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INTERNATIONAL RIVERS

IN

THE CRUX OF MULTIPLE-PURPOSE UTILITIES

by

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A given feature of geography giving rise to various and frequent international disputes from place to place has been the case of rivers with international character.

A river making the frontier between two nations or a river traversing several countries is one of the most striking examples of the problems which, like in the case of outer space, are still void of a generalised pattern of legal regulations as compared with the rules for land and sea, yet have been dealt with more or less for the betterment of international relations. (1)

The present day's difficulty of any universal solution of water dispute is not altogether in the matter of navigation but in the diversities of the industrial and agricultural use of a river. As a rapid development has been made in the multifarious techniques of the exploitation of water resources, a river, when it finds itself not
completely under a state's exclusive territorial competence, has naturally become susceptible of the overlapping utilities by riparian states possessing conflicting interests in the use of the same water.

Thus, freedom of navigation and other interests not for communication but for hydro-electric generation, irrigation, drainage or prevention of the flood on the one hand and the technical compromise of these two scopes of the utility on the other, are all subject to legal and political considerations which in the main result in case-by-case legislations for river-water, in order to extinguish existing menace to good neighbourship relations in a river basin or to ultimately bring about the solution of international economic problems as intimated in article 55 of the United Nations Charter.(2)

Historically to look back, the exclusive exercise of public proprietary right to the portion of a river running along a state's land-territory almost came to cease with the end of the eighteenth century in Europe, where the water problem first caused an international concern on the regional basis.(3) As early as 1815 the Act Final of the Congress of Vienna provided some principles for the regulation of the use of the Rhine as this river was an international one in the sense that its navigable natural waterway is traversing several countries.

In the Act of Vienna, while there existed the provision for the establishment of the international river commission, the comparison of institutional weight between the freedom of navigation and that
of commerce availing the whole watercourse shows, to a distinctive
degree that the freedom of commerce was set its place next to the
freedom of navigation; for the article 109 in particular laid the first
precedence on the navigation purporting that “the navigation...
should not, in respect of commerce, be prohibited to any one, subject
to uniform regulations of police.” (4) (Emphasis added)

The regime established at the Congress of Vienna, which was
later extended to the Danube and other main European rivers throu-
gh separate arrangements, is remarkable in that, for the sake of
regionally international liberalisation of river-navigation, the regime
provided the commission for the maintenance of free passage throu-
gh the Rhine’s navigable water, though the commission was to be
composed by the riparian states only.

It was then in the Versailles Treaty and after in the Barcelona
Convention and Statute that the navigation problem of any river
acquired the broader significance in internationalisation by inducing
even non-riparian but geographically interested states to join in the
administration for international rivers such as the Oder, the Danube
and other rivers falling in the category of the international water-
way defined in the Barcelona Statute.(5)

The legal motivation of enlarging the scope of the freedom of
navigation from riparian to non-riparian and upstream to downstre-
am states has been once analysed also in the judgment of the Court:

“(This) community of interest in a navigable river becomes
the 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 other riparian state.”(6)

With reference to non-riparian states, it is observed that article 4
of the Barcelona Statute stipulates the indiscrimination of the Par-
ties’ nationals and vessels on the footing of equality, declaring that
no distinction shall be made between the nationals, the property and
the flags of riparian and non-riparian states.

The establishment of the freedom of navigation on international
waterways has been the second-to-none issue for nearly one century,
if Napoléon’s décret, a historically accidental land-mark of the
liberalisation of rivers, could be counted as a beginning of the
liberalising trend through the Act of Vienna to the Barcelona syst
em; nevertheless, rules of general principle of the river use are as
not yet being numerously in the making under international law,
owing to the individualistic varieties of the regulations regarding
water use differing upon that peculiarity of topography surrounding
a river basin which does not allow limited number of norms, if exis-
ting, to function as a sole panacea to the conflict of interests of the
nations concerned. (7)

