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WEST AFRICAN CONTRIBUTION TO THE LAW OF INTERNATIONAL WATERCOURSES

by K. Rowny

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1. Introduction

I CONSIDER the invitation from the University of Ife authorities to deliver this lecture not only as a pleasure and honour for me but also as a recognition of the importance of law and the development of legal education in this fast developing country.

Indeed, there are good reasons why legal knowledge should be respected not only by the University itself but also by the Federal and State governments. A society cannot develop in any field (agriculture, industry and so forth) without developing itself as a united, law-abiding, modern society, conscious of its present and long-term aims in every area of its social life. Law, which in its relation with other human sciences is the oldest and richest of the social sciences, has played a vital role in organizing and adding some social discipline necessary to build up and develop all other fields of a social life. Moreover, one may safely say that without law it is impossible to conceive not only of the development but the very existence of any society, at least at its present and foreseeable stages of development.

The topic of today's inaugural lecture seems to be a good illustration of the fact that international law deals not only with the so-called high-policy matters, such as war and peace, but, that it deeply penetrates every field of every-day human life.

There is no need to argue widely for the importance of inland watercourses and water resources to the population of every region of the world; but it would be appropriate to remember, as an American historian pointed out, that: "Civilization has flowed to man along the valley [*sic*] of great rivers where the soil was fertile . . . and where the waters carried him to other peoples who were thinking of problems of human life and solving them in varied ways."[1] Extending briefly this historical approach, everybody would appreciate the great value to humanity of such watercourses as the Yangtze, Hoang Ho, Indus, Ganges and the Nile. As far as the Nile itself is concerned it should be remembered here that it was in its valley that the most significant, continuous human culture arose, which led to that European civilization of which the world boasts so much today.[2]

In spite of the above-mentioned facts, international law had not shown a great concern with international watercourses until the beginning of the nineteenth century. Then at the Congress of Vienna of 1815, in line with the new ideas brought by the Great Capitalist Revolution in France, the principle of free navigation on rivers by merchantmen of all states was proclaimed. The Congress gave recognition to the principle by making arrangements for free navigation on the Rivers Scheldt, Meuse, Rhine and on the navigable tributaries of the latter, namely the Rivers Neckar, Maine and Moselle. The Treaty of Paris (1856) contained similar provisions (Article 15),

in respect of the biggest river in Europe, the Danube and its mouths, and expressly declared the principle of the Vienna Congress regarding free navigation on international rivers for merchantmen of all nations to be part of "European Public Law". From that time to World War II the majority of international treaties dealt mostly with the navigational uses of international rivers.

For some decades, however, the idea of the non-navigational uses of international watercourses has been mooted in international treaties and in the doctrine of international law. This issue arises because water flowing from one country to another has been used in increasing degrees for irrigation of arid areas, for generation of electricity and generally for the development of industry.[3] With these new developments new problems have arisen for lawyers to solve. In the case of irrigation, the uses of water by upper riparians inevitably diminish its natural quantity in the lower part of the river and thus adversely affect the lower riparians. Although hydrologic works for power purposes do not consume water as such, they interfere with its normal flow and produce the same consequences for the lower riparians as in the above case. Furthermore, increasing industrialization entails more consumption of water and changes in its natural quality giving rise to water pollution, detrimental to biological life (fauna and flora) and thus adversely affects the consumers of water, human beings, animals and plants alike.

These uses of international watercourses have attracted the attention of governments and consequently have led to a large number of bilateral and some multilateral treaties on the matter. But by now the law of international inland waters has been waiting for a worldwide codification, similar to that of the Law of the Seas under the Geneva Conventions of 1958.[4]

