. In the areas of collection, exchange and standardization of data, fixation of priorities, overall planning and engineering project

<sup>3</sup> For example, in the eighteenth and nineteenth centuries, when water was utilized mainly for the purpose of navigation, there was a marked tendency for the internationalization of rivers. Historically speaking, after the French revolution, with its liberal ideas, France formulated a general provision in this regard. On November 16, 1792, a decree of the Provisional Executive Council of the French Republic provided that « the watercourse of rivers shall be the common and inalienable property of all the countries watered by it and no nation may without injustice claim the right to have the sole use of the channel of a river and prevent the neighbouring peoples from enjoying the same advantages ». The Treaty of Paris of May 30, 1814, laid down the principle of complete freedom of navigation on the Rhine in such a manner that it may be forbidden to none. The principle was reaffirmed in Articles 108 to 117 of the Final Act of the Congress of Vienna in 1815, and was applied to the Rhine from 1815 and to the Danube after the Congress of Paris in 1856. Similarly, the Congress of Berlin of 1885 opened to all flags the Congo and Niger Rivers and their tributaries.

<sup>4</sup> See OSBORNE, M., *International River and Canal Transport*, London (O.U.P.), 1945, p. 13.

<sup>5</sup> See NORTCUTT, E. and WOLMAN, A., « Administration » in GARRETSON, et. al., *op. cit.*, *supra* note 2, pp. 124-159.

design, equitable apportionment of consumptive uses, pollution, construction of projects and settlement of disputes, agreements are more likely to be obtained if an international machinery is set up « than if the problem is left to spasmodic negotiations at the diplomatic level »<sup>6</sup>.

Modern experience in integrated multi-purpose development of water resources has shown with increasing clearness that the development problems cannot be solved by purely national action<sup>7</sup>. The need for interchange of information and experience and coordination of action among national authorities has become not only useful but necessary at every stage of any development programme. In United Nations and other international forums, concern has been expressed over the apparent lack of awareness in the international community, especially in the developing world, of the significance of the developments mentioned above and the vital lessons to be learned from them. Those of the newly independent countries who are aware of these developments are more and more interested in seeking United Nations assistance to help in establishing international institutional mechanisms for obtaining technical and financial aid from various sources in the development of their water resources programmes. To meet this need, many of the specialized agencies in the United Nations family participate in various aspects of international water resources development programmes<sup>8</sup>. In fact, many of the important river commissions in the developing world have been in one way or another the offspring of one or more international organizations in cooperation with the local authorities.

<sup>6</sup> *Ibid.*, p. 147.

<sup>7</sup> See United Nations, *Integrated River Basin Development*, Doc. E/3066/Rev.1 (New York : 1970); CHAPMAN, J.D. (ed.), *The International River Basin* (Vancouver : 1963); United Nations, *Integrated Utilization of Water Resources* (Proceedings of the Interregional Seminar on the Integrated Utilization of Water Resources, Fergana : 1966); GARRETSON, et. al., *op. cit.*, supra note 2; International Association of Water Law, *Annales Juris Aquarum*, Mendoza : 1968; United Nations, *Proceedings of the Panel of Experts on Legal and Institutional Implications of International Water Resources Development*, Vienna, December 1968 and New York, December 1969 (unpublished); United Nations, *Juridical and Institutional Problems of Multinational Water Development Projects in Latin America*, Seminar Report, Quito : January 1969 (mimeo); United Nations, *River Basin Management*, Doc. ST/ECE/WATER/3, New York : 1971.

<sup>8</sup> Nearly all United Nations agencies are directly or indirectly concerned with the development of water resources. For example, the Food and Agriculture Organization is concerned with agriculture, forestry and fisheries; the United Nations Educational, Scientific and Cultural Organization with scientific aspects, especially hydrologic studies; the World Health Organization with the problems of water pollution and water quality; the World Meteorological Organization with hydrological and meteorological aspects; the International Atomic Energy Agency with radioactive waste, the United Nations Development Programme with technical assistance, and the International Bank for Reconstruction and Development and its affiliates International Development Association and International Finance Corporation with financial assistance. See United Nations, *Fifth Biennial Report in Water Resources Development*, Doc. E/4447, 1968.

In recent years, the agreements reached by the territorial states in regard in the Lower Mekong, the Plate, the Niger, the Chad and the Senegal river basins exemplify the principle of mutual cooperation and joint development of water resources. The process of development on an institutionalised regional basis is only at its nascent stage in the above cases and no evaluation can be made or conclusions drawn from such a short experience with a dynamic and still fluid situation. Nevertheless they seem to be interesting additions to the classical European type of river agency such as that of the Rhine and the Danube which was set up for the accomplishment of a certain specific task, invariably to control navigation or to settle disputes and decide on the standardization of national water projects and the use of international water resources. This paper will try to identify the institutional mechanisms created by the basin states for undertaking multinational river basin programmes outlining the structure and administrative procedures which have been selected in each one of them.

### THE LOWER MEKONG RIVER BASIN

The Mekong river bears to Southeast Asia much the same relationship which the great Mississippi bears to the central states of northern America. It is the eighth longest river in the world and the tenth greatest in the volume of water it carries. It rises in the snow-clad mountain ranges of the Tang-Ku-La Shan of the Tibetan plateau, flows generally in a southerly direction through China and Indochinese peninsula and finally discharges into the South China Sea near Saigon<sup>9</sup>.