As to the Barcelona Convention and its regime for instance, it is
no doubt that they are principal guides for the institution of inter-
national utilisation of rivers inasmuch as it concerns the problem
of the free navigation. (8)

There has, however, arised during these several decades of years in more and more accelerated degree the awareness that the freedom of navigation alone is not the first and most cause of water utility and rather that the economic integrity of a region with juxtaposed states traversed by the rivers is not in the least of the secondary significance.(9)

With regard to the conflict of the water uses for navigation and for agrico-industrial purposes, the interesting impact between the extremist theories is being presented by Harmon and Max Huber, the former emphasising the absolute qualification of sovereignty in whatever use of a river whereas the latter goes so far as to ban any installations or constructions which might cause prejudice to the utilisation for other riparian states.

In 1895, Harmon, then the Attorney General of the U.S., rejected the complaint from Mexico that the diggings of irrigation trenches in Colorado and New Mexico caused to the detriment of Mexico the great diminishing of the water of the Rio Grande and related damage to the river-side Mexican inhabitants, and then Harmon declared:

that...rule of international law imposed upon the U.S. no duty to deny to its inhabitants the use of the water of the Rio Grande the portion of which run through within the U.S. and further that the suposition of the existence of such duty was inconsistent
with the sovereignty over the national domain.

Consequently he indicated that "the question should be decided as one of policy only, because...the rules, principles and precedents of international law impose no liability or obligation on the U.S."[10]

Max Huber, in the contrary direction against Harmon's opinion, holds his own view grounding on the principle "sic utere tuo ut alienum non laedas", declaring,

that "the possibility of executing of and making constructions or installations within the territory of the riparian state should be prohibited when such construction might cause obstacles to the utilisation of the river by other states converging it."[11]

and states he with uniqueness:

"if the watercourse has not yet been the object of the exploitation within its portion traversing the upstream states, then the downstream states only shall have the right to its exploitation."[11,b]

Huber, as such, stands for the protectionism of the interests of the downstream states by framing a pattern of international water rule.

It is not the matter of simple choice for river-user states to lean toward either of these two exemplified extremist views, because, the function of law being in the regulation of the conflict of legal interests accruing from a geographical condition of a river, the harmonising measures should be sought for in the case of the dispute so
that the navigation and other uses of a watercourse become compatible with each other on the basis of the equal respect of their varying necessities.

As in fact the historic priority in navigation has gradually ceded to industrial and agricultural uses in proportion to world-wide expansion of the multi-purpose exploitations of rivers, the solution of conflict of interests of river-user states has become the keen issue among nations whose concerns now are not confined to the problem of the navigation.

H. Smith points out apparently the first legal precedent as to water user states' dispute over the economic interests dating back, forty years earlier than the Rio Grande case, to 1856, when Holland and Belgium, the co-users of the Meuse, were diplomatically at odds, the protest having been lodged by the Netherlands Government against Belgium concerning the drawing of the water from the Meuse for the latter's new construction for irrigation, the Campine Canal. The Netherlands based its claim on the existence of the rule of international law to be applicable to other uses of the water than the navigation. It contended that though the both Parties undoubtedly possessed the competence to the physical use of the Meuse, yet the both also were obliged, in accordance with general principle of law, to abstain from any action whether for the navigation or the irrigation which caused damages to either of them.(2)

The theoretical view and judicial cognisance of the primary pre-
cedence of the navigation among other uses of a river is nevertheless frequently noticeable, from case to case, under the circumstances that the traditional respect of the freedom of navigation has rooted deeper.

In other words, this might suggest that the navigation-first principle has been a covert phase of the corollary of state's exclusive sovereign right or territorial competence, the other economic uses of a river being of relatively recent emergence in international relations.

Accordingly, it appears that riparian states are not completely free from the concept of their individualistic advantage the status quo of which means the maximum interest of each own, though they are conscious of being obliged to take into consideration the use of water by other river users.

One may thus presume that against the background as such only international treaties can settle a reasonable balance of interests among river user states by that restriction of their territorial competence which bases on the give-and-take principle.

