The Law of International Waterways in its Institutional Aspects

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I. Introduction

DIETRICH SCHINDLER's interests cover a wide range of topics of international law, among which those concerning his own country loom large. As is attested by Swiss writings and practice, and by the number of treaties concluded[1], the law of international waterways belongs to the issues that are of particular interest and relevance to Switzerland. In recent years, that law received much attention through the work of the International Law Association[2], the Institute of International Law[3] and the International Law Commission[4]. That attention was, however, centred on the economic uses of international waterways, more particularly on the substantive rules relating to such uses, thus neglecting institutional aspects[5]. This neglect may have

1 A Swiss author was among the first to contribute a general study to the subject: K. SCHULTHESS, Das internationale Wasserrecht, Zurich 1915. As regards Swiss practice, the numerous legal opinions prepared by WALTHER BURCKHARDT on issues of international water law deserve particular attention, *cf.* P. GUGGENHEIM (ed.), Répertoire suisse de droit international 1914–1939, Basel 1975, vol. II, No. 5.38, 5.42–5.46, 5.50, 5.51, 5.53, 5.54, 5.80, 5.88, 5.91, 5.95. The relevant Swiss treaties are listed in Recueil officiel des lois fédérales et Recueil systématique du droit fédéral, Table des matières 1987, pp. 385–386 and 400–403.

2 See in particular the Helsinki Rules on the Uses of the Waters of International Rivers, ILA, Report of the Fifty-Second Conference Held in Helsinki, London 1967, p. 484.

3 Annuaire de l'Institut de droit international, vol. 48–I, 1959, pp. 131–358; vol. 49–II, 1961, pp. 84–192 and 381–384; vol. 58–I, 1979, pp. 193–380; vol. 58–II, 1979, pp. 104–203.

4 International Law Commission, Yearbook 1976, vol. I, pp. 268–277, 279–283, vol. II/1, pp. 147–191, vol. II/2, pp. 153–162; 1978, vol. II/1, pp. 253–261; 1979, vol. I, pp. 104–122, 226–233, vol. II/1, pp. 143–181, vol. II/2, pp. 160–169; 1980, vol. I, pp. 122–153, vol. II/1, pp. 153–198, vol. II/2, pp. 104–136; 1981, vol. II/1, pp. 65–197; 1983, vol. I, pp. 184–233, vol. II/1, pp. 155–199, vol. II/2, pp. 62–78; 1984, vol. I, pp. 95–110, 236–274, vol. II/1, pp. 101–127, vol. II/2, pp. 82–98; 1985, vol. I, pp. 301–304, vol. II/1, pp. 87–96, vol. II/2, pp. 68–71; 1986, vol. I, pp. 218–241, vol. II/1, pp. 87–144, vol. II/2, pp. 60–63.

5 The following exceptions may be noted, however: N. ELY and A. WOLMAN, Chapter 4: Administration, in: A. H. GARRETSON, R. D. HAYTON and C. J. OLMSTEAD (ed.), The Law of International Drainage Basins, Dobbs Ferry, N. Y. 1967, pp. 124–159; B. A. GODANA, Africa's Shared Water Resources (Chapter VI: Institutional Mechanisms), London 1985, pp. 250–297; P. K. MENON, Institutional Mechanisms for the Development of International Water Resources, Belgian Review of

several causes. First, the sheer number and diversity of intergovernmental bodies dealing with international water systems make it difficult to reach general conclusions. Second, research may be hampered by the fact that while the constitutive instruments of most relevant agencies are readily available, their practice is often little known. Third, the development of those bodies, some of which were among the forerunners of modern intergovernmental organisations[6], may have been overshadowed by the possibly more spectacular changes that have occurred elsewhere in the world of international organisation.

International waterways and drainage basins are governed by the principle of limited territorial sovereignty or integrity and, more specifically, by a rule calling for the allocation to each riparian or co-basin State of a reasonable and equitable share in the beneficial uses of the waters within its territory[7]. This principle and the ensuing rule proceed from the assumption that the riparian or co-basin States form a community of interest[8] the existence of which may necessitate the establishment of institutional mechanisms on the intergovernmental level. But international waterways or drainage basins differ from each other, as do the needs of riparian or co-basin States. Sometimes all that may be required is a permanent negotiating forum; in other instances a technical body to collect data, to conduct surveys, to carry out or coordinate research, or even to formulate development schemes may be needed; in yet other situations it may be indicated to set up an agency enjoying independent legal personality and empowered to build, operate and maintain works, to apportion or regulate uses, to prepare, enact and even enforce regulations, and to settle disputes among the States concerned.

In some parts of the world, where the riparian or co-basin States have the necessary know-how, an intergovernmental body of modest proportions may well suffice, for it will be able to rely on well-developed national water administrations. In other parts, particularly on the African continent, there may be a need for more comprehensive international organisms which will help to make up for deficiencies on the national level, possibly by solliciting outside technical and financial assistance. While the

International Law, vol. 8, 1972, pp. 80–100; J. RAUX, La régionalisation et la centralisation: Deux tendances complémentaires de l'administration internationale des fleuves, Revue générale de droit international public, vol. 73, 1969, pp. 637–743.

6 J. A. BARBERIS, Nouvelles questions concernant la personnalité juridique internationale, Hague Academy of International Law. Collected Courses, vol. 179, 1983–I, pp. 145–304, at pp. 215–216; G. MANGONE, The Idea and Practice of World Government, New York 1951, pp. 77–78.

7 See Article IV of the Helsinki Rules.

8 Territorial Jurisdiction of the International Commission of the River Oder, PCIJ, Series A, No. 23, at p. 27 (1929).

activities of most existing intergovernmental agencies are confined to aquatic resources, the functions of some of them extend to other matters with a view to achieving overall economic integration within the basin territory and even in adjacent areas.

II. Typology of Institutional Mechanisms

The existing variety of situations and the diversity of the solutions devised make it difficult to establish a typology of institutions. The main categories of organisms may, however, be identified by relying on three elements: structure and composition, functions, and legal status.

1. Structure and Composition

The intergovernmental organisms concerned with aquatic resources exhibit an infinite variety with regard to their structure and composition.

A first and obvious distinction may be made between mechanisms consisting of one main organ – usually single-purpose bodies[9] – and hierarchically structured entities comprising a plurality of organs[10], the latter features being the hallmark of some modern multiple-use basin organisations of the Third World.

A second distinction is based on the composition of these agencies: some of them consist of national sections meeting jointly at regular intervals[11], while the majority form a single unit. An interesting variety is provided by those bodies which, though not made up of national sections, rely on national committees for the performance of certain tasks[12].

9 Such as the Rhine Central Commission described on pp. 30–33, but not the Canada-United States International Joint Commission studied at pp. 33–36.

10 See, for Africa, the OMVS mentioned in note 14 and the Niger Basin Authority examined on pp. 36–39; and, for Latin America, the Plate Basin system described on pp. 39–43 as well as the organisms established by the Treaty for Amazonian Cooperation cited in note 16.

11 *Cf.* the Canada-United States International Joint Commission, see p. 33, and the Mexico-United States International Boundary and Water Commission described in Article 2 of the Washington Treaty of 3 February 1944 Relating to the Utilisation of the Waters of the Colorado and Tijuana Rivers and Rio Grande, United Nations Treaty Series, vol. 3, p. 313. On the latter Commission, see C. HIGGINS, From Harmon to Harmony. Equitable Utilization and the U. S.-Mexico Boundary Regime, Geneva, Graduate Institute of International Studies, 1987, pp. 26–32.