Geographically the Mekong traverses six countries : China and Burma in its upper reaches, and Laos, Thailand, Cambodia and the Republic of South Vietnam in its lower reaches. The Lower Mekong river referred to in this study is the river from the Burma border to the sea flowing or separating the territories of the latter four countries. It (Lower Mekong) has a length of 2,400 kilometers and drains an area of about 609,000 square kilometers.

During the period of their colonial hegemony, the French did not make any serious effort to develop the water resources of the Mekong except a few scattered attempts to improve commercial steam navigation which were not mostly successful due to the turbulence of the river in the upper basin. It was only after the establishment of the Economic Commission for Asia and the Far East (E.C.A.F.E.) as one of the four regional economic commissions of the United Nations in 1947 that a systematic study of the Mekong basin was

<sup>9</sup> See United Nations, *Flood Damage and Flood Control Activities in Asia and the Far East*, Flood Control Series No. 1, Bangkok : 1950, p. 58.

undertaken. The achievement of independence of the Indochinese states led to a renewed interest in the development of the basin.

The significance of the Mekong river to the states which share in it led over a century ago to the conclusion of international agreements beginning with the Treaty of Friendship, Commerce and Navigation between France and Siam (Thailand) on August 15, 1856. But concerted efforts for development of the river were undertaken only after the establishment of the Committee for Coordination of Investigations of the Lower Mekong Basin (The Mekong Committee) in 1957 under the auspices of E.C.A.F.E.<sup>10</sup>. Since then the entire outlook and motive force of development have undergone a radical change; in addition to the basin states twenty-six countries<sup>11</sup> outside the basin, seventeen United Nations agencies<sup>12</sup>, four foundations<sup>13</sup>, and a number of private organizations<sup>14</sup> have shown considerable interest and have actively collaborated in the development activities by offering technical and financial assistance by way of grants and soft loans.

#### *The Lower Mekong Committee.*

Broadly speaking, the Lower Mekong Committee was created for consultation, negotiation and for the joint action necessary to develop the water resources of the basin. As the Executive Secretary of E.C.A.F.E. points out, the administrative structure of the Committee « represents a new and stimulating example of international enterprise rather than just a variation of the conventional inter-governmental type of agency »<sup>15</sup>. The Committee functions under

<sup>10</sup> See MENON, P.K., *The Lower Mekong River Basin : An Enquiry into the International Legal Problems of the Development Programme of the Lower Mekong Committee* (unpublished doctrinal dissertation, New York, New York University, School of Law, 1970).

<sup>11</sup> Australia, Austria, Belgium, Canada, Republic of China, Denmark, Finland, France, Federal Republic of Germany, Hong Kong, India, Indonesia, Iran, Israel, Italy, Japan, Netherlands, New Zealand, Norway, Pakistan, Philippines, Sweden, Switzerland, United Kingdom, United Arab Republic and United States.

<sup>12</sup> Bureau of Technical Assistance Operations, United Nations Development Programme, Economic Commission for Asia and the Far East, International Bank for Reconstruction and Development, International Labour Organization, International Atomic Energy Agency, Food and Agriculture Organization, United Nations Educational, Scientific and Cultural Organization, United Nations Industrial Development Organization, World Food Programme, World Health Organization, World Meteorological Organization, International Telecommunication Union, United Nations Children's Fund, Asian Development Bank, Asian Institute for Economic Development and Planning, and Asian Highway Transport.

<sup>13</sup> Asia Foundation, Ford Foundation, Ramon Magasaysay Foundation, and Rockefeller Foundation.

<sup>14</sup> For example : Resources for the Future, Inc., Society of Friends (London), Bulgur Associates Inc., Gestetner (Eastern) Ltd., Imperial Chemical Industries Ltd., Nippon Electric Co., Price Waterhouse Co., Shell Oil Co., and Sycip, Gorres, Velaya & Co., University of the Philippines.

<sup>15</sup> U NYUN, « International Relationship and Organizations » in *5 Water for Peace*, Washington (U.S. Government Printing Office), 1967, p. 33.

the aegis of E.C.A.F.E. and in close cooperation with several other United Nations agencies and national governments.

### *Composition.*

The Lower Mekong Committee is composed of four states, each of which appoints one representative with plenipotentiary authority. The Executive Secretary of E.C.A.F.E. or his representative may participate in the deliberation and proceedings of any of the meetings of the Committee. On invitation, representatives of non-basin states and specialized agencies who participate in the development activities may also attend the meetings of the Committee as observers.

The Chairmanship of the Committee is rotated annually by the members of the Committee in the alphabetical order of the member states.

### *Functions and Powers.*

The functions of the Mekong Committee are mostly technical in nature. The four statutory functions are promotion, coordination, supervision and control of the planning and investigation of water resources development projects in the basin <sup>16</sup>.

To perform the abovementioned functions, the powers assigned to the Committee include the authority to (i) propose to the governments of the member states plans for studies and research; (ii) submit work programme to these governments for consideration; (iii) approach the United Nations, specialized agencies, national and international organizations for technical and financial assistance; (iv) take title to such property as may be offered by the United Nations and other organizations; and (v) submit criteria for the use of the water of the main river for the purpose of water resources development <sup>17</sup>.

It may be however argued that occasionally the Committee has exercised powers which go a good deal further than those outlined above and which might be held to approach something like quasi-legislative powers. The Committee has taken initiatives in negotiating and in drafting agreements and plans of operation. In general, the draft agreements approved by the Committee have to be accepted and formally concluded by the states concerned. Nevertheless, in certain cases, the Committee has itself concluded agreements <sup>18</sup>. In this sense, the Committee has acted as a quasi-legislative body.