With regard to the delicate relations between riparian's territorial competence and the freedom of the navigation in the case of non-existence of a treaty to regulate them, McNair states as follows:

"Failing such regulation (as to the navigation by a treaty), the general opinion is that no more than an 'imperfect right of navigation' can be said to exist against that single state in
favour of a state whose territory is located higher up the river of any other state.”(13)

And the following part of the opinion of a British Law Officer concerning an Anglo-Argentine diplomatic transaction, underlies the above quoted opinion:

“......(but) this right of passage is described by jurists of the high eminence as imperfect right and one which ought not to be enforced against the will of the state possessing the domain.”(14)

It is true that the overwhelming precedence of the navigation is not sanctioned by any established rule of international customary law up to now, but concurrently correct is to say that the restriction of the territorial competence of a riparian cannot be induced with the fact of emerging necessity of agrico-industrial uses of a river.

The particular arrangement by treaties is, in most instances, serving as at least a starting point of the harmonisation of conflicting interests of the riparians, such interests varying from place to place and also from time to time.

The very fact that such notion as abuse of rights, equity or even comity may often affect on bettering of the regulation of river-use within the framework of a treaty concluded among the riparians, betrays that the impact of sovereign intransigence and rapidly rising common interest of international society, however regional, is really hard to produce some universal precise rule of law by
which to solve the politico-legal intricacy of water disputes.

But a quasi-rule of law applicable to the water problem does exist, as Berber observes. That is "a principle according to which the user must in some way take into consideration the use of water by other users." (15)

This principle, though vague in itself except its generality as such principle is used to be, nevertheless will tend to develop in more minute and precise rule of international water law, the exact conception of international law being to be founded on a formatively historical basis. (16)

The above-mentioned principle has been, in a recent international dispute over a river use, affirmatively upheld by the judgment of an international tribunal, although the difference of "right" and "interest" regarding the use of river water for an agrico-industrial use seemed to have been decided in favour of the priority of "right" accruing from a particular international arrangement, leaving "interest" of riparians to be a matter of the judicial reasoning depending upon the circumstances about the utilisation of water.

It may be a safer interpretation under any legal dispute that the rigidity of a right in strict sense is something more than the reasoning of the court endowing an interest in the use of a river with the legitimate protection by which the said interest should be put in line with opposing rights.

However, in the case the very right as to a particular way use
of water as termed in an international arrangement is being not literally applicable owing to de facto change of topography through the eclipse of long time, relativity of such right would become self-evident.

The interrelation between “right” of one state and “interest” of another regarding the use of water is usually prone to sharpen the dispute not in form but rather in substance.

One of basic causes of this specific circumstance concerning a dispute of the use of water would be found in the following facts:

Rights and interests are both for agrico-industrial benefits of river-using states, but precise legal constructions of the situation that needed international agreement due to a geographical and hydrological background maintains no permanently appropriate value; for all possible ways of utilisations of a river will not be foreseeable prior to the rise of a dispute or even so at the time of the conclusion of the treaty.

Then some order of priority of the use having been given in international accord, such order of priority, as has once been seen between the navigation and other uses, is legally obligatory to Parties. But depending upon further developments of the utilities of a river, it is sometimes conceivable that “right” and “interest” would become less different from one another in content, for instance either by disuetude or inapplicability of the former or by the latter’s exceeding importance.
The rights and interest are to considerable extent inter-relative and often semi-identical in the case of the use of a river, since the comparison of conflicting interests has weighed very much in achieving a common regime among river users whose consciousness of the obligations corresponding to the rights is particularly weak under the international legal custom. When one calls a title of a state action as "vested interest", "historical right" or "acquired right", the substance of such right is hardly anything but "interest" that has resulted from or has been protected by the formalistic concept of "right".

The principle of taking into account of another's "interest" as against one's "right" provides at any rate a method to stabilise the users' legal relation on the reasonableness and equity. The mere assertion of absolute attribute of a legal right, while it has occasionally contributed to solve the nebulous state of a river dispute infused with political elements, seems not all the time suffice to create the peace of water in the long run.