12 This is true of the mechanisms provided for by the Plate Basin Treaty of 1969 (below, p. 42) and the Treaty for Amazonian Cooperation (Article 23; below, note 16). On the Committee for Coordination of Investigations of the Lower Mekong, *cf.* MENON (note 5), pp. 86–87.

2. Functions

As regards the functions entrusted to international organisms concerned with water resources, a first distinction may be drawn between agencies destined to serve as fora for ongoing negotiations [13] and organisms endowed with an extensive range of powers in the fields of planning, decision-making and implementation [14].

A second distinction may be made between single-purpose and multiple-use agencies. Examples of the former are provided by the European river commissions instituted on the basis of Articles 108 to 116 of the Final Act of the Vienna Congress [15], whose attributions were limited to navigation; examples of the latter are the more recent multiple-use organisations mainly found in the Third World. As has been noted, some of the bodies falling into the second category even transcend the drainage basin concept by promoting sub-regional economic integration in general [16].

Other distinctions result from the nature of the activities engaged in by those entities. Such activities may include one, several or all of the following: the collection, survey, analysis and exchange of data and other information; the conduct or coordination of research; the analysis and approval of national projects; the elaboration of joint development programmes; the search for external technical and financial assistance; the apportionment and regulation of water uses, possibly accompanied by powers of enforcement; the construction, operation and maintenance of common works; and the settlement of disputes. In an effort of simplification, one author has subsumed these numerous activities under three headings, each of which would correspond to a type of organism: (i) commissions of study; (ii) global technical commissions which manage an international water system or some of its uses; and (iii) regulatory and judicial bodies [17]. The attributions of the agencies falling under (ii) and (iii) may further be subdivided into legislative (in a broad sense [18]), administrative and judicial functions.

13 This was the case of the Rhine Central Commission in its early years and of the Revision Commission set up by the Act for the Free Navigation of the Elbe, of 23 June 1821, C. PARRY (ed.), The Consolidated Treaty Series (CTS), vol. 72 (1821–1822), p. 42. See GODANA (note 5), pp. 251–252.

14 Such as the Niger Basin Authority studied on pp. 36–39, the 'Organisation pour la mise en valeur du fleuve Sénégal' (OMVS) instituted by the Convention of 11 March 1972, as amended on 17 November 1975, and the Chad Basin Commission established by the 1964 Statute mentioned in note 45.

15 CTS, vol. 64 (1815), p. 453.

16 See the Plate Basin system examined on p. 39 and Article 2 of the Treaty for Amazonian Cooperation of 3 July 1978, International Legal Materials, vol. 17, 1978, p. 1045.

17 J.-M. LE BESNERAIS, Les fleuves et lacs internationaux en Amérique latine, La documentation française. Notes et études documentaires, N. 4421–4423, 21 October 1977, pp. 73–92, at pp. 81–82.

18 That is, encompassing law-making *stricto sensu* as well as the drafting of international agreements.

3. Legal Status

Contemporary multiple-use river or basin organisations are usually endowed with legal personality on the international and national levels. In particular, they enjoy privileges and immunities; they are also empowered to conclude treaties and contracts, and to own property [19].

By contrast, the legal personality of some of the traditional river administrations, such as the Rhine Central Commission, is not being dealt with in the relevant constitutive instruments [20]; yet the issue is not without interest in connexion with the regulatory activities of those bodies [21].

Particular solutions are those provided by the Plate River Basin Treaty of 23 April 1969 [22] and the Treaty for Amazonian Cooperation of 3 July 1978 [23]. The mechanism set up by the former enjoys no legal personality of its own, while its main component, the Intergovernmental Coordinating Committee, apparently does. As regards the Amazonian system, there is no trace of an independent legal personality; accordingly, that system may well provide primarily a forum of negotiation and, it seems, not an overly successful one.

4. Conclusion

The classification attempted above shows that the international agencies concerned with aquatic resources cannot be viewed from a single vantage point. Depending on the angle chosen – structure and composition, functions, or legal status – they may fit into one or another category. This does not mean, however, that there is no correlation between the characteristics exhibited by a given organism when the latter is being viewed from different perspectives. Thus, the lack of any express grant of legal personality may go with the absence of operational, especially law-making, attributes, and the latter element may, in turn, be connected with ambitions to achieve overall sub-regional economic integration. Simple or unitary structures, with or without legal personality, were usually designed to serve a single purpose, while multiple-use

19 See the African organisms mentioned in note 14.

20 Regarding the legal personality of the Rhine Central Commission, see J. HOSTIE, Le statut international du Rhin, Hague Academy of International Law. Collected Courses, vol. 28, 1929–III, pp. 109–227, at pp. 208–209.

21 For the nexus between international legal personality and law-making, *cf.* K. SKUBISZEWSKI, Enactment of Law by International Organizations, British Year Book of International Law, vol. 41, 1965/1966, pp. 198–274, at pp. 201, 220–221 and 242–243. For the Rhine Central Commission, see also pp. 31–32.

22 International Legal Materials, vol. 8, 1969, p. 905. See p. 42.

23 See note 16.

agencies are often characterised by their legal personality and by the presence of several organs arrayed in a hierarchical order. In short, each and every intergovernmental organism dealing with water resources fits into several of the compartments described earlier, but there may be a link between its various characteristics as revealed by an examination from different perspectives.

III. Historical Evolution[24]

The history of intergovernmental organisations begins with international river administrations, the first of which was created for the Rhine. The Central Office on Navigation Dues ('Administration générale de l'octroi de la navigation du Rhin') was established by the Convention Respecting the Navigation on the Rhine concluded between France and Germany on 15 August 1804[25]. Its main functions were the regulation of tolls on vessels and cargoes, subject to the approval of the Contracting Parties, and the collection of such tolls.

The Central Office was succeeded to by the Rhine Central Commission, a body provided for in Annex 16B of the Final Act adopted by the Vienna Congress on 9 June 1815[26]. The tasks of this new agency, composed of one member for each riparian State, were to draft regulations on navigation or related matters and to monitor compliance with common regulations (Articles 1, 10 and 17 of Annex 16B). Though taken by a majority vote, decisions of the Commission required the approval of each member State to become binding on it (Article 17 of Annex 16B).

The creation of the Rhine Central Commission led to the establishment of similar organs for the Elbe[27], the Scheldt[28], the Pô[29] and, most importantly, the Danube[30].

24 G. KAECKENBEECK, International Rivers, New York 1962 (reprint), pp. 37 and ff.; GODANA (note 5), pp. 21–32, 250–255.

25 CTS, vol. 57 (1803–1804), p. 465.

26 CTS, vol. 64 (1815), p. 16.

27 See note 13.

28 Treaty between Belgium and the Netherlands, of 19 April 1839, Relative to the Separation of Their Respective Territories, CTS, vol. 88 (1838–1839), p. 427.

29 Convention Relative to the Free Navigation of the Pô concluded between Austria and the Duchies of Modena and Parma on 3 July 1849, CTS, vol. 103 (1849–1850), p. 163.