<sup>16</sup> See *Statute of the Committee for Coordination of Investigations of the Lower Mekong Basin*, Article 4.

<sup>17</sup> *Ibid.*

<sup>18</sup> For instance, the Convention for the Supply of Power between Laos and Thailand, 1965, was signed and approved by the four members of the Committee. See Mekong Committee, Doc. E/CN.11/WRD/MKG/INF/L.152, August 6, 1965.

Further, implicit in Article 8(1) of the Statute of the Committee for Coordination of Investigations of the Lower Mekong Basin, is the right of the Committee to reach decisions on technical matters which are within its competence. It is true that the term decision has not been employed in the Statute and it is apt to give rise to some misunderstanding. However, an agreement reached by the Committee on technical matters is not merely recommendatory in nature; since the basin states are required to act through the Committee<sup>19</sup>, in accordance with its governing statute, the Committee's resolutions are closer to decisions than recommendations.

### *The Secretariat.*

The Mekong Secretariat constitutes the Executive Agent<sup>20</sup> together with the staff. It is attached to the Secretariat of E.C.A.F.E. and collaborates with all appropriate offices of the latter. It is stationed at the office space made available by the Government of Thailand in Bangkok.

The Secretariat is headed by the Executive Agent. The Mekong Committee serves as its board of directors.

The Mekong Secretariat contains three divisions — engineering services, economic and social studies, and navigation improvement — headed by directors and a supporting administrative section. Most of the secretariat staff have been made available from within the United Nations family — United Nations proper, E.C.A.F.E., the Special Fund sector of the United Nations Development Programme, United Nations Technical Assistance Organization, and the International Bank for Reconstruction and Development. These several relations with the United Nations have set high standards of political impartiality and objectivity.

### *National Committees.*

The policy formulating machinery of the Mekong Committee includes National Mekong Committees. They have been established in each of the four basin states by their respective governments. They assist the Mekong Committee

<sup>19</sup> See *Statute of the Committee for Coordination of Investigations of the Lower Mekong Basin*, Article 8 (1).

<sup>20</sup> The Executive Agent is appointed by the Secretary-General of the United Nations and his services are made available under the Technical Assistance Programme. He receives his mandate from the Mekong Committee normally through the work programme and budget which require unanimous approval by the Committee. The performances of his duties are most crucial in maintaining the balance between the views of the Committee on the one hand and the programmes of the United Nations on the other. As a United Nations official, he is required in the performance of his duties to observe the highest degree of independence, impartiality and objectivity as provided in Article 100, paragraph 1 of the United Nations Charter. At the same time he is an agent of the Committee.

in the process of policy formulation, provide a link in the chain of policy-making, and serve to coordinate national water resources activities.

The National Committees are very important instruments<sup>21</sup> in undertaking studies, investigation, planning and collection of hydrological data. They centralize the studies and evaluate the national problems relating to the basin. They exchange information through the Mekong Committee.

#### *Advisory Board.*

The Mekong Committee has an Advisory Board consisting of highly qualified engineers, economists and administrators of global reputation. In general, the functions of the Board are to guide the Committee on policy matters. It renders « technical, economic and administrative advice on matters referred to it by the Committee or Executive Agent from time to time »<sup>22</sup>. All current and forward work programmes of the Committee are submitted to the Advisory Board for its review. If any of these programmes are not approved by the Board, it will report its reasons and the nature of changes proposed. The Board may also examine, as it deems necessary and with the consent of the Committee, any aspect of the work carried out under the auspices of the Committee<sup>23</sup>. Broadly stated, the Board renders (i) general advice; (ii) special advice; and (iii) emergency advice.

### THE PLATE RIVER BASIN

The Plate River basin which is only second to the Amazon in Latin America is one of the largest hydrographic systems in the world<sup>24</sup>. It drains an area

<sup>21</sup> Realizing its importance, Thailand elevated the National Mekong Committee to cabinet level with the Prime Minister as Chairman and its Mekong Committee Member as Secretary to the National Committee. See Mekong Committee, *Annual Report 1964*, E/CN.11/WRD/MKG/L.129, p. 121.

<sup>22</sup> See *Rules of Procedure for the Advisory Board to the Mekong Committee*, Mekong Committee, Doc. E/CN.11/WRD/MKG/L.75, January 21, 1965.

<sup>23</sup> See Mekong Committee, Doc. E/CN.11/WRD/MKG/L.231, May 16, 1968.

<sup>24</sup> The Plate river which has tremendous resource potential for development is extremely important to all of its five basin states — Argentina, Bolivia, Brazil, Paraguay and Uruguay. In Argentina, the basin provides transport, through the important navigable Parana and Uruguay rivers, for the most highly industrialised zones of its northeastern parts. In Bolivia, the system is identified with the resources of the rich eastern lands and has the potential to provide a means of access to the Atlantic Ocean. In Brazil, in addition to serving the most heavily populated south-central zones, the basin offers a great wealth of hydroelectric potential comparatively close to the country's most important industrial centres. Furthermore, the system comprises important ways of internal and international communication linking the country to Argentina, Paraguay, and Uruguay. Paraguay which is a landlocked country is vitally dependent on the navigation carried out on the Parana and Paraguay rivers which



of approximately 1,235,000 square miles which is almost one-sixth of Latin America. The river system empties into the Atlantic ocean having the cities of Buenos Aires and Montevideo, on its lower part flows through or borders the territories of Argentina, Bolivia, Brazil, Paraguay and Uruguay.