For some time the legal problems of the manifold uses of international inland waters have also attracted the attention of international lawyers and learned international and political bodies. As early as in 1910, two members of the Institut de Droit International—Von Bar and Harburger—proposed to treat the topic: "Determination of international legal rules concerning international watercourses from the standpoint of their exploitation for power purposes" (author's translation). This topic was then discussed in 1911 at the Madrid Session of the Institute and an appropriate resolution was adopted.[5] Fifty years later, the Institute, after deliberating for some time on problems of the law of non-maritime waters, adopted another resolution at its Salzbourg Session in September 1961 which, "considering that the economic value of the use of waters has been modified by modern techniques", dealt mainly with non-navigational uses of international watercourses, and restated draft Articles of international principles in the matter.[6]

Another highly authoritative international learned body, the International Law Association, established a Committee on the Use of Waters of International Rivers at its Edinburgh Conference in 1954. A dozen years of the Committee's work had led to the acceptance by the 52nd Conference of the Association, held in Helsinki in 1966, of a set of draft Articles on the uses of waters of international rivers known as the "Helsinki Rules".[7] The draft Articles reflect an appreciation of the problems connected with the law of waters in international drainage basins and could well serve as a contribution for a general codification of law[8] in this very important field of human activities.

In addition to the above-mentioned works of the learned international bodies, it must be pointed out that the United Nations Organization and its family of specialized institutions have also marked their interest in this field. The United Nations Economic Commission for Africa (ECA) already at the end of its first session, held at Addis Ababa (29 December 1958 to 6 January 1959), reported that it "considered that there was a great need in Africa for certain types of scientific surveys such as hydrological, geological, geodetic and other surveys of resources including resources for industrialization and sources of energy such as solar energy."[9] Since then the water problem has proved to be very vital for the Commission.[10]

UNESCO, at the request of the Executive Secretary of the Economic Commission for Africa, has undertaken in 1959 a review of the natural resources of the African continent and Madagascar.[11] Since then, UNESCO has proved to be very active in organizing, in cooperation with international and national institutions, many worldwide and regional conferences and symposia dealing with Hydrology.[12] The Food and Agriculture Organization is also heavily involved in water development problems and utilization.[13]

The UN General Assembly itself adopted, on 21 November 1959, Resolution 1401 (XIV), in which it considered that it was desirable to initiate preliminary studies on the legal problems relating to the utilization and use of international rivers. As a result of this resolution useful legal material was collected in the report submitted by the UN Secretary General on 15 April 1963.[14] More recently it adopted Resolution 2669 (XXV) on 8 December 1970 on "Progressive development and codification of the Rules of International Law relating to international Watercourses".[15] The Resolution, pointing out that water, owing to the growth of population and the increasing and multiplying needs and demands of mankind, is of growing concern to humanity, recommended "that the International Law Commission should take up the study of the law of the non-navigational uses of international watercourses with a view to its progressive development and condification."

Apart from that, some other international institutions belonging to the United Nations "family" have for some time participated in the development of water resources.[16]

* * *

It may be too early at this stage to make a more general evaluation of the contribution of the entire African continent to the development of the law of its international inland waters. One observation, however, can safely be made: that newly independent African states, from the very beginning of their independent existence, have found it necessary to deal with international rivers and other kinds of international inland waters by preparing international regulations on the matter. Within a few years after independence the interested states entered into negotiations and concluded appropriate international treaties dealing with their respective watercourses.

In this respect, the River Niger, Lake Chad and the Senegal River are good examples of the early concern of their riparian states to meet the needs of their respective countries and populations. Therefore it will be useful to concentrate on these international inland waters.

The biggest of the above-mentioned international watercourses is the River Niger which flows through seven West African countries while from Chad and Cameroun it collects water through its tributaries and sub-tributaries. The initiative for international co operation concerning this river came as early as 1960[17] and in a relatively short period an Act Regarding Navigation and Economic Co-operation between the States of the River Niger Basin was signed at Niamey on 26 October 1963. This Act, together with the Agreement Concerning the River Niger Commission and the Navigation and Transport of the River Niger, signed at Niamey on 25 November 1964,[18] form the basic legal framework for co-operation of their signatories in this matter.