If imperfectness of the right of navigation as has already been referred to should be recalled in a different angle, then the resilient analysis of the relativity in "right" and "interest" regarding the uses of water would be required when interpreting or setting out anew an international water treaty.

Recently on the Lanoux case between France and Spain, the Arbitral Court expounded in the judgment on November 16,
1957:

“When one examines the question of whether France either in the course of the dealings or in her proposals has taken Spanish interests into sufficient consideration, it must be stressed how closely linked together are the obligations to take into consideration adverse interests in the course of negotiations, and the obligation to give a reasonable place to these interests in the adopted solution. A state which has conducted negotiations with understanding and good faith in accordance with article II of the Additional Act is not dispensed from giving a reasonable place to adverse interests in the solution it adopts because the conversations had been interrupted, though owing to intransigence of its partner.” (17)

A typical regime interweaving “right” and “interest” regarding the use of water under the changed situations by a newly settled national frontier can be found in a provision of the Treaty of Saint- Germain; article 309 of the Treaty reads as follows:

“à moins de dispositions contraires, lorsque, par suite du tracé d’une nouvelle frontière, le régime des eaux (canalisation, inondations, drainage ou affaires analogues) dans un État dépend de travaux exécutées sur le territoire d’un État, en vertu d’usage antérieurs à la guerre, des eaux ou de l’énergie hydraulique nées sur le territoire d’un autre État, il doit être

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établi une entente entre les États intéressés de nature à sauvegarder les intérêts et les droits acquis par chacun d'eux."[10]

That the problem of the close relationship between right and interest concerning the use of water possesses, intrinsically some thorny peculiarities turns out salient, when an international regime for a river, bilateral or multilateral, has to deal with the two elements in international law, that is to say, the institutional respect of the freedom of international communication typified by that of navigation and the customarily established rigid rule of territorial jurisdiction over the portion of a river running through within the sovereign land.

The first one of these elements, the freedom of navigation, historically undeniable use concomittant to the very existence of a river, still enjoys a remarkable priority in most international water arrangements.

In this connection, Alvarez points out that this is strongly eminent in the European region, where the freedom of navigation has been absolute in international juridical consciousness.[11]

Not mentioning the Convention regarding the regime of navigation on the Danube, in Asia too, the Convention regarding the maritime and river navigation on the Mékong concluded in 1954 came to establish the freedom of the regionally international navigation.[12]

Generally, if the navigation of a river is open free to non-partic-
ipants to the treaty establishing that international freedom, often non-participant states are to enjoy the indirect benefit from the regime which is legally short of a right of free navigation accorded to participants.\(^{(21)}\)

In the above case, non-participant states' freedom of the use of water depends on the consent or grant of the Parties to the regime.

But it is also a legal fact that "interest" there nears very close "right" at least in so far as their each content is concerned, whereas in the case of the territorial jurisdiction to a portion of international river, the title of sovereign action covering any works related to the utilisation of that adjacent portion of river is far much exclusive, thereby making another's right in domestic plane to water for irrigation for instance a mere "interest" in international relations.

In this connection, the following judgment of the Permanent Court of International Justice is paradoxically a progressive view because it demonstrated a heavier restriction of the territorial competence in favour of the functional interest in the use of water of international concern. The Court, in regard to the case concerning the objection against the exercise of the function by the Oder River Commission, holds:

"The internationalisation of a waterway traversing or separating different states does not stop short at the last political frontier,
but extend to the whole navigable river.” (22)

The demarcation line is sometimes less tangible between the jurisdiction of international administrative institution such as the regime of international freedom of navigation and the territorial competence which a state possesses. It is because the legal presumption of legitimacy of the territorial competence which covers the land and water alike under a state’s effective control, failing any contrary indication by special international agreement, has been traditionally predominant in international relations.

As regards the internationalisation of waters for the navigation by a multilateral treaty among many states, the rigidity of a state’s territorial competence retreats in proportion with extensiveness of the specific norm giving room to “common interest” to work.