30 S. GOROVE, Law and Politics of the Danube, The Hague 1964, pp. 22–31; KAECKENBEECK (note 24), pp. 83–137; P. COSTA, Les effets de la guerre sur les traités relatifs au Danube, dans le cadre d'une étude globale du droit conventionnel du Danube, in: R. ZACKLIN and L. CAFLISCH (ed.), The Legal Regime of International Rivers and Lakes, The Hague 1981, pp. 203–245, at pp. 208–231; J. H. W. VERZIJL, International Law in Historical Perspective, vol. III, Leyden 1970, pp. 143–156.

The Paris Peace Treaty of 30 March 1856[31], which ended the Crimean War, provided for two organisms: (i) a European Commission, composed of representatives of riparian as well as non-riparian States (Austria, France, Great Britain, Prussia, Russia, Sardinia and Turkey), whose existence was to be temporary, *i. e.* confined to the execution of works destined to improve the navigability of the maritime Danube; and (ii) a Riparian Commission, consisting of representatives of Austria, Bavaria, Turkey and Wurttemberg, which was to draft common rules on navigation and to take over the duties of the European Commission after its demise.

Following the war of 1877/1878 between Russia and Turkey[32], the Danube regime was reorganised by the Berlin Congress of 1878[33]. The European Commission was maintained, and Romania included in it. It was henceforth empowered to regulate and supervise navigation on the lower Danube (from the Black Sea to Galatz); it was also responsible for the construction and maintenance of works in that part of the river. Responsibility for the upper Danube (from Galatz to the Iron Gates) was to lie with a Riparian Commission assisted by the European Commission. The London Treaty of 10 March 1883 Relative to the Navigation on the Danube[34] did not basically modify the situation but extended the jurisdiction of the European Commission from Galatz to Braïla[35].

In the wake of the First World War, and on account of Articles 331 to 362 of the Peace Treaty of Versailles[36], a Convention on the Definitive Statute of the Danube was concluded on 23 July 1921[37]. The existing two Commissions were maintained, but their composition changed[38]; the Riparian Commission, re-named International Commission, now included non-riparian members, true to the philosophy underlying the provisions of the Versailles Treaty on rivers, and its jurisdiction was extended to Ulm.

31 CTS, vol. 114 (1855–1856), p. 409.

32 COSTA (note 30), pp. 217–218.

33 Treaty for the Settlement of Affairs in the East, of 13 July 1878, CTS, vol. 153 (1878), p. 171.

34 CTS, vol. 161 (1882–1883), p. 353.

35 This extension eventually gave rise to a dispute opposing Romania to France, Great Britain and Italy, and to an advisory opinion of the PCIJ. Jurisdiction of the European Danube Commission between Galatz and Braïla, PCIJ, Series B, No. 14 (1927).

36 CTS, vol. 225 (1919), p. 188.

37 League of Nations Treaty Series, vol. 26, p. 173.

38 The European Commission was to be composed of France, Great Britain, Italy and Romania, while the International Commission was to consist of two representatives of the German riparian States, one representative of each of the other riparian States, and one representative of each member State of the European Commission. Articles 4(1) and 8 of the Definitive Statute.

The decline of the principle of freedom of navigation for all States in the inter- and post-war periods, in connexion with the Danube and, much later, with the Rhine, has been described elsewhere[39] and is well known. So is the drastic transformation of the substantive and institutional provisions governing the Danube[40].

The pattern set by the Rhine and Danube Commissions, which enjoyed considerable powers, albeit limited to navigation, was not emulated elsewhere, though an attempt was made in the Final Act of the Berlin Conference of 26 February 1885 to 'export' it to the Congo river on the African continent[41]. The only other region to have contributed substantially[42] to the early history of international water administrations was North America, but the conditions on that continent differed from those prevailing in Europe: navigation was neither the only nor even the paramount water use since activities such as the generation of hydro-electric power, irrigation and fishing were important as well. This is why the Canada-United States International Joint Commission established in 1909[43], followed in 1944 by the Mexico-United States International Boundary and Water Commission[44], does not resemble its European counterparts. Both those bodies are made up of national sections.

It is with the advent of the decolonisation process that a new generation of mechanisms emerged: multiple-use administrations whose structures gradually blossomed into full-fledged intergovernmental organisations and whose jurisdiction was

39 COSTA (note 30), pp. 237–242; GOROVE (*ibid.*), pp. 31 and ff.; Pratique suisse de droit international public 1980, Annuaire suisse de droit international, vol. 37, 1981, at pp. 235–245.

40 The present Danube Commission, governed by Articles 5 to 19 of the Convention Regarding the Regime of Navigation on the Danube of 18 August 1948 (United Nations Treaty Series, vol. 33, p. 197), is composed of the riparian States (excluding, however, the Federal Republic of Germany, which has observer status), and its attributions are modest compared to those of its predecessors. COSTA (note 30), pp. 239–240 and 242.

41 Articles 17 and ff., CTS, vol. 165 (1885), p. 485. The International Commission for the Navigation on the Congo River never materialised, *cf.* GODANA (note 5), pp. 253–254.

42 In this connexion, the Permanent High Commission established by Siam and French Indochina under Article 10 of the Convention of 25 August 1926 Concerning the Relations between the Two Countries (League of Nations Treaty Series, vol. 69, p. 313) also deserves mention. The functions of that organ related essentially to boundary, navigation and fisheries matters, *cf.* J.-L. FERRET, Le régime juridique du Mekong, in: ZACKLIN and CAFLISCH (note 30), pp. 75–96, at p. 79.

43 The Commission was established pursuant to Article 7 of the Boundary Waters Treaty concluded on 11 January 1909, CTS, vol. 208 (1908–1909), p. 213.

44 See note 11.

eventually to encompass drainage basins or at least portions thereof[45]. Part of this evolution spread to Asia[46] and Latin America[47].

In conclusion, then, the early international river administrations described above were the forerunners of modern intergovernmental organisations. Initially little more than permanent fora for ongoing negotiations, they gradually grew into agencies vested with some degree of independence from their constituent States, endowed with regulatory powers and administrative functions, and, sometimes, with judicial attributions. While the functions of most of those administrations were centred on navigation, then the main activity on international waterways, some of them, notably those set up in North America, enjoyed more extensive attributions on account of the emergence of non-navigational uses. The Canada-United States International Joint Commission, to which this paper shall revert later on[48], proved to be a trend-setter. First, under Article 8(3) of the 1909 Boundary Waters Treaty, navigation is no longer considered the only, nor even the predominant, use since the utilisations which the Commission is to deal with are, in hierarchical order, (i) domestic purposes; (ii) navigation; and (iii) generation of power and irrigation[49]; in addition, the Treaty formulated requirements regarding the quality of the boundary waters and waters flowing across the boundary. Second, the Joint Commission enjoys a wide variety of powers: (i) the approval of national projects affecting the natural level of the flow of boundary and even non-boundary waters[50]; (ii) the formulation of recommendations concerning the rights, duties and interests of the Contracting Parties under the 1909 Treaty; and (iii) non-compulsory adjudication[51].