The river system consists of four major waterways — the Paraguay, Parana, Plate and Uruguay rivers — and a large number of tributaries to these rivers<sup>25</sup>. Each of these four waterways is international in the sense that they serve both as a boundary and as a successive river with respect to the specific basin states. Bolivia, Brazil and Paraguay are the basin's upper riparians, and Argentina and Uruguay are the lower riparians.

The regime of the Plate river basin is so complex and somewhat confusing that until very recently there was not a single comprehensive international agreement among the five basin states dealing with water resources development<sup>26</sup>. Indeed, there are a large number of inter-se treaties, mostly between pairs of states dealing with navigation.

In the past, the basin states had expressed their intense desire to undertake development projects in a cooperative way for mutual advantage. For example, the declarations and resolutions adopted by the Seventh Inter-American Conference held at Montevideo in 1933<sup>27</sup>, by the Regional Conference of the countries of the River Plate held at Montevideo in 1941<sup>28</sup>, and by the Tripartite Meeting provided in Article 11 of the Agreement between Argentina and Uruguay relating to the utilization of the rapids of the Uruguay river in the areas of Salto Grande in 1960<sup>29</sup> contain the desirability and necessity of joint development. However, it was only after the establishment of intergovernmental

link it to the ocean. Uruguay is strategically located within the hydrographic system at the junction of the vital trade routes. See MENON, P.K., « The Plate River Basin : Some Aspects of Navigation Development », *Paper presented at the UNITAR (United Nations Institute for Training and Research), Symposium on the Financial and Legal Aspects of the Improvement and Maintenance of International Rivers for Navigation*, Buenos Aires, November 30 - December 4, 1970, Doc. UNITAR/SYMP./BP/6.

<sup>25</sup> For details on the hydrographic system of the Plate river basin see Pan American Union, *Transportation and Economic Growth : The Plate River System* (Economic Conference on the Organization of American States, Buenos Aires, Argentina 1957; Doc. 11, Washington : July 1957); HAYTON, R.D., « The Plate Basin » in GARRETSON et al., *op. cit.*, *supra* note 2 at pp. 298-442.

<sup>26</sup> See MENON, P.K., *op. cit.*, *supra* note 24 at p. 8.

<sup>27</sup> Declaration of Montevideo Concerning the Industrial and Agricultural Use of International Rivers, December 24, 1933, in United Nations, *Legal Problems Relating to the Utilization and Use of International Rivers*, Annex I (Doc. A/5409), (April 1963).

<sup>28</sup> Resolutions Concerning the Establishment of Joint Technical Commissions to Study the Hydrographic System of the River Plate, 6 February 1941, *ibid.*

<sup>29</sup> Joint Declaration of Argentina, Brazil and Uruguay of 23 September 1960 in United Nations, *Legislative Texts and Treaty Provisions Concerning the Utilization of International Rivers for Other Purposes than Navigation* (New York : 1963), p. 163.

organizations — the Intergovernmental Coordinating Committee of the Plate River Basin countries (I.C.C.), the United Nations Development Programme (U.N.D.P.), the United Nations Economic Commission for Latin America (E.C.L.A.), Organization of American States (O.A.S.), Latin American Free Trade Association (L.A.F.T.A.) and Inter-American Development Bank (I.D.B.) — that the basin states began to devote serious attention to develop their common water resources in a cooperative and coordinated way.

The new regime of the Plate river basin is founded on (1) the Joint Declaration of February 1967 of the Foreign Ministers of the basin states at Buenos Aires<sup>30</sup>, and (2) the River Plate Basin Treaty of 1969<sup>31</sup>. The regime focusses on the joint promotion of a comprehensive study and development of the basin on a national, binational and multinational basis.

### *The Plate Basin Committee.*

The Intergovernmental Coordinating Committee, which is the institutional mechanism created by the basin states to achieve the common objectives of harmonious and balanced development of the basin, is important enough to be briefly reviewed. The Committee was established in response to the Joint Declaration of the Ministers of Foreign Affairs of the basin states in 1967<sup>32</sup>.

### *Composition.*

The Intergovernmental Coordinating Committee is composed of representatives of the five basin countries. On invitation, representatives of other governments and international agencies may also attend the Committee meetings as observers.

There is no limitation imposed as to the number of appointments made by each country to the Committee. The delegation may consist of a titular representative, his alternate and technical advisers. The head of the delegation is invested with diplomatic rank not lower than of a Minister Plenipotentiary.

The Chairmanship of the Committee is rotated on a monthly basis by the representatives of the member countries in the alphabetical order of the names of the countries. In the case of his absence, the Chairman is replaced by the representative who is next in line.

<sup>30</sup> For the Declaration see Pan American Union, *Rios y Lagos Internacionales* (Utilization para fines agricolas e industriales), OEA Documents Officiales OEA/Ser.I/VI. CLJ-75 Rev., Washington, 1967, p. 169.

<sup>31</sup> For the Treaty see *The Review of the River Plate*, n° 3709, April 30, 1969, pp. 607-608.

<sup>32</sup> See Joint Declaration of the Ministers of Foreign Affairs of the Countries of the River Plate Basin, February 27, 1967 (hereinafter cited Joint Declaration), Section II.

The headquarters of the Committee is in Buenos Aires. Provision has however been made to hold meetings of the Committee in other places whenever it is suitable for the performance of its functions.