The second sub-regional grouping is formed by four of the nine state-signatories of the River Niger international instrumentalities, namely Cameroun, Chad, Niger and Nigeria, which concluded the Convention and Statute Relating to the Development of the Chad Basin on 22 May 1964.[19]

The third sub-regional grouping of West-African states is formed by the Senegal River riparian states (Guinea, Mali, Mauritania and Senegal). On 10 and 11 July 1962, ministers of the above states met at Conakry (Guinea) to discuss common development of the River Senegal. At the request of the Conakry Conference, a United Nations Mission for the study of the uses of the Senegal River visited the four countries from October 1962 to January 1963 and presented a number of suggestions for ensuring proper co-ordination. The ministers of

the basin countries then met again on 25 and 26 July 1963 at Bamako (Mali), and signed a Convention Relating to the Development of the Senegal River Basin on 26 July 1963. Half a year later, the same states signed (at Dakar on 7 February 1964) a Convention Relating to the Statute of the Senegal River. Of relevance to the above international instrumentalities (in the sense that it established a supervising agency) is the Statute of the Organization of the Senegal River States, signed at Labe (Guinea) on 24 March 1968.[20]

What, in these documents, are the main directions in which West African states have made peculiar and distinct contributions to the law of international watercourses as reflected by new techniques and the needs of their respective peoples? To answer this question it is intended to analyze these documents from the standpoint of three major principles recently formulated by previously-mentioned international learned bodies. These principles are:

(1) States when dealing with international waters should take into consideration manifold uses of such waters and they should treat all water systems as one integrated unit.[21]

(2) Each co-riparian state is entitled to a reasonable and equitable share in the beneficial uses of the waters of the drainage basin [cf. *ILA Report*, 1966, p. 480 and Institut de Droit International, Salzbourg Resolution, Article II].

(3) Co-riparian states are under a duty to respect the legal rights of each co-riparian state in the drainage basin [*ILA Report*, 1966, ibid.; and Institut de Droit International Salzbourg Resolution, Articles II to IV].

2. Water System as One Integrated Unit for Manifold Uses

Looking at inland waters as an integrated unit, a fundamental change can be noticed with regard to the concept of "interested" states. For the purpose of navigation, traditional international law dealt with riparians as well as non-riparians as "interested" states. A deviation from this rule was made by the Belgrade Convention of 1948, where only riparians were parties to it. Consequently only riparian states proclaimed rules dealing with navigation on the River Danube.

The same attitude was taken by the parties to the Act Regarding Navigation and Economic Co-operation between States of the Niger Basin. As has been already mentioned, only direct and indirect riparians are parties to this Act and the Conference of Niamey (24-26 October 1963) itself was called "Conference of the Riparian States of the River Niger, its Tributaries and Sub-tributaries".

Moreover it can be seen that the definition of riparians has also been enlarged to encompass tributary and sub-tributary states. It is one of the premises which proves that the members of the Niamey Conference considered the water system as an integrated whole.

Moreover, in order to avoid any misunderstandings as far as the then existing conventional law dealing with the River Niger was concerned, the Act, by its Article 1, abrogated previous treaties,[22] namely, the General Act of Berlin of 26 February 1885, the General Act and Declaration of Brussels of 2 July 1890 and the Convention of Saint Germain-en-Laye of 10 September 1919, stating that those treaties "are and remain abrogated as far as they concern the River Niger, its tributaries and sub-tributaries." In this way another one of the vestiges of the past era of colonialism was definitively eradicated. This abrogation also supports the idea that only the riparians are landlords of the basin waters, having the right to make laws relating to their natural resources.

The idea that only riparians are landlords of international inland waters was also adopted in relation to Lake Chad by the parties to the Convention and Statute Relating to the Development of the Chad Basin of 22 May 1964; only riparians are members of the Chad Basin Commission established under its Article 1.

The same point of view was also adopted by the parties to international treaties dealing with the Senegal River Basin. Thus the first treaty dealing with the matter, namely the Convention Relating to the Development of the Senegal River of 26 July 1963 proclaimed this principle in its several provisions (cf. particularly Articles 2 to 5, 8, 10 to 13 and *passim*). This principle was corroborated later by the Convention Relating to the Statute of the Senegal River of 7 February 1964 (in many instances, *passim*).