The tendency to enlarge the functions of organisms which had once been confined to the regulation of a single use came to fruition after the Second World War, with the advent of decolonisation. It was to be reinforced eventually by a trend to broaden the

45 Under Article 2 of the Statute Relating to the Development of the Chad Basin, of 22 May 1964, the area covered does not extend to the entire Chad drainage basin, but is limited to an arbitrarily delimited core portion of that basin. See the map reproduced by P. SAND, Development of International Water Law in the Lake Chad Basin, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, vol. 34, 1974, pp. 52–76, at p. 57. For the text of the 1964 Statute, *cf. ibid.*, p. 78.

46 The present regime of the Mekong River favours a multiple-use and integrated basin approach, *cf.* FERRET (note 42), p. 90.

47 *I. e.* the regimes mentioned in note 10.

48 Pp. 33–36.

49 See also Article 3(1) of the 1944 Washington Treaty cited in note 11, where navigation appears only in fifth place.

50 The Preliminary Article of the 1909 Treaty defines 'boundary waters' as the waters of the lakes and rivers and connecting waterways along which the international boundary passes; 'non-boundary waters' comprise tributaries of boundary waters, waterways leaving such waters, and the waters of rivers crossing the boundary.

51 G. GRAHAM, International Rivers and Lakes: The Canadian-American Regime, in: ZACKLIN and CAFLISCH (note 30), pp. 3–21, at pp. 10–12.

jurisdiction of those entities so as to include international drainage basins, or parts thereof, some of the bodies in question being geared to even more formidable a task, namely, that of promoting the overall economic integration of a sub-region.

This brief historical outline will now be followed by a study of the structure, attributions and decision-making processes of four organisms performing their duties in three different continents: (i) the Rhine Central Commission; (ii) the Canada-United States International Joint Commission; (iii) the Niger Basin Authority; and (iv) the Plate Basin system. It is hoped that this examination of four vastly different but equally important institutional mechanisms will yield some general conclusions and, possibly, a pattern to be followed for the creation of new institutions.

IV. Four Case Studies

1. The Rhine Central Commission (RCC)[52]

The RCC is presently governed by the Mannheim Convention Governing Navigation on the Rhine of 17 October 1868, as amended by the Peace Treaty of Versailles and by a Convention of 20 November 1963[53].

(a) Structure and Composition

The RCC, whose headquarters are located at Strasbourg (France), consists of one to four members designated by each Contracting Party (Belgium, Federal Republic of Germany, France, Netherlands, Switzerland, United Kingdom) (Articles 43 and 44*ter*[54]). The Commission, which may establish its own working bodies, meets at least twice a year in regular sessions, and in extraordinary sessions if requested by a member (Article 44*ter*). It is presided by a chairman chosen from among its members for a two-year term, the member States taking turns (Article 44). The Chairman, who directs the proceedings and represents the RCC, shall be responsible for the execution of the latter's decisions and the proper working of its services (Article 44*bis*). The RCC, which is assisted by a Secretariat (Article 44*ter*), may establish relations 'with other international or European organisations' (Article 44*quinquies*).

52 PH. BIAYS, La Commission centrale du Rhin, Revue générale de droit international public, vol. 56, 1952, pp. 223–278; W. J. M. VAN EYSINGA and H. WALTHER, La Commission centrale pour la navigation du Rhin, Strasbourg, Commission centrale, 1974; A.-CH. KISS, Commission centrale pour la navigation du Rhin, Annuaire français de droit international, vol. 1, 1955, pp. 508–514.

53 For the text of the Convention in its amended form, see International Organization and Integration, 2nd ed., Dordrecht 1984, vol. II. K., No. 6. 1. a.

54 Unless otherwise indicated, references in this subdivision are to the Articles of the Mannheim Convention as amended.

Since 1963 the judicial business of the RCC is handled by a Chamber of Appeal, composed no longer of the members of the Commission itself but of six persons elected by it for six years from among the candidates proposed by each State Party (Article 45*bis*).

(b) Functions

The RCC is essentially concerned with river navigation. Its attributions include the enactment of regulations on piloting and river police (Article 356 of the Treaty of Versailles), the study of proposals made by States Parties in the interest of 'the prosperity of Rhine navigation' to amend the Mannheim Convention or to enact joint regulations, the examination of complaints arising from the application of that Convention (Article 45), and the approval of derivations effected by France and of projects of works to be executed on the French-German section of the river (Articles 358 and 359 of the Treaty of Versailles).

But the most curious – and unique – of the Commission's attributions are assuredly its judicial functions. The RCC serves as an appellate tribunal in certain criminal (violation of rules on navigation and on river police) and civil (payment of pilotage and other dues, settlement of claims arising out of injuries caused by navigators, including collisions) matters (Article 34). Some of those matters, which are initially brought before the Rhine navigation tribunals of the State on whose part of the river they can be localised (Articles 33, 35 and 36), may be submitted, at the option of the appellant, to a nationally designated appellate court or to the Chamber of Appeal of the RCC (Articles 37 to 40 and 45(c))[55].

(c) Decision-Making

Since 1963 the Commission is governed once again by the one-State one-vote rule found in the original text of the Mannheim Convention (Article 46)[56]. While decisions pertaining to internal affairs of the Commission may be taken by majority vote, resolutions on other issues will be binding on member States only if approved unanimously by the members of the RCC, provided further that no State cancels the vote of approval or announces referral to its legislative bodies within one month. Resolutions adopted by a mere majority – including those for which initial unanimity has been cancelled within one month through the withdrawal of an affirmative vote –

55 If both the claimant and the defendant decide to appeal, one to the designated national jurisdiction, the other to the Chamber of Appeal, priority in time will be decisive (Article 37*bis*).

56 Article 355 of the Treaty of Versailles had introduced a system of weighted voting under which Germany and France were given four votes each, while each other State (Belgium, Great Britain, Italy, Netherlands, Switzerland) was to have two votes.

are treated as recommendations (Article 46)[57]. Unless challenged, unanimously approved regulatory texts thus become binding upon the Contracting Parties.

This procedure suggests that the RCC enjoys law-making powers[58] which, however, appear to be weakened by the possibility offered to each member State to reverse within one month the stand taken by its commissioner[59]. This mechanism differs from the more common devices of 'contracting in' and 'contracting out'[60]. Even a single withdrawal of approval effected within the prescribed time-limit will deprive the resolution of its binding force *erga omnes* and not only vis-à-vis the cancelling State.

(d) Conclusions

The RCC is a classical river commission consisting of a single unit, except for the Chamber of Appeal, its judicial component. It must be stressed, however, that all Contracting Parties but one (Switzerland) are equally members of the European Community (EC), which conducts a common policy in the field of transport. For this reason, the Commission is no longer the multilateral organism it used to be but tends to become a forum for bilateral negotiations between the EC States and Switzerland.

To this day, the RCC has had but one preoccupation, that of enhancing and regulating navigation on the Rhine[61]. Within that limited framework, the scope of its powers is relatively wide, encompassing regulatory attributions and, also, unprecedented judicial functions concerning individuals involved in Rhine navigation. Those functions would seem to provide one of the earliest – if not the earliest – examples of access of individuals to international tribunals.

57 According to the initial Article 46 of the Mannheim Convention, resolutions were to be adopted by majority vote but, to become binding upon the Contracting Parties, had to be approved by the latter.