But in the case of the bilateral treaties regulating both the navigation and other uses of a river, the workableness of the settled regime is not always sufficient in guaranteeing the agrico-industrial use as against the navigation.

And even a multilateral treaty for hydraulic use of a river happens to be practically handicapped with the right of territorial competence, in contrast to the international arrangement for the navigation.

This is observed clearer when, though restricted to some degree by an international consent, a state has yet a possibility of filling up the internationally limited scope of its territorial right by in-
voking some other domestic title available to the use of water, that is not being affected by international restrictions contained in a treaty.

As one example of this crux in the use of a river, the case of the General Convention Relating to the Development of Hydraulic Power Affecting More Than One State of December 9, 1923 will be mentioned.

The article 5 of the Convention stipulates that technical method adopted in international agreements for the development of rivers should, insofar as possible, disregard the international frontiers. The provision thus may be construed to anticipating a larger role of the international commission for the purpose of investigations as to the dam site, or any other necessary planning or the execution thereof through international co-operation.(23)

However, the fact being that no state has hitherto ratified the Convention, the difficulty proves conspicuous in getting a single industrial use materialised in accordance with the principles agreed to in the Convention. At any rate, article I of the same Convention provides the liberty of the Parties to execute works for hydraulic power as they wish to within their individual territory and in compliance with international law.

In contrast to the Barcelona Convention and Statute for the international navigation, this characteristic multilateral treaty for the industrial use of waters first supplied the pattern of
principles of international use of water in an industrial aspect; but as to its weak normative effect in general application, the existence of the precedence of territorial sovereignty in toto in the very regime seems to have caused the consequent limitation of their institutional effect ab initio.

It is noteworthy to recall now that the Conference of International Law Association held at Dubrovnik, Yugoslavia, in 1956 adopted unanimously a resolution on "Uses of the waters of the International River".

Since the resolution presents some principles on the use of water beside the principle of the navigation, it bears a part to the future legislation on the diversified industrial uses of waters in which there still exist no clear-cut universally applicable norms.

Among the broad principles indicated in relation to the use of waters at the Dubrovnik Conference, the principle "sic utere tuo ut alterum non laedas" occupies the primarily important position. This principle the basic significance of which the theory of abuse of right shares in common, is thus somthing not to be by-passed simply because of its vagueness.(24)

Further in regard to the exercise of the freedom in the use of waters of river, it would not be irrelevant to quote some provision concerning the regime of the high seas, specifically noticing that the harmonisation of legal benefits among the users of river-water is the crucial subject because of the usually sharp clash of their
territorial competence in the form of Janus-faced "right" and "interest".


(These) freedoms, and others which are recognised by the general principle of international law, shall be exercised by all states with reasonable regard to the interests of other states in their exercise of the freedom of the high seas.

A fortiori, need is for the reasonable regard to the interests of other states in the use of river-water, no established general rule of international law being in existence.

Finally the recent international efforts and concern should be referred to as the proof of today's international interest in the water resources.

In 1955, the United Nations Economic Commission for Asia and the Far East issued a publication entitled "Multiple-Purpose River Basin Development" particularly covering the water resources development question on national plane regarding Ceylon, China, Japan and the Philippines. The Publication states in its forward as follows:

"If the economy of Asian countries is generally characterised by the pressure of population on resources, this is perhaps less true as to water resources, except for the regions loca-
ted in the north-western part of the Chinese mainland and in the Northwestern part of the Indo-Pakistan subcontinent. The problems connected with water resources relate, in the main, less to the scarcity of water than to the control and conservation of its abundance during floods, so that it may be made available for constructive use during periods of drought. Water, in Asia as elsewhere, is an invaluable resource to be used wisely. Since Asian countries are predominantly agricultural, the adequate and timely supply of water to the densely populated agricultural land is a prerequisite to ensuring adequate food production for millions. In the meantime, the harnessing of rivers and streams for the development of power and navigation has an important bearing on various schemes of industrialisation designed to raise levels of living. "...various countries in this region, which have similar difficulties in developing their water resources can benefit from the experience gained by others..."(26)

Needless to say, in the above-quoted statement, the Asiatic particularities, geographical or agrico-industrial, is being portrayed sufficiently enough so that future politico-juridical handling of them should be linked with the respect for Asia's regional common interest.