### *Functions and Powers.*

The objective of the Plate basin Committee are « to promote, coordinate and pursue the course of multinational action toward the best possible use of the resources of the Plate River Basin », and « to centralize the interchange of information that may affect the programme's objectives »<sup>33</sup>.

In order to fulfil its objectives the Committee shall exercise the functions as spelled out in Article 3 of its Statute. These functions include (1) to propose to the governments of the member countries plans for studies and research; (2) to submit work programme to those governments for consideration; (3) to receive information and studies relating to the River Plate basin that the governments or national agencies send whenever they consider it pertinent and to distribute copies thereof to the representatives of the governments, maintaining the originals in its files; (4) to approach national and international agencies with respect to undertaking studies or research and providing technical and financial assistance whenever it is unanimously agreed and explicitly recommended by the governments of the member states that this be done; (5) to transmit to the governments any offers that the agencies make; (6) to propose dates for the regular meetings of the Foreign Ministers of the countries of the Plate basin and special meetings when deemed advisable for the consideration of common problems relating to the general development of the region, and to prepare the provisional agenda therefor.

The above-mentioned functions, in general, deal with the promotional and technical aspects of the basin development. The decisions of the Committee, even though they are reached after obtaining the assenting vote of all the representatives, are only recommendatory in nature. Political authority is retained by the member states. The Foreign Ministers of the basin states who meet once a year consult each other with regard to the proposed action of their respective governments in the field of integrated multinational development of the basin. They lay down the basic directives of common policy for the attainment of their objectives and direct the action of the Committee<sup>34</sup>.

### *The Secretariat.*

To perform its functions, the Plate Basin Committee has been provided with a secretariat. The secretariat is headed by a secretary appointed by the unanimous vote of the Committee for a period of two years.

<sup>33</sup> See *Statute of the Intergovernmental Coordinating Committee for the River Plate Basin Countries*, Article 1.

<sup>34</sup> See *The Plate River Basin Treaty*, 1969, Article 2.

The secretariat consists of necessary personnel who are also appointed by the Committee, upon nomination of the secretary on the basis of a fair geographic distribution among nationals of the countries in the area. Upon authorization of the Committee, the secretary is also empowered to recruit technical advisers for the performance of specific tasks.

In order to maintain independence, impartiality and objectivity in the performance of their duties, the Statute provides that « neither the secretary nor the personnel of the secretariat shall request or receive instructions from any government or from any authority other than the Committee, and shall abstain from all conduct inconsistent with their exclusive responsibility to the Committee »<sup>35</sup>. Furthermore, the office of the secretariat, its property, appurtenance, buildings and documents are exempt from the juridical and administrative jurisdiction of the host country. In the discharge of its functions the officers of the Committee enjoy immunity from juridical process for acts committed and statements spoken or written by them. They are also exempt from taxes befitting their international status.

#### *National Committees.*

It is inconceivable that the Committee consisting of a limited number of secretariat staff can effectively deal with the problems of such a gigantic river basin like the Plate. Bearing this in mind in their Joint Declaration in 1967, the Ministers of Foreign Affairs proposed the establishment of specialised national agencies in each of the countries to centralize the studies and evaluate their national problems relating to the basin<sup>36</sup>. Pursuant to this, the basin states have established centralized national committees composed of high officials.

The scope, nature, and functions of the national committees vary from country to country. Obviously, each country confers on the Committee the functions and powers it deems desirable. In general, these committees coordinate various studies undertaken by different agencies in the respective countries at the national level, and also facilitate the functions assigned to the Intergovernmental Coordinating Committee at the international level<sup>37</sup>.

#### *International Cooperation in the Plate Basin.*

The basin states, in unequivocal terms, have recognized the necessity of technical and financial cooperation of international agencies to ensure the

<sup>35</sup> See *Statute of the Intergovernmental Coordinating Committee for the River Plate Basin Countries*, Article 8.

<sup>36</sup> See *Joint Declaration*, 1967, Section III.

<sup>37</sup> For a detailed discussion on the structure and functions of national committees see Organization of American States, « River Plate Basin Development Programme », *Paper presented at the UNITAR Seminar on Juridical and Institutional Problems of Multinational Development Project in Latin America*, 13-15 January 1969, Quito.

attainment of their objectives<sup>38</sup>. They have therefore agreed to maintain close contact with these organizations.

The Statute of the Intergovernmental Coordinating Committee contains specific provisions regarding the manner in which cooperation has to be received from international agencies. After obtaining unanimous and explicit direction of the Governments of the member countries, the Committee negotiates with international agencies for undertaking studies or research and for technical and financial assistance to achieve their objectives and conveys to the Governments the proposals made by the agencies in accordance with their programme<sup>39</sup>. As mentioned earlier, representatives from international organizations and governments may attend Committee meetings as observers<sup>40</sup>. The Committee is also empowered to invite any person, entity or representatives of international agencies to provide information on questions which fall within their competence<sup>41</sup>.

In addition to U.N.D.P. and E.C.L.A. interest, there has been considerable activity on the part of O.A.S. and I.D.B. with respect to providing assistance to the Plate Basin development programme. For example, the contribution of O.A.S. in the field of natural resources consists of an inventory and analysis of basic information on natural resources and related subjects for the basin as a whole. The general objective of this programme is to produce information that will be required for development planning and project implementation. More specifically, one of the objectives of the programme is to support immediate development efforts in the basin through assistance to local and national agencies which require economic development projects.