58 For a definition of this concept, see SKUBISZEWSKI (note 21), pp. 201–204.

59 In view of the slowness usually displayed by national administrations, the possibility of opting out within a one-month deadline has been deemed largely theoretical. C.-A. COLLIARD, Evolution et aspects actuels du régime juridique des fleuves internationaux, Hague Academy of International Law. Collected Courses, vol. 125, 1968–III, pp. 337–442, at p. 433.

60 The expression 'contracting in' refers to situations where regulations elaborated by an intergovernmental agency require the subsequent approval of member States, as was the case under the original Article 46 of the Mannheim Convention (see note 57).

The term 'contracting out' designates the right of any member State of an intergovernmental agency to indicate, within a prescribed time-limit, that it does not wish to be bound by regulations enacted by that agency.

In both cases, the regulations stand but will not bind the States which omitted to contract in or chose to contract out.

61 Other aspects of the management of the river are taken care of by other organs. The question of pollution, for instance, is within the purview of both the European Community and an International Commission for the Protection of the Rhine against Pollution (comprising Switzerland, which is not a member of the Community) established by an Agreement concluded on 29 April 1963, Revue générale de droit international public, vol. 69, 1965, p. 897. See M. T. KAMMINGA, Who Can Clean Up the Rhine: The European Community or the International Rhine Commission?, in: ZACKLIN and CAFLISCH (note 30), pp. 371–387.

2. The Canada-United States International Joint Commission (IJC)[62]

Contrary to what its name may lead one to expect, the IJC, a body established under Article 7 of the 1909 Boundary Waters Treaty between Canada and the United States, has jurisdiction over boundary waters proper as well as over some categories of non-boundary waters[63]. It is called upon to contribute to the implementation of the principles set forth in the 1909 Treaty (Article 8), to avert difficulties between the Contracting Parties and to settle disputes in a variety of areas. Fisheries matters are, however, beyond the scope of its functions[64].

(a) Structure and Composition

The IJC consists of six members, each Contracting Party being entitled to appoint three (Article 7); the three commissioners on each side form a national section presided over by a national chairman. Once appointed, the members act independently and are not bound by instructions (Article 12(1)). The plenary IJC meets alternatively in each Contracting State, under the presidency of the chairman of that State's national section, approximately eight to ten times per year. It is serviced by a small permanent staff and has set up a number of working parties.

(b) Functions

The IJC is entrusted with administrative, advisory and judicial duties; in the performance of any of those duties, it may call and hear witnesses (Article (12(3)).

The *administrative* functions of the Commission, which relate to the approval of work plans submitted on the basis of Articles 3(1) and 4(1), include: (i) the approval of uses, obstructions and diversions in one State which would affect the natural level or flow of boundary waters in the other State; and (ii) the approval of the construction or

62 CH. BÉDARD, Le régime juridique des Grands Lacs de l'Amérique du Nord et du St-Laurent, Québec 1966; M. COHEN, The Regime of Boundary Waters: The Canadian-United States Experience, Hague Academy of International Law. Collected Courses, vol. 146, 1975–III, pp. 219–339; G. GRAHAM (note 51); D. C. PIPER, The International Law of the Great Lakes, Durham, N. C., 1967.

63 For an explanation of these terms, see note 50. References in this subdivision are to the Articles of the 1909 Treaty.

64 A special Fisheries Commission was created for the Great Lakes and their connecting waters by a Convention concluded on 10 September 1954, United Nations Treaty Series, vol. 238, p. 97.

maintenance by the lower riparian of works, dams and other obstructions in non-boundary waters (waters flowing from boundary waters, cross-boundary rivers) if their effect is to raise the natural level of the waters in the territory of the upper riparian[65]. As its members, once appointed, are to act independently, the IJC could conceivably refuse to approve projects on which the two Governments themselves are agreed.

In the exercise of its *advisory* function (Article 9), the Commission examines questions referred to it by either Contracting Party that have arisen between the Parties regarding their respective rights, obligations or interests, or those of their inhabitants, along the common frontier (Article 9(1)); usually such references are made jointly by the two States. When performing its advisory function, the IJC will investigate the facts and draw up a report reciting its conclusions and recommendations (Article 9(2)). That report is not binding, however, and hence cannot be assimilated to a judicial decision (Article 9(3)). Therefore, the Commission's role is basically one of fact-finding and conciliation.

But the IJC may equally act as a *judicial* body. Disputes regarding the rights, obligations and interests of the Contracting Parties, or of their inhabitants, may, by means of an *ad hoc* agreement, be brought before the Commission, which may then take a binding decision (Article 10)[66]. It must be stressed, however, that to date this channel has not been used. A dispute that had arisen in connexion with the Gut Dam in the St-Lawrence River, the construction of which had allegedly resulted in a prejudice to United States nationals, was eventually referred not to the Commission but to an *ad hoc* arbitral tribunal[67]. The reasons invoked for this neglect are two-fold: (i) the legal

65 These functions limit the scope of the theory of absolute territorial sovereignty – or Harmon doctrine – embodied in Article 2(1) of the 1909 Treaty. The Harmon doctrine, a concept then much fancied by the United States in its role of upper riparian, remains operative in situations outside the purview of the IJC, namely, when an injury has been inflicted by the upstream State on the downstream State or its inhabitants. Even then, however, the injured parties are not deprived of legal redress: under Article 2(1), they have the same rights, and may use the remedies offered by the legal system of the upstream State, as if the injury had occurred on the latter's territory.

66 Unlike the advisory task of the IJC, its judicial function is not restricted to water-related disputes since the words 'along the common frontier', which qualify the expression 'inhabitants' in connexion with advisory proceedings (Article 9(1)), are omitted from the provision dealing with judicial settlement (Article 10(1)). This is why the IJC has been suggested as a forum for settling Law of the Sea disputes between the two States, *cf.* GRAHAM (note 51), p. 14.

67 *Gut Dam* arbitration, recorded settlement of 27 September 1968, International Legal Materials, vol. 8, 1969, p. 118. In this connexion, attention must however be drawn to the Treaty concluded between Canada and the United States on 17 January 1961 and relating to Cooperative Development of the Water Resources of the Columbia River Basin, reprinted in United Nations, Legislative Texts and Treaty Provisions Concerning the Utilization of International Rivers for Other Purposes than Navigation, document ST/LEG/SER.B/12, p. 206. Article 16 of that instrument provides that 'differences arising under the Treaty' between the Contracting Parties may be unilaterally referred to the IJC for *decision*. If no decision is forthcoming within a three-months' period from the referral of the dispute, the latter may be submitted by unilateral application to the arbitration procedure laid down in the Treaty, unless the Parties agree to another means of settlement, including recourse to the International Court of Justice.

basis on which disputes would be adjudicated is unclear; and (ii) as most commissioners are engineers rather than lawyers, they are ill-prepared to perform judicial duties[68]. At least the former reason is debatable. As adjudication by the IJC depends on the conclusion of a special agreement, the latter can easily determine the applicable law; and in the absence of any determination, the provisions of the 1909 Treaty and general rules of international law would apply.

(c) Decision-Making

The IJC takes binding decisions in the exercise of its administrative functions and may equally do so in the context of judicial proceedings agreed upon by the States Parties. Theoretically at least, such decisions will be adopted independently of the two Governments since the commissioners are not bound to follow instructions. Decisions being taken by simple majority of the commissioners (Articles 8(8) and 10(2)), the IJC could make a ruling, for instance, on the basis of an affirmative vote of the three Canadian members and one American commissioner.