The United Nations also took up in New York the water resources questions, and among the subjects discussed at the Economic
and Social Council's twenty-fifth session held in April-May 1958, the first item was the industrial use of the water.

The report on the water resources comprise among other things the question of Industrial Use of The Water and Integrated River Basin Development.

The report on the industrial use of the water reviewed problems arising from industrial demand for water while examining such matters as water quantity and quality requirements, and further it presented suggestions for national and international action to develop the use of water for industry. The third report entitled Integrated River Basin Development contained the review of the scope, purpose and major aspects of river basin development. The recommendations were also made in the report that steps should be taken to encourage scientific and technical investigations and that the United Nations should support efforts to overcome the special problems of developing international rivers.

What is of great interest regarding the discussion on water resources problem at the Economic and Social Council is that some members saw great importance in the efforts for formulation of legal principles for users of waters of international rivers.(27)

In conclusion, although admittedly no customary rule for universal application is being established concerning international use of a river, the increasing demand of water for agrico-industrial use is more and more in evidence. Under the circumstances, juridical value
of multilateral arrangement covering states as many as possible would be great, but the geographical peculiarities which require specific rules of waters of international rivers should not be overlooked so that at least unity through diversity of legal principles applicable to peculiar situations grows to produce a definite rule with general applicability in the face of further varying aspects of water utilisation in the world.

April 3, 1961. Nagasaki
NOTES

(1) The Barcelona Convention and Statute on the Regime of Navigable Waterways of International Concern, signed on April 20, 1921, is the sole multilateral agreement up to now defining some general criteria (article 1 and 2 of the Statute) by which a river may be put under international administrative institution. The Convention and the Statute are neither related to the solution of river disputes directly nor furnish immediate legal remedies beyond specific agreements concluded by water-user states (article 13). In reply of the question whether Parties to the Treaty of Versailles were bound by the Barcelona Convention, even if they had not ratified it, the Permanent Court of International Justice affirmed that the Convention had not been binding upon states which did not ratify it, despite article 338 of the Treaty providing the supersedence of the regime set out in it by the new regime to be later made with the approval of the League of Nations.

The Barcelona Convention fell in the category of such a case as article 338 had prepared for.


(2) The freedom of communication is endorsed with tacit validity of international customary law only in the case of the maritime navigation.

The internationalisation of communication in any other sphere is all the outcome of contractual agreements among states concern-

(3) Probably as an accidental precedent of the assertion for liberalisation of the European rivers, Napoléon’s Décret of Nov. 16, 1792 may be cited: the Décret ordered the French Commander in chief in Belgium to ensure the freedom of navigation in the Meuse and the Escaut, upholding the liberal ideal that “waterways are common property and inalienable from all the countries traversed by these rivers.” C. Rousseau, Droit International Public, p. 389, 1953.


(5) Article 338 of the Versailles Treaty and article 23 (E) of the Covenant of the League of Nations are both the directive to the drafting of the Barcelona system. Article I of the Barcelona Statute gives the definition of the elements of international rivers to be put under its regime.


(7) While admitting that the basis of the right of a state to navigate the water of a river traversing foreign territory is believed to be the general interest of international society of states, Hyde points out that treaties concerning river uses have generally not purported to provide for more than “the requirement” of the con-

(9) Von Bar, the rapporteur at the sixth commission, Madrid session of l'Institut de Droit International held in 1911 states as follows; "...that ego-centric manner of the exertion of sovereignty without regard to its possible resultant prejudice is not allowed, is an application of a general rule of international law. Consequently riparian states of an international water must take into consideration their reciprocal interests. But the question which today poses for a legally international solution is quite distinct from that question of the free navigation. The very problem is that to which hydraulic constructions for the production of electric power...give a rise." (the writer's translation)


(8) Beside commonly recognised geographical elements up to the time of the Barcelona Conference, namely, the navigability of watercourse, the regime created another one: the fact that such naturally navigable watercourse separates or traverse more than one state. This added element for the definition of international river is in essence 'of juridical invention. The application of the artificial element thus justifies the saying that “the regime (of Barcelona) was epoch-making through the whole history of international river systems”.