### THE NIGER RIVER BASIN

The Niger is the largest river in West Africa for it measures about 4,200 kilometers without its main affluents. The basin of the river which covers more than one million square kilometers is shared by nine countries : Cameroon, Chad, Dahomey, Guinea, Ivory Coast, Mali, Niger, Nigeria and Upper Volta<sup>42</sup>.

During the colonial period, the river was utilized chiefly for the purpose

<sup>38</sup> See *Joint Declaration*, 1967, Section V.

<sup>39</sup> See *Statute of the Intergovernmental Coordinating Committee for the River Plate Basin Countries*, Article 3, paragraph c.

<sup>40</sup> *Ibid.*, Article 10.

<sup>41</sup> *Ibid.*, Article 14.

<sup>42</sup> For physical characteristics of the Niger River Basin see DEKKER, G., « International River Basins and Regional Development in Africa », *Paper presented at the United Nations Meeting of Panel of Experts on Water Resources Development Policies*, Buenos Aires, June 1970.

of navigation. The wake of independence in the African continent coupled with the refinements in the science and technology generated a keen interest among the basin states for international cooperation with regard to the study and multi-purpose development of water resources of the river. The Italconsult report commissioned by the United Nations and the Nedeco survey sponsored by the Nigerian Federal Government in 1962 spurred the interest of these countries even further<sup>43</sup>.

With a better awareness of the basin's resource potential and the accompanying development problems, the riparian states felt that it would be in the interest of all concerned to establish a permanent body which would coordinate the various studies and facilitate exchange of information. This body is called the River Niger Commission.

The present regime of the Niger River Basin is founded on the treaties : (1) Act Regarding Navigation and Economic Cooperation between the States of the Niger Basin, October 1963<sup>44</sup>, and (2) Agreement concerning the Niger River Commission with respect to Navigation and Transport on the River Niger, November 1964<sup>45</sup>. By Article 1 of the 1963 Treaty, the General Act of Berlin of 1885, the General Act and Declaration of Brussels of 1890, and the Convention of Saint-Germain-en-Laye of 1919 were abrogated as far as they concerned the River Niger, its tributaries and subtributaries.

#### *The River Niger Commission.*

In the 1963 Treaty, the basin states stressed the importance of creating an inter-governmental organization for the fostering, the promotion and the coordination of studies and programmes relating to the integration and development of the basin<sup>46</sup>. In the following year, in giving effect to the above provision, the River Niger Commission was created<sup>47</sup>.

#### *Composition.*

The Commission consists of nine commissioners, one for each riparian state. Each commissioner is assisted by experts and advisers as required. There is no qualification prescribed for the commissioner.

<sup>43</sup> See ELIAS, T.O., « The Berlin Treaty and the River Niger Commission » 57 *A.J.I.L.*, 1963, pp. 874-875.

<sup>44</sup> For the text of the Act see SCHREIBER, « Vers un nouveau régime international du fleuve Niger », in 9 *A.F.D.I.*, 1963, p. 885.

<sup>45</sup> For text of the Agreement see SCHREIBER, « Accord relatif à la Commission du fleuve Niger et à la navigation et aux transports sur le fleuve Niger », in 10 *A.F.D.I.*, 1964, p. 815.

<sup>46</sup> See *Act Regarding Navigation and Economic Cooperation between the States of the Niger Basin*, 1963, Article 5.

<sup>47</sup> See *Agreement Concerning the River Niger Commission and the Navigation on the River Niger*, 1964, Article 1.

On invitation, representatives of the United Nations, the specialized agencies, the Organization of African Unity, and other inter-governmental organizations may participate in the Commission's deliberations without having the right to vote. They may also make written statements on the Commission's activities which will be circulated to members of the Commission. Experts from these organizations may also attend the meetings in the capacity of advisers and observers and make oral statements.

The Chairman of the Commission is elected by secret ballot, at the commencement of each ordinary session, from among the members whose terms of office terminate at the end of the session. The Chairmanship is rotated in the sense that a Chairman is not reelected until all other commissioners have held office.

The quorum of the Commission is six commissioners. Each member of the Commission has one vote and the decisions are taken by a majority of two-thirds of the members present and voting. This majority may not be less than four.

#### *Functions and Powers.*

The establishment of the Commission is an outcome of the joint interest of the basin states to develop close cooperation for the judicious exploitation of the water resources of the river. They have also recognized the fact that development efforts by individual states would adversely affect the regime of the river<sup>48</sup>. In response to this, the functions of the Commission as stipulated in the Treaty include (1) maintenance of liaison between the basin states to ensure the most effective use of the water and resources of the basin; (2) collection, evaluation and dissemination of basic data on the basin; (3) examination of projects prepared by the states and recommendation of plans for common studies and works for development of the basin, and (4) follow-up of the progress of the execution of studies and works in the basin and keeping the riparian states periodically informed<sup>49</sup>.

In order to exercise the functions mentioned above, adequate powers have been given to the Commission. Among others, it has the power to (1) supervise the implementation of the provisions of the Act of Niamey and the 1964 Agreement; (2) examine complaints and promote the settlement of disputes and the resolution of differences; (3) establish general regulations regarding all forms of navigation on the river; (4) draw up staff regulations and ensure their application<sup>50</sup>. International personality has been expressly conferred upon

<sup>48</sup> See *Act Regarding Navigation and Economic Cooperation between the States of the Niger Basin*, Preamble.