If the votes are evenly split within the Commission – a situation that seldom occurs – the divergent views and conclusions are presented in a common report to both Governments or in separate reports submitted by each national section to its Government (Articles 9(5) and 10(3))[69].

(d) Conclusions

As is the case with the Rhine Central Commission, the structure of the IJC is fairly simple. The main differences between the two bodies are the existence of numerous working groups within the IJC and the latter's division into two national sections. Other important differences lie in the broader scope of the attributions of the IJC – which are not confined to navigation – in its more technical character and in the independence of the commissioners vis-à-vis their respective Governments.

The functions exercised by the IJC cover a wide spectrum of uses and of matters related thereto, such as environmental protection, and they encompass different types of powers: approval of projects, advisory jurisdiction, adjudication. They do not,

68 GRAHAM (note 51), p. 11.

69 If such a split occurs within the Commission when exercising its judicial functions, the Contracting Parties undertake, pursuant to Article 10(3), to refer the dispute to an umpire chosen in accordance with Article 45(4) to (6) of the Hague Convention for the Pacific Settlement of International Disputes of 18 October 1907, CTS, vol. 205 (1907), p. 233.

however, seem to include law-making. The IJC thus appears to be less of a regulatory agency than the Rhine Central Commission.

The decision-making process of the IJC, unlike that of the Rhine Central Commission, relies exclusively on the majority rule; theoretically at least, that process is independent from the attitude taken by the Contracting States themselves.

3. The Niger Basin Authority (NBA)[70]

In 1963/1964, upon achieving independence, the nine Niger basin States (Chad, Dahomey (Benin), Guinea, Ivory Coast, Mali, Mauritania, Niger, Nigeria, Upper Volta (Burkina Faso)) established the Niger River Commission[71], a multi-purpose body whose law-making activities were subject to a two-thirds majority rule as well as subsequent approval by member States[72]. A proposal made by Niger to require the Commission's approval for national projects likely to affect significantly the interests of other riparian States was substituted by a condition of mere prior information[73]. Having failed to live up to expectations, its achievements having been confined to the collection of data and the conduct of partial studies[74], the Commission was replaced by the Niger Basin Authority established under the Convention of 21 November 1980[75].

(a) Structure and Composition

The NBA, an entity endowed with its own legal personality both on the domestic and international level (Article 16), is made up of the Parties to the 1980 Convention which are riparians of the Niger, its tributaries and sub-tributaries (Article 2). Following the pattern set by the Organisation of African Unity, the Authority has a three-tiered structure.

The 'Summit', composed of the Heads of State and Government of the Parties, or of their representatives (Article 6(2)), meets in ordinary session every two years (Article 6(4)); extraordinary sessions may be called at the request of the President or a member if all the other member States concur (Article 6(5)). The Summit is presided in turn by each member for a two-year term (Article 6(8)).

70 GODANA (note 5), pp. 270–274.

71 Act of Niamey Regarding Navigation and Economic Cooperation between the States of the Niger Basin, of 26 October 1963, and Agreement Concerning the Niger River Commission, of 25 November 1964, United Nations Treaty Series, vol. 587, pp. 9 and 19.

72 Articles 4 and 2 (a) of the 1964 Statute.

73 Article 12 of the 1964 Statute.

74 GODANA (note 5), p. 269.

75 Autorité du Bassin du Niger, Convention et protocoles, Edition 1, 1982, p. 9. References in this subdivision are to the provisions of the 1980 Convention.

The Council of Ministers consists of a minister for each member State or its representative; each member has one vote (Article 7(1)). It meets in ordinary session once a year (Article 7(3)) and in extraordinary session at the request of any member State (Article 7(4)). Again, the chairmanship rotates in two-year turns (Article 7(5)).

The Technical Committee of Experts (Article 8) is composed of experts representing each member country, while the permanent personnel of the NBA forms the Executive Secretariat (Article 9). The latter is headed by an Executive Secretary appointed for a once renewable four-year term by the Summit upon the recommendation of the Council of Ministers.

(b) Functions

The attributions of the organs described above derive from the purpose and the specific objectives set forth in the 1980 Convention.

According to Article 3(1) of the latter, the NBA is to promote cooperation among member States and to achieve the integrated development of the Niger basin, particularly through the production of energy and the development of hydraulic schemes, agriculture, animal husbandry, fisheries and fish farming, forestry, transports and communications, and industry. In other words, the purpose of the Convention may well transcend the management of aquatic resources.

The specific objectives to be pursued by the Authority are set forth in Article 4(1) of the Convention. They include: (i) the harmonisation of national basin policies with a view to achieving the equitable apportionment of waters among member States; (ii) the definition of an overall development policy consonant with the international character of the Niger River through an integrated plan for the basin and through an orderly and rational regional policy relating to the use of surface and ground waters; (iii) the formulation and execution of studies and research proposals; and (iv) the planning, construction, operation and maintenance of works and projects consistent with the overall objective of an integrated development of the basin.

Within this framework, the Summit, as the 'supreme organ' of the NBA, defines the general policies of the Authority (Article 6(3)); its decisions and guidelines bind all other organs of the Authority (Article 6(6)). In addition, it shall decide on matters not resolved by the Council of Ministers (Article 6(7)) and settle disputes between member States which relate to the interpretation or application of the 1980 Convention and which have not been resolved through negotiations (Article 15).

The Council of Ministers, 'supervisory organ' of the NBA (Article 7(1)), prepares the agenda of the Summit, makes recommendations to the latter, watches over the Executive Secretariat and, generally, deals with the issues submitted to it (Article 7(2)). It enjoys specific powers in financial (Articles 4(2), 13 and 14) and budgetary (Article 10) matters, particularly in connexion with the Niger Basin Development

Fund established by a separate Protocol dated 19 March 1981[76]. In its work, the Council is assisted by the Technical Committee of Experts (Article 8(1)).

The Executive Secretary, who reports to both the Council of Ministers and the Summit (Article 9(6)), is the Authority's administrator (Article 9(7)) and implements its decisions (Article 9(1)). In particular, he performs the tasks assigned to him by the Council of Ministers and, with the latter's assent, negotiates loans and receives donations on behalf of the Authority (Article 9(7)).

(c) Decision-Making

The only rule of the 1980 Convention on this critical point is Article 7(3) which prescribes that the Council of Ministers shall adopt its resolutions and recommendations by consensus. In the absence of any provision to the contrary, the same rule might apply to the Summit and, perhaps, to the Technical Committee of Experts as well[77].

(d) Conclusions

The NBA is a full-fledged international organisation endowed with a legal personality of its own on both the national and international level. Its structure derives from that of the Organisation of African Unity. Lack of information makes it difficult to appreciate whether the expansion of the Niger River Commission effected by the 1980 Convention is or will be achieving the desired results.

Within the framework of the purpose and objectives set forth in that Convention, the scope of the Authority's functions is virtually unbounded. It encompasses all activities connected with the integrated development of the basin, undertaken on the national level or within the framework of the basin community. In addition, one of the organs of the NBA, the Summit, enjoys attributions in the field of disputes settlement.