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(10) Moore, A Digest of International Law, 1906. vol.I, p.654

(11,a) Fauchille, Traité de Droit International Public. Tome I. Deuxième Partie. p.448, 1925. (the writer's translation and the emphasis added.)

(11,b) Fauchille, Ibid.


(14) McNair, Ibid, this is a part of the legal opinion of Dodson, a legal adviser to Her Majesty’s Government, addressed to Canning in 1844.


(17) The treaty of Bayonne which decided the Franco-Spanish frontier in 1866 had been associated with the Act Additionnel setting out the regime for the international river Carol which stemmed...
from the lake Lanoux. The following shows some aspect of the Lanoux issue.

"les traités frontaliers n'ont institué qu'une égalité juridique et non une égalité de fait, aucune de leurs dispositions n'interdit une action unilatérale susceptible de créer la possibilité de violer les droits de l'État voisin." (sic !)

"Enfin, la France a rempli les obligations particulières décou- lant pour elle de l'article 2 de l'Acte additionnel. Elle a notifié ses projets à l'Espagne pour permettre des réclamations et, dans leur dernier état, les dits projets avec les engagements qui les accompagnent donnent des garanties suffisantes aux "intérêts" espagnols, en face du "droit" qu'exerce la France."; further see A. F. D. I, 1957, p.178 et seq.

In connection of the above cited French-side view, though objective in itself in so far as it summarises the tribunal's findings, some other part of the Tribunal's opinion deserves particular attention here, because of its non-the-less objectivity: the Tribunal opines,

that the upstream state has, according to the rules of good faith, the obligation to take into consideration the different interests at stake, to strive to give them all satisfactions compatible with the pursuit of its own interests, and to demonstrate that, on this subject, it has a real solicitude to reconcile the interests of other riparian with its own.
And further, as to the interests which must be safeguarded, the Tribunal is of the opinion that such interests include all those which might conceivably be affected by the work undertaken, whatever their nature and even though they do not correspond to a right. A. J. I. L., op. cit. p.169.

(18) The article text is quoted from p.502. Fauchille. op. cit.

(19) Alvarez is quoted by Hyde as stating:

“In Europe, the principle of free navigation on international rivers is almost absolute and is, moreover, usually enunciated in the conventions concluded between the Great Powers.” Hyde. op. cit. p.534. Simultaneously see p. p. 527-528, Le Droit International Nouveau. 1959. Alvarez there states: “dans ce domaine (des fleuves internationaux), on ne peut édicter qu'un petit nombre de règles de caractère universel… on ne peut songer à établir des règles uniformes pour tous les fleuves internationaux étant donné la différence des conditions géographiques et hydrographiques dans les divers continents ou régions: les fleuves de l’Europe sont différents de ceux de l’Amérique, de l’Asie ou de l’Afrique…”

(20) Specifically article 2 of the Convention on the Mekong guarantees the freedom of the navigation of the said river.

(21) The Danube Convention signed on August 18, 1948 in Belgrade provided in article I the freedom of navigation to “all states” only with the restriction of the cabotage. It reads: “La navigation sur le Danube sera libre et ouverte aux ressortissants, aux bat-
(21) In comparison, the Convention on the Navigation of the Mékong is more restrictive than the Danubian Convention in granting the freedom of navigation to non-Parties; article 2 states "en ce qui concerne les États n'ayant pas reconnu diplomatiquement les Hautes Parties Contractantes, la liberté de navigation est subordonnée à l'accord des Hautes Parties."