<sup>49</sup> See *Agreement Concerning the River Niger Commission and the Navigation and Transport on the River Niger*, Article 2.

<sup>50</sup> *Ibid.*, see also Article 15.

the Commission and the commissioners are accorded diplomatic privileges and immunities by the basin states<sup>51</sup>. Further, the states have themselves undertaken to abstain from carrying out on the portion of the river, its tributaries and sub-tributaries subject to their jurisdiction, any works likely to pollute the waters, or any modification likely to affect biological characteristics of its fauna and flora, without adequate motive to, and prior consultation with the Commission<sup>52</sup>.

### *The Secretariat.*

The River Niger Commission has a secretariat headed by an administrative secretary and such other staff as determined by the Commission. The administrative secretary is appointed by the Commission, by a two-thirds majority vote, from among the candidates proposed by the riparian states<sup>53</sup>.

The duties of the secretariat<sup>54</sup> as well as the administrative secretary<sup>55</sup> have been carefully enumerated in detail in the Rules of Procedure. In particular, the administrative secretary is charged with the onerous responsibility for the overall control of the finances of the Commission<sup>56</sup>. He is also responsible for presentation of the annual budget and preparation of the balance sheet of all financial transactions<sup>57</sup>.

### *International Cooperation.*

During the short period of its operational study, the River Niger Commission has been able to attract financial and technical assistance from the United Nations Development Programme and other United Nations agencies, the United States Agency for International Development and the Government of the Netherlands. The assistance rendered by the Netherlands through the firm « Nedeco » is especially noteworthy. The Government has contributed 79 % of the cost of the Navigation study of the middle course of the Niger covering the part from Tossaya in Mali to Yelwa in Nigeria. The remaining 21 % is shared by the four riparian states — Dahomey, Mali, Niger and Nigeria.

## THE LAKE CHAD BASIN

The Lake Chad covers an area varying between 18,000 and 23,000 square kilometers and is shared by the countries Cameroon, Chad, Niger and Nigeria. The preliminary studies and surveys revealed that the exploitation of fresh

<sup>51</sup> *Ibid.*, Article 11.

<sup>52</sup> *Ibid.*, Article 12.

<sup>53</sup> *Ibid.*, Article 6.

<sup>54</sup> See River Niger Commission, *Rules of Procedure*, Rule 22.

<sup>55</sup> *Ibid.*, Rule 21.

<sup>56</sup> *Ibid.*, Rule 24.

<sup>57</sup> *Ibid.*, Rule 23, 25.



water aquifers in one country may affect the yields across the border. It became evident that the orderly development of the water resources required the cooperation of the four countries concerned. This has prompted the basin states to establish the Chad Basin Commission which is somewhat similar to the Niger Commission discussed in the preceding paragraphs.

#### *The Chad Basin Commission.*

The Chad Basin Commission was established in 1964 in terms of the Convention and Statutes relating to the development of the Chad Basin concluded by the four basin states<sup>58</sup>. The Commission is composed of eight members, with two representatives from each state. The decisions of the Commission are adopted unanimously. The Commission, as expressly provided in the Statute, enjoys the status of an international organization.

The headquarters of the Commission is at Fort-Lamy or in any other place which it deems suitable for the discharge of its functions.

#### *Functions and Powers.*

The functions and powers of the Chad Basin Commission are broad and in many respects similar to those of the Niger Commission. These functions include (a) legislative, such as formulating common rules of navigation, preparing for the approval of member states joint rules with a view to fully applying the principles set out in the Convention and Statutes, and establishing regulations governing its personnel<sup>59</sup>; (b) executive, such as the maintenance of liaison between the basin states, recommendations to member states of plans for common studies and works relating to the harnessing of the river resources, observation of the execution of works and studies, and supervision of the implementation of the provisions of their respective agreements<sup>60</sup>; (c) technical, such as assembling, examining and disseminating information on projects prepared by basin states, keeping the states informed on the progress of construction projects on the basin on the basis of annual periodic reports to be submitted by each state<sup>61</sup>; and (d) quasi-judicial, such as examining complaints and assisting in the settlement of disputes<sup>62</sup>.

#### *Secretariat.*

The Commission has a secretariat headed by an executive secretary and supporting personnel. The executive secretary is appointed by the member states upon recommendation by the Commission by a simple majority.

<sup>58</sup> For text of the Convention and Statutes see, *Official Gazette of the Federal Republic of Cameroon*, September 15, 1964, p. 1002.

<sup>59</sup> See *Statutes Relating to the Development of the Chad Basin*, Article 9, paragraphs a, e, f.

<sup>60</sup> *Ibid.*, Article 9, paragraphs c, h.

<sup>61</sup> *Ibid.*, Article 9, paragraphs b, d.

<sup>62</sup> *Ibid.*, Article 9, paragraph g.

## THE SENEGAL RIVER BASIN

The Senegal River basin drains an area of about 333,800 square kilometers shared by four countries : Guinea, 30,800 square kilometers; Mali, 155,000 square kilometers; Mauritania, 75,600 square kilometers; and Senegal, 72,400 square kilometers<sup>63</sup>. Considering that the coordinated development of the entire basin promises prospects for a fruitful exploitation of the various resources, the riparian states, in the early sixties, thought it necessary to create an intergovernmental organization. On July 26, 1963 the Governments of the four countries met together at Bamako and concluded an agreement in regard to the common development of the resources of the basin<sup>64</sup>. The Agreement declared the Senegal to be an international river and established an Inter-State Committee for promoting and coordinating studies and development works of the basin.