The relatively complex structure of the NBA and the comprehensiveness of its powers strangely contrast with the virtual absence of rules on decision-making. While the adoption of decisions by the Council of Ministers requires consensus, nothing is said regarding the Summit and the Technical Committee of Experts. Nor is there any indication on whether regulations adopted within the context of the Authority – for

76 *Ibid.*, p. 19.

77 Presumably, consensus must exist among the members present at the meeting of the Council or of the Summit. Why, otherwise, would Articles 7(3) (Council of Ministers) and 6(4) (Summit) allow for a quorum consisting of a simple majority, *i. e.* considerably lower than the total membership of those two organs?

example on navigation or on the protection of the environment, see Article 4(2)(d) and (e) of the 1980 Convention – require the approval of each member State to be binding on it[78].

Thus the NBA is in many ways the antithesis of traditional European river commissions, especially on account of its structure and the wide range of its functions. These characteristics also distinguish it, albeit to a lesser extent, from the Canada-United States International Joint Commission. Moreover – and this may appear strange – the Authority's decision-making process is much less developed than that of the above-mentioned bodies. Despite the imposing structure and extensive functions of this 'African model', one wonders whether the above two features do not prevent it from achieving the success enjoyed, throughout their long life-spans, by the two Commissions described earlier.

4. The Plate Basin System[79]

The last mechanism to be examined here is the system established by the States of the River Plate basin (Argentina, Bolivia, Brazil, Paraguay, Uruguay) under the Treaty of 23 April 1969. Article 1 of that Treaty, which applies to the basin proper as well as 'its areas of influence which are immediate and identifiable'[80], calls upon the Contracting Parties jointly to promote the harmonious development and physical integration of the River Plate basin in a wide range of matters reaching from navigation to conservation, including even regional 'economic complementation', especially in frontier areas. Thus, the scope of the 1969 Treaty is not limited to the management of aquatic resources but encompasses overall sub-regional integration.

78 Article 6(6) is of little help. While it provides that 'the decisions and guidelines of the Summit are binding on all the institutions of the Authority', it is silent regarding their effect on member States. From Article 6(7), pursuant to which the Summit takes final decisions on all issues left unresolved by the Council of Ministers, it could be inferred, however, that both organs are empowered to adopt final decisions. The same conclusion could be deduced, as regards the Council of Ministers, from Article 4(2)(g) which provides that agreements relating to outside financial and technical assistance and implying financial liabilities for member States will become effective only upon their approval by that Council; this rule might be applied by analogy to the other decisions taken by the Council, the inference being, *a contrario,* that no approval by individual member States is required.

79 G. J. CANO, Recursos hidricos internacionales de la Argentina, Buenos Aires 1979, pp. 127–139; W. HUMMER, La Plata Basin, Encyclopedia of Public International Law, Instalment 6, Amsterdam 1983, pp. 237–241; MENON (note 5), pp. 89–92.

80 This goes well beyond the definition of the international drainage basin contained in Article II of the Helsinki Rules (see note 2): 'An international drainage basin is a geographical area extending over two or more States determined by the watershed limits of the system of waters, including surface and underground waters, flowing into a common terminus.'

(a) Structure and Composition

The institutions set up by the 1969 Treaty include the Meeting of Foreign Ministers, the Intergovernmental Coordinating Committee (ICC), the Secretariat, and National Commissions[81].

The Meeting of Foreign Ministers (Article 2[82]), 'supreme organism' of the Treaty system[83] which consists of the foreign ministers of the five Contracting Parties, convenes once a year in ordinary session; extraordinary meetings may be called at the request of at least three Contracting Parties. The chairmanship rotates on a yearly basis[84].

Contrary to the Meeting of Foreign Ministers, the ICC is a permanent organ of the basin community (Article 3) composed of diplomatic representatives of the Contracting Parties. The ICC, whose chairman changes every month, holds monthly meetings (Article 3) and may set up boards of experts for technical issues[85]. In practice, its work has suffered from the long-standing dispute between Argentina and Brazil over the construction of the Corpus and Itaipu dams[86]. Therefore, much of what was expected from the ICC had to be accomplished through the conclusion of agreements between the co-basin States immediately concerned. Interestingly, it seems to be the ICC rather than the mechanism established by the 1969 Treaty as such that is endowed with legal personality[87]. Accordingly, that mechanism as a whole cannot be characterised as an intergovernmental organisation properly so called.

The ICC is assisted by a permanent Secretariat headed by a Secretary appointed for a two-year term by the Commission. The Secretariat, which consists of nationals of the Contracting States, may also recruit outside experts for specific tasks.

Finally, mention must be made of the National Commissions to be established by each Contracting Party in pursuance of Article 4 of the 1969 Treaty. While the Treaty organism as such is not simply made up of the National Commissions – as is the case with the Canada-United States International Joint Commission[88] – these bodies form an important link between that mechanism and individual Contracting States[89].

81 It should be noted that the 1969 Treaty was negotiated within the framework of the ICC, which had been set up in 1967 by a meeting of the Foreign Ministers of the co-basin States. Hence the creation of the ICC preceded the conclusion of the Treaty. See CANO (note 79), p. 131.

82 References in this subdivision are to the Articles of the 1969 Treaty unless stated otherwise.

83 Article 1 of the Regulations Governing the Meeting of Foreign Ministers of the Plate Basin States.

84 *Ibid.*, Article 7.

85 For details on the functioning of the ICC and its Secretariat, see the Statute of the Committee, of 20 May 1968, and its Rules of Procedure, of 14 September 1978.

86 *Cf.* C. G. CAUBET, Le barrage d'Itaipu et le droit international fluvial, thesis, Toulouse 1983.

87 HUMMER (note 79), pp. 238–239.

88 See p. 33.

89 Another element of the system's institutional structure is the Development Fund of the Plate Basin founded in 1974, see HUMMER (note 79), p. 239.

(b) Functions

The purpose of the Plate Basin Treaty, which has been described above, is to be achieved by various types of common action tending toward: (i) the advancement of navigation; (ii) the reasonable utilisation of water resources, particularly through regulation of waterways and their multiple and equitable uses; (iii) the conservation and development of animal and vegetable life; (iv) the improvement of highway, rail, river, air, electrical and telecommunication interconnexions; (v) regional complementation through the promotion and installation of industries of interest to the basin development, and economic complementation in frontier areas; (vi) cooperation in matters of health and education; and (vii) the promotion of other projects of common interest, particularly those related to inventory, assessment and utilisation of the area's natural resources. Despite those common objectives formulated by the 1969 Treaty, Contracting Parties are not prevented from carrying out national projects if their implementation does not run counter to the rules of international law[90] or to 'acceptable practices between nations who are neighbours and friends' (Article 5). Specific or partial agreements between the Contracting Parties are equally permitted as long as they are in line with the general objectives of basin development (Article 6). The attributions of the different organs of the Plate basin system should be viewed against this background.

The Meeting of Foreign Ministers is the supreme organ within that system, since it is its task to define basic common policies, to assess the results achieved in the implementation of the 1969 Treaty, to consult on individual actions of Contracting Parties, and to adopt the measures necessary for the observance of the Treaty (Article 2).