As to the expression of the idea of treating a system of rivers and lakes in a drainage basin as an integrated whole, the Act of Niamey fully recognizes the principle according to which states should take into consideration the manifold uses of waters belonging to a water system. Thus, in its preamble, the signatories took into account that "in the wake of technical progress several of the riparian states had already drawn up plans for hydrologic developments, such as irrigation, water supply, hydro-electric installations, civil works, soil and river basin improvements, and also plans for dealing with the problem of water pollution, exploitation of fishery resources, the improvement of agricultural practices and the industrial development of the basin". Then, in Article 2, paragraph 2, they stated that "the utilization of the said River, its tributaries and sub-tributaries, shall be taken in a wide sense, to refer in particular to navigation, agricultural and industrial uses and collection of the products of its fauna and flora".

The same principle is also proclaimed by Article 4 of the Statute Relating to the Development of the Chad Basin, which says: "The development of the said Basin and in particular the utilization of the surface and ground waters shall be given its widest connotation, and refers in particular to domestic, industrial and agricultural development, the collection of the products of its fauna and flora". It is to be pointed out that this is a unique West African treaty in this regard. Its wide formulation, including not only surface but also the ground waters of the basin, does indeed treat a water system as an integrated unit.

As far as the sub-regional grouping of the River Senegal Basin is concerned, this principle has been not so clearly conceived in its respective documents. But it does not mean that it is absent here. First, the title itself of the first Convention stating that it deals with the "development of the Senegal River Basin" enunciates this principle indirectly. For the term "basin" is large enough to embrace the entire water system connected with the River Senegal. In addition, the same Convention, in its Article 13, includes a general basic principle which reads as follows: "The River Senegal is declared by four riparian states as an 'International River' including its tributaries..." (French: *affluents*—author's translation). It seems that this general principle of the Convention contains, indirectly, that which we are looking for, especially when taking into account that the French term *affluents*, used in the plural, seems to be broader than the English term "tributaries", and is able to encompass tributaries as well as sub-tributaries.

The conclusion from the above analysis is very clear. All Conventions treat their respective water systems as integrated units and they determine the governing principle of international law between the parties.

3. Reasonable and Equitable Shares in the Beneficial Uses of the Waters

In contradistinction to this idea is the theory of unlimited or absolute territorial sovereignty as far as flowing waters are concerned. It may be exemplified by the "Harmon Doctrine", of the American Attorney-General, Harmon, who, in connection with the dispute with Mexico concerning the utilization of the Rio Grande, stated in 1895: "The case presented is a novel one. Whether the circumstances make it possible or proper to take any action from considerations of comity is a question which does not pertain to this Department; but that question should be decided as one of policy only, because, in my opinion, the rules, principles and precedents of international law impose no liability or obligation upon the

United States."[23] The idea of absolute sovereignty over international inland waters had been advocated by many publicists in international law and also by some court decisions.[24]

On the other hand, in writings of international lawyers, a contrary doctrine has been advocated. This doctrine, called the "Principle of a Community of Property in Waters", is very close to the presently formulated principle of "reasonable and equitable share in beneficial uses of the waters of the drainage basin". It was expressed some ten years after the Harmon Declaration by an American writer, H.R. Farnham, who said: "A river which flows through the territory of several states or nations is their common property. . . . It is a great natural highway conferring, besides the facilities of navigation, certain incidental advantages, such as fishery and the right to use the water for power and irrigation." And he added the following very important point: "Neither nation can do any act which will deprive the other of the benefits of those rights and advantages. . . . The gifts of nature are for the benefit of mankind, and no aggregation of men can assert and exercise such right and ownership of them as will deprive others equal rights and means of enjoyment . . . the common right to enjoy the bountiful provisions of Providence must be preserved."[25]