### *Senegal Basin Committee.*

The Inter State Committee for development of the Senegal Basin is composed of four ministers, one from each riparian state. The ministers are assisted by experts and advisers.

The Chairmanship of the Committee is rotated annually by each of the basin states and the meetings of the Committee are held successively in each of the four states.

### *Functions and Powers.*

The functions of the Inter-State Committee are in many respects similar to those of the Niger and Chad Commissions. However, the Senegal Agreement is more concise and specific in regard to the following principles of cooperation. It requires that particular improvement works which are likely to cause effect on the overall development of the basin should be approved by the Committee<sup>65</sup>. It also states that requests for multilateral or bilateral assistance for river development projects are to be submitted by the riparian states either jointly or separately; in the latter case the Committee should be consulted in advance<sup>66</sup>.

The Inter-State Committee has the power to approve as well as to manage a new project, thus functioning both as an executive and as a consultative

<sup>63</sup> See DEKKER, *op. cit.*, *supra*, note 42.

<sup>64</sup> For text of the Agreement see *Journal de la République du Sénégal*, February 20, 1965, p. 171.

<sup>65</sup> *Ibid.*, Article 8.

<sup>66</sup> *Ibid.*, Article 9.

body. Its decisions, however, require the approval of the states concerned to have binding effect.

### *The Secretariat.*

The Inter-State Committee has a permanent secretariat headed by a secretary nominated by the Committee. The secretariat, in the main, serves as a liaison of the Committee, implements the decisions of the Committee, and reports regularly on the implementation of these decisions and on any other initiatives it has taken by itself.

The secretariat consists of (1) an administrative commission; (2) a commission in charge of the navigation and transport problems, and (3) a commission in charge of problems of hydroelectric and hydroagricultural development.

It is interesting to mention at this point that the Inter-State Committee has been integrated in the Organization of the Riparian States of the Senegal River which was established in March 1968. This new organization has a much wider scope. Among others, it has an executive general secretariat in charge of the general coordination, a general secretariat for the development of the Senegal River basin, for planning and development which should coordinate national development plans<sup>67</sup>.

## CONCLUDING OBSERVATIONS

River development organizations are decidedly not new phenomena. Regulation of navigation on the Rhine and the Danube — perhaps typical of the nineteenth century regional agency — is of considerable administrative importance. Equally true, for example, is the work of the International Joint Commission which the United States and Canada established more than half a century ago to regulate and control the diversion of waters from the Great Lakes. These historic river authorities which have reached mature status are in developed countries of the world where, on account of their accumulated rich experience, refinements of science and technology, and the availability of financial and human resources, national and local agencies have been heavily relied upon for development activities. The necessity for a binational or multinational agency is found minimal. What is needed is only a coordination of activities.

In the developing world, where experienced national agencies are non-existing, or have had little experience, the necessity for a new organizational set up

<sup>67</sup> See DEKKER, *op. cit.*, *supra* note 42.

becomes even more evident. The basin states suffer from a shortage of trained and specialized personnel. The financial commitment is far beyond their capability. Also, no development of importance has hitherto taken place in the basin area. These factors, however, do not prevent the establishment of an international agency to carry out the promotional and operational activities. On the other hand, they provide excellent opportunities for the creation of a cross-basin agency for the unified and comprehensive development of the basin. The gradual realization of the advantages of such an agency; the urge of cooperation, and the linking of the agency with the United Nations and its specialized agencies may pave the way for integrated basin development. The relationship with the United Nations family of organizations is needed not only to permit an ordered reliance on the availability of water resources but also to attract the financial investment needed to exploit it. A third party scrutiny and professional criticism can be a healthy factor in harmonizing conflicts of views among the basin states and in achieving the specialization necessary for effective action.

The establishment of intergovernmental institutional agencies is the expression of a cooperative spirit of the basin states on the recognition of the need for an appropriate instrument to secure optimum development of the resources they commonly share. However, they have been reluctant to create autonomous institutions — even though created by themselves — with all responsibility for multinational projects. Stated otherwise, the states concerned have jealously preserved their national sovereignty by reserving for themselves final decision-making power on all important issues. This may be attributed to two main reasons : first, large-scale water resources development is a novel experiment for the basin states in the developing world; second, water is a depletable and multiuse resource, the proper control of which has a great impact on social and economic development.

At any event, the agency responsible for development must be a permanent organ. The traditional practice of occasional diplomatic negotiations or conferences will not satisfy the requirements of integrated development wherein there is a clear need for coactivity and not mere coexistence. The problem is not how to keep the basin states peacefully apart but how to bring them together. To be effective, the agency should have sufficient authority, technical capability and financing capacity so that development programme for the basin as a whole can be conducted on a continuing basis. The functions of the agency may vary according to the physical characteristics of the basin and with the political, economic, social, cultural and traditional factors.

Finally, it may be observed that there is no discernible perfect institutional mechanism for the development of water resources. The mechanics of specific arrangement are in fact not as important as the disposition of those who rely on it. It is not of great importance whether the agency has operational functions

in the field or is simply promotional, policy determining or policy-making, whether it decides by majority or by unanimity or by consensus, whether it possesses general or limited political or technical functions. The really important determinant is whether member states discover in it the means of fulfilling their important needs and are psychologically prepared to employ it effectively to realize their mutual objectives. In other words, do the participating states fully cooperate with each other in spite of their internecine political rivalries and conflicting domestic interests ?