As the main executive organ on the international level, the ICC carries out the decisions taken by the Meeting of Foreign Ministers and promotes, coordinates and supervises multinational activities aimed at achieving integrated basin development. It may secure technical and financial assistance from external sources with the support of the intergovernmental organisations it deems desirable (Article 3). According to Article 3 of its Statute of 20 May 1968, the ICC may in particular: (i) propose plans for studies and research to the States Parties; (ii) submit work programmes to member States; (iii) receive information and studies communicated by States Parties and transmit them to other Parties; (iv) if so agreed by the co-basin States, request national or international agencies to carry out studies and research, or to provide technical or financial assistance; (v) transmit to the Contracting Parties offers of assistance extended by such agencies; and (vi) propose dates for regular meetings of the Foreign Ministers and prepare the agenda.

90 Presumably, the rules alluded to are those of equitable and reasonable apportionment, the prohibition to cause appreciable injury to co-basin States, and the duty to inform co-basin States of projects likely to cause such injury.

While the Secretariat of the ICC, whose functions are purely administrative, may take no initiatives of its own, the scope of the activities of the National Commissions is essentially determined by the relevant national legislation. Article 4 of the 1969 Treaty however adds that those Commissions: (i) may advise their respective governments; (ii) may establish bilateral contacts; and (iii) must keep the ICC informed of such contacts. Accordingly, the National Commissions perform functions on the international as well as on the national level[91].

(c) Decision-Making

Pursuant to Article 2(3) of the 1969 Treaty, the Foreign Ministers take their decisions unanimously, as does the ICC[92]. No subsequent approval by each Contracting State seems to be required.

(d) Conclusions

While the mechanism created by the Plate Basin Treaty is a fairly complex three-layered system, as is the case of some recent African agencies, its various components do not add up to an intergovernmental organisation. It is in fact one of those components, the ICC, rather than the mechanism as such, that is endowed with legal personality. Herein lies one of the basic differences between the Plate basin system and the bodies examined earlier.

As regards functions, the mechanism studied here is comparable to its African counterparts in that it is a multiple-use system encompassing every aspect of integrated basin development, allowing for both individual and basin-wide action, and reaching even beyond purely water-related issues.

The looseness and complexity of the Plate system, its wide scope, the unanimity rule and the difficulties between Argentina and Brazil, the two most powerful co-basin States, account for the disappointing performance of the 1969 Treaty and the

91 The situation is somewhat different under the 1978 Treaty for Amazonian Cooperation cited in note 16. According to Article 23 of that instrument, the National Committees, in addition to the tasks assigned to them by domestic law, are to carry out the decisions of the Meeting of Foreign Ministers and to enforce the provisions of the Treaty on their national territory.

92 Article 11 of the Statute of the ICC cited in note 85.

institutions established under it[93]. To make up for this failure, the Contracting States have entered into a number of partial agreements and set up special institutions relating to particular sub-basins or waterways[94].

V. General Conclusions

It would be tempting to stop here with what appears to be the obvious general conclusion, namely, that each international waterway or drainage basin, and the needs of each riparian and of each basin community, differ and hence require different substantive rules as well as institutional mechanisms. Accordingly, tailor-made solutions are called for in each case.

While this is probably an accurate if somewhat trite conclusion, it is unsatisfactory from the viewpoint of States looking for models on which new mechanisms could be based. If at all possible, the matter should thus be taken one step further.

Of the patterns examined in the heading devoted to case studies, that established by the Rhine Central Commission – alongside those of the defunct Danube Commissions of the pre-war and inter-war periods – seems somewhat obsolete. It may still be suitable for the large international waterways of Europe, where navigation remains the predominant – though no longer the sole – use[95]. Its attractiveness lies in its simplicity and, at least for the lawyer, in its regulatory and judicial aspects. The most conspicuous drawback is its concentration on navigational uses, which makes it unsuitable for the multiple-use drainage basins of other continents.

Viewed from that angle, the model provided by the Canada-United States International Joint Commission remains surprisingly relevant. While the Commission's activities are confined to the relations between two States, which limits its exemplary value, that body exhibits several features that may be of lasting interest: (i)

93 For a detailed and vigorous criticism, see CANO (note 79), pp. 135–136.

94 One of those agreements is the Treaty Concerning the Plate River concluded between Argentina and Uruguay on 19 November 1973, International Legal Materials, vol. 13, 1974, p. 252; Articles 59 to 67 of that Treaty establish a mixed Administrative Commission endowed with far-reaching attributions, including regulatory functions, in the fields of consetvation, protection of the environment, navigation and disputes settlement. Another is the tripartite Agreement between Argentina, Brazil and Paraguay of 19 October 1979 Regarding the Conditions for the Construction of the Corpus and Itaipu Dams, reproduced in CAUBET (note 86), p. 531.

95 But, as other utilisations are becoming increasingly important, and as new problems have arisen, additional institutions had to be created. For the Rhine, see note 61.

the independence of its expert members; (ii) decision-making by majority; (iii) the presence of a permanent professional staff; (iv) the wide scope of its functions, covering several uses of the waters; (v) the power to thwart the implementation of any project detrimental to the interests of a riparian in boundary and even non-boundary waters; and (vi) the Commission's attributions in the field of disputes settlement.

Accordingly, the Canada-United States International Joint Commission provides a valuable precedent, though it does have defects such as: (i) the Commission's inability to draw up and propose integrated development projects on its own initiative; (ii) the absence of regulatory functions; and (iii) the circumstance that, owing to the independence of its members and the lack of any body able to give political backing to its decisions, the latter could be at variance with the wishes of the Contracting States.

Some of the advantages offered by the Canada-United States International Joint Commission are shared by the Niger Basin Authority and the Plate basin system. Both mechanisms seem to possess the necessary decision-making powers and a sufficiently wide range of attributions, including the right to sollicit outside expertise and financial assistance, especially from the appropriate intergovernmental organisations. Nonetheless, the actual performance of the two mechanisms appears to have been less than satisfactory. This may be due to their complexity, to which one might add an apparent inability or unwillingness to come to grips with political problems. By contrast, the Canada-United States International Joint Commission has greatly benefitted from both its simple structure and from the largely trouble-free political relations between the two partners.

Bearing all these factors in mind, and recalling once again that circumstances and needs differ from case to case and may justify different solutions, a blueprint for an efficient multiple-use mechanism in the field considered here would appear to include the following elements:

- reliance on an organism composed of experts and based on the model set by the Canada-United States International Joint Commission, but placed on a plurilateral rather than bilateral level;
- creation of a supervisory political body – a conference of ministers, for example – consisting of persons who are empowered to commit their respective States and who would clothe the decisions taken by the expert body with the required binding force and effectiveness;
- a bundle of attributions covering: (i) all existing uses of the waters, including navigation if relevant; (ii) the initiation and implementation of integrated development programmes; (iii) law-making powers wherever the adoption of common regulations appears necessary or desirable; and (iv) the possibility of seeking external expertise and financial assistance.

This rough outline could serve as a starting point for the establishment of modern and efficient mechanisms to study, develop and manage the uses and resources of

international waterways or drainage basins. Surely there are other possible blueprints, some of which may actually be preferable to the one suggested. In any event, the pattern selected will have to be adapted to the specificity of each case. But, and this is a conclusion claiming general validity, the model chosen will be successful only if it is simple and free from bureaucratic overgrowths, if the terms of reference of the mechanism to be established are sufficiently broad and if that mechanism is seconded by a political body empowered to secure the implementation of its decisions.