In 1933 the Polish writer, Professor B. Winiarski, former Judge and President of the International Court of Justice in the Hague, put it in this way: "Let us take the matter further. If a river, whether or not navigable, traverses or separates two or more states, each of the riparian states exercises sovereignty on the section of the river which is within its territory; but *in using this section it must respect the rights of its neighbours: it is one of the general principles of law elaborated by Roman jurists for the* praedia vicina [emphasis added], the reception of which by international law was equally entirely natural."[26]

To those opinions should be added an extract from the judgment of the inter-war Permanent Court of International Justice in the case of The International Commission of the River Oder in which it observed:

> But when consideration is given to the manner in which states have regarded the concrete situations arising out of the fact that a single waterway traverses or separates the territory of more than one state, and the possibility of fulfilling the requirements of justice and the considerations of utility which this fact places in relief, it is at once seen that a solution of the problem has been sought not in the idea of a right of passage in favour of upstream states, but *in that of a community of interest of riparian states. This community*

of interest in a navigable river becomes a basis of a common legal right, the essential features of which are the perfect equality of all riparian states in the use of the whole course of the river *and the exclusion of any preferential privilege of any riparian state in relation to others* [emphasis added].[27]

Now the question arises whether the principle of "reasonable and equitable share in the beneficial uses of the waters" is embodied in the West African treaties being here reviewed. Prima facie, it may be noted that these treaties do not precisely and fully provide for such a principle. But it would be wrong to conclude from this that the principle was alien to their drafters, for it can be deduced from the stipulations of the treaties.

Thus, in the preamble to the Act of Niamey, it is said that the parties were "Desirous of developing close co-operation for *the judicious exploitation of the resources of the River Niger, its tributaries and sub-tributaries and to ensure equality of treatment to those who use it*" (emphasis added). This provision is corroborated in a way by Article 2, paragraph 1 of the same Act which says: "The utilization of the River Niger . . . is open to each riparian state in respect of the portion of the River Niger basin lying in its territory and without prejudice to its sovereign rights *in accordance with the principles defined in the present Act and in the manner that may be set forth in subsequent special agreements*" (emphasis added).

The principle under discussion may also be deduced from the Convention and Statute Relating to the Development of the Chad Basin. Article 5 of the Statute declares that: "*The member states undertake to abstain from taking without consultation with the* [Chad Basin] *Commission any measure likely to have an appreciable effect on the extent of the loss of water on the yearly hydrogramme and limnogramme and certain other features of the Basin* [emphasis added], the conditions subject to which other riparian states may utilize the water in the Basin, the sanitary conditions of the waters or the biological characteristics of its fauna and flora."

In the preamble to the Convention Relating to the Development of the Senegal River Basin, the intention of the parties in this matter is even more precisely defined, when they say that: "co-ordinated development of the River Senegal Basin for *reasonable exploitation of its diverse resources* provides prospects for fruitful economic co-operation" (emphasis added—author's translation). This principle is also included in its Article 8 which says: "The development project of interest to a riparian state *shall be approved by the Committee which will examine its effect on the totality of works of the Basin*" (emphasis added). The Convention Relating to the Statute of the Senegal River later concluded, in its Article 1, as follows: "solemnly affirm. . .

willingness to develop a *close co-operation to enable the reasonable exploitation of the resources of* the Senegal Basin and guarantee the freedom of navigation and *the equality of treatment to those who use it*" (author's translation—emphasis added).

It is true that the terms used in the above-analyzed provisions of the West African treaties differ somehow from the formula of the "reasonable and equitable share in the beneficial uses of the waters". Nevertheless, it seems that they are based on the same principle, and the principle itself has merely been expressed by them in slightly different terms from that formulated by the learned international bodies. For one may ask if such terms as "judicious exploitation of the resources", "equality of treatment to those who use" the waters (River Niger treaties), abstention from "taking without consultation with the Commission, any measure likely to have an appreciable effect either on the extent of the loss of water or on . . . certain other features of the Basin" (Lake Chad), "reasonable exploitation of its diverse resources" (River Senegal), are anything but the wider conceived principle of the "reasonable and equitable share in the beneficial uses of the waters in the drainage basin"?

It is also to be noted that at the time when all these West African treaties had been concluded the International Law Association, from whose Resolution the analyzed formula is taken, was still working on the formulation of its final Draft Articles, which were only adopted after the conclusion of all West African treaties in question. Thus the development of the widely formulated principle of the "reasonable and equitable share in the beneficial uses of the international waters" is to be attributed in this case to the discussed West African treaties.

Another point should also be added as far as the general and broad concept of the principle of the "reasonable and equitable share" in the West African treaties is concerned: namely, that the parties to these treaties have left open the question of its more precise formulation to the future actual needs and technical and financial possibilities of their respective countries. This opinion finds its support in the powers and functions of the River Niger Commission prescribed by Article 2 of the Agreement Concerning the River Niger Commission and the Navigation and Transport of the River Niger of 25 November 1964. Under its provisions the Commission is called upon, *inter alia*, "to prepare General Regulations which will permit the full application of the principles set forth in the Act of Niamey, to ensure their effective application" and "to draw up General Regulations regarding all forms of navigation on the River" (cf. Article 18). The subsequent developments of the provisions set up by the Convention and Statute Relating to the Development of the Chad Basin of 22 May 1964 are also foreseen by the Chad Basin Com-

mission (see Articles 9 and 11, cf. Article 3). This idea was foreseen with even greater emphasis in the Convention Relating to the Statute of the Senegal River of 7 February 1964. Its Article 4 provides that "A special convention, between the riparian interested states, should define with precision the conditions of the execution and exploitation of the works as well as the mutual obligations of states . . ." (author's translation).

4. Respect for the Legal Rights of each Co-riparian State in the Drainage Basin

This principle has already been advanced for a long time in the theory of international law and had been accepted by some arbitral and judicial decisions.[28] It seems to be well grounded at present in the legal conscience of the peoples and it may be considered now as being accepted as *opinio juris sive necessitatis* in the matter.

A detailed description of this principle is given by the Institut de Droit International in its already-mentioned Salzbourg Resolution of 1961. Article III of this Resolution simultaneously confirms (i) the sovereign right of every state to make use of the waters flowing across or bordering its territory and (ii) subjects this right to the limitations imposed by international law and in particular those which result from the Salzbourg Resolution. In a general way the Article limits that sovereign right by declaring that the other states concerned have corollary right of use of such waters.[29] It is to be observed that this statement of the principle is admirable, as it reflects not only the logic of the law of international waters, but also a wider set of international rules and a more general principle of human behaviour, which may be summarized as follows: all acts are permissible to the extent that they do not infringe the rights of other individuals and the community as a whole. In other words a human being is free to do everything but only within the limits imposed by society.

The Salzbourg Resolution went on further in developing this general principle in the light of contemporary principles of the United Nations Charter. It establishes rules for peaceful settlement of possible international water disputes. Thus, "If the various states disagree upon the extent of their rights of use, *the disagreement shall be settled on the basis of equity taking into consideration the respective needs of the states, as well as any other circumstances relevant to any particular case*" (Article III—emphasis added). As the further consequence of the duty to respect legal rights of each co-riparian state in the drainage basin, Article IV of the Resolution stresses that: "Each state may only proceed with works or to use the waters of a river or watershed that may affect the possibilities of use of the same waters

by other states on condition of preserving for those states the benefit of the advantages to which they are entitled by virtue of Article III, as well as adequate compensation for any losses or damages incurred." And it adds, as a safeguard to the proper procedure in the matter, in Article V that: "The works or uses referred to in the above-mentioned article may only be initiated after due advance notice has been given to the states concerned."

Now let us have a look at the West African treaties on the matter to see whether and how the principle of the "respect for the legal rights of each co-riparian state in the drainage basin" is implemented. In both treaties dealing with the River Niger this principle is included. In Articles 4 to 5 and 7 of the Act Regarding Navigation and Economic Co-operation Between the States of the River Niger certain features of the principle are proclaimed. But Article 12 of the Agreement Concerning the River Niger Commission and the Navigation and Transport of the River Niger, dealing with agricultural and industrial utilization and development, set up this principle very clearly stating: "In order to achieve maximum co-operation in connection with the matters mentioned in Article 4 of the Act of Niamey, the riparian states undertake to inform the Commission as provided for in Chapter I of the present Agreement, at the earliest stage, of all studies and works upon which they propose to embark. *They undertake further 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 notice to, and prior consultation with, the Commission*" (emphasis added). As it is seen here, the emphasis is put on the works and the detrimental uses of the waters of the River Niger, its tributaries and sub-tributaries.

Similar provisions are contained also in Chapter II of the Convention and Statute Relating to the Development of the Chad Basin, dealing with domestic, industrial and agricultural utilization of the basin waters. According to its Article 5 "*The Member states undertake to abstain from taking, without prior consultation with the Commission, any measure likely to have an appreciable effect either on the extent of the loss of water or on the nature of yearly hydrogramme and limnogramme and certain other features of the Basin* [emphasis added], the sanitary conditions of the waters or the biological characteristics of its fauna and flora." When comparing this statement of the principle with that formulated in the River Niger instrumentalities it is to be observed that the latter's emphasis, for the reasons of different hydrological situations, is concentrated mostly on domestic, agricultural and industrial utilization.

to become the basis of a real and everlasting peace among the nations of this increasingly contracting world.

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1. W. E. B. Du Bois, *The World and Africa* (New York, 1947), p. 98.
2. Cf. ibid.
3. See: G. Sauser-Hall, "L'Utilisation industrielle des fleuves internationaux", *Recueil des Cours, Academie de Droit International* (*RCADI*), vol. 83 (1953, II), pp. 465 ff.; C.-A. Colliard, "Evolution et aspects actuels du régime juridique des fleuves internationaux", *RCADI*, vol. 125 (1968, III), pp. 33 ff.; B. M. Klimenko, "Mezdunarodnye Reki, Pravovye Voprosy ispolzovania rek v promyslennosti i selskom hozaistve", Moskva, 1966; and Yu. D. Dmitrievsky, *The development of water resources in African countries in the interest of their national economy*, Moscow, 1967 (mimeographed).
4. J. G. Starke, *An Introduction to International Law* (London, 1972), pp. 210, 211–12.
5. Cf. J. Andrassy, "Les relations internationales de voisinage", *RCADI*, vol. 79 (1951, II), p. 170.
6. *Annuaire de l'Institut du Droit International*, vol. 49.
7. The International Law Association, *Report of the Fifty-Second Conference, Helsinki*, 1966 (further cited as: *ILA Report*, 1966), pp. 477 ff.
8. Cf. J. G. Starke, op. cit., p. 212.
9. *Report of the First Session ECA*, Doc.E/3201 (E/CN. 14/18), paragraph 59.
10. Cf., e.g., *Yearbook of the United Nations* (further cited as: *UN Yearbook*), vol. 25, 1971 (New York, 1974), p. 343.
11. See the results of this undertaking in: *A Review of the Natural Resources of the African Continent* (Paris: UNESCO, 1963). Cf. in particular the Preface in which it is stated *inter alia:* "In this work an attempt has been made to give all those interested in Africa an overall picture of all existing knowledge in this field" (p. 5).
12. The outcome of these activities may be fully appreciated when looking at more than twenty important publications co-sponsored by UNESCO (cf. *UNESCO Publications Catalogue* 1972 and 1974 under Hydrology); cf. also *Report the of Director General* on the activities of the Organization in 1971 (Paris: UNESCO, 1972), pp. 120–4.
13. Cf. *UN Yearbook*, vol. 25, 1971, p. 695.
14. Cf. *UN Yearbook*, vol. 24, 1970, p. 819.
15. See: *Resolutions Adopted by the General Assembly during its Twenty-fifth Session*, Official Records: Twenty-fifth Session, Supplement No. 28/A/80289, p. 27. For further action taken by the General Assembly in the matter, see: Resolution 2780 (XXVI) adopted unanimously on 3 December 1971; in: *Resolutions*

Adopted by the General Assembly during its Twenty-sixth Session (September–December 1971), Supplement No. 29 (A/8429), p. 136 (Part I, paragraph 5 of the Resolution).

16. Cf. *UN Yearbook*, vol. 24, 1970 and vol. 25, 1971, respectively; e.g.: The International Bank for Reconstruction and Development, at pp. 932 (vol. 24); 714, 716, 717 (vol. 25); International Development Association, Credits by Purpose, at p. 952 (vol. 24); pp. 725 and 727 (vol. 25); Co-ordination of Programme Activities, Second UN Development Decade, p. 612 (vol. 24); Strategy for Second Development Decade, p. 983 (vol. 24); and United Nations Development Programme/Special Fund Activities, pp. 452–3 (vol. 24).

17. M. R. Ofoegbu, "Functional Co-operation in West-Africa", *Odu: A Journal of West African Studies*, New Series No. 6, 1971, p. 25.

18. Both documents may be found in *United Nations Treaty Series*, vol. 587, p. 9 and vol. 587, p. 19 respectively. The signatories of them are: Cameroun, Chad, Dahomey, Guinea, Ivory Coast, Mali, Niger, Nigeria and Upper Volta.

19. Some years of expert inter-state discussions preceded adoption of this document. Text: *Nigeria's Treaties in Force* (Lagos, 1969), pp. 217–24.

20. French texts of all these documents in: *Basic Documents of African Regional Organizations*, edited by L. B. Sohn (New York, 1972), vol. III, pp. 1015–31.

21. International Law Association in "Agreed Principles of International Law" puts it in the following words: "A system of rivers and lakes in a drainage basin should be treated as an integrated whole [and not piece-meal]" and in the comment to this principle adds: "Until now international law has for the most part been interested with surface waters although there are some precedents having to do with underground waters. It may be necessary to consider the interdependence of all hydrological and demographic features of a drainage basin" (*ILA Report*, 1966, p. 480).

22. For the legal interpretation of the provision see: T. Elias, "The Berlin Treaty and the River Niger Commission", *American Journal of International Law* (*AJIL*), vol. 57 (1963), pp. 879–80.

23. J. B. Moore, *Digest of International Law*, vol. I, p. 654, cited after F. J. Berber, *Rivers in International Law* (London and New York, 1959), p. 15.

24. Cf. Berber, op. cit., pp. 15–19.

25. *The Law of Waters and Water Rights*, 1904, cited after Berber, op. cit., pp. 22–3.

26. "Principes généraux du droit fluvial international", *RCADI*, vol. 45 (1933, III), p. 81. Translation after Berber, op. cit., pp. 30–1.

27. The Permanent Court of International Justice (PCIJ), *Series A*, No. 23, 1929, p. 27, cited after *Annual Digest of Public International Law Cases*, vol. 5 (London, 1935), p. 84.

28. E.g., cf. Judgment of the PCIJ in the case of *The International Commission of the River Oder*, cited earlier in this study.

29. The full text of Article II reads as follows: "Every state has the right to make use of the waters flowing across or bordering its territory subject to the limitations imposed by international law and in particular those which result from the following legal dispositions. That right is limited by the right of use by the other states concerned with the same river or watershed." (Translation after FAO, *The Law of International Water Resources*, Background Documentation prepared by D. A. Caponera, Legislation Branch, Paper I, November 1970.) See also *AJIL* 56 (1962), p.737.

30. The French text of this Article reads as follows: "Les Etats riverains s'engagent à soumettre au Comité Inter-Etats à dès leur phase initiale les projets dont l'exécution est susceptible de modifier d'une manière sensible certaines caractéristiques du régime du fleuve, ses conditions de navigabilité ou d'exploitation agricole ou industrielle, l'état sanitaire des eaux, les caractéristiques biologiques de sa faune ou de sa flore."

31. Cf. J. Brierly, *The Law of Nations* (Oxford, 1972), pp. 57–8.

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