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The River Basin in History and Law, by Ludwik A. Teclaff

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BOOK REVIEWS

THE RIVER BASIN IN HISTORY AND LAW, by Ludwik A. Teclaff. The Hague: Martinus Nijhoff, 1967. Pp. 228.

THE designation of the river basin as the unit for water resources development is of ancient lineage as well as current acceptance. The river basin approach of the Helsinki Rules on the Uses of the Waters of International Rivers, adopted by the International Law Association in 1966,¹ for example, served to once again emphasize the importance of the river basin as the primary legal, administrative, and economic unit of water resources development and allocation on the international scene. The adoption in 1965 of the basin oriented Water Resources Planning Act by the United States Congress² made the same point on a national scale. Nonetheless, legal writers and historians have done little to draw together either on a horizontal or vertical basis the river basin unit concept.

It is both the vertical (time) and horizontal (geographic) perspective of the concept that Professor Teclaff seeks to set forth in *The River Basin in History and Law*. Although the book is written in English by one who is now an American law professor, the fact that the author is also a former Polish diplomat and the fact that the book is published in The Netherlands correctly suggests to the reader the international scope of the work.

The thesis which structures the author's examination of the subject is well, but somewhat belatedly, expressed in the closing paragraph of the book:

Finally, although the needs of the inhabitants of

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1. "The general rules of international law as set forth in these chapters are applicable to the use of the waters of an international drainage basin except as may be provided otherwise by convention, agreement or binding custom among the basin States." INTERNATIONAL LAW ASSOCIATION, RULES GOVERNING THE USES OF INTERNATIONAL RIVERS, art. I (1966).

Professor Arthur H. Garretson states in the forward to *THE RIVER BASIN IN HISTORY AND LAW* that the book is "the first fully developed response to the important resolution passed by the International Law Association at its New York Meeting in 1958 recognizing the legal nature of the international river basin." Garretson, *Foreword* to L. TECLAFF, *THE RIVER BASIN IN HISTORY AND LAW* v. (1967) [ereinafter cited as TECLAFF]. The New York resolution saw fruition in the adoption by the Association of the Rules Governing the Uses of International Rivers at the Helsinki meeting in August of 1966.

2. 42 U.S.C. § 1962 (1965).

an individual basin may not always control the development of its water resources, and works may be designed to serve other areas and be combined with the works of other basins, it would seem that regulation of streams generally should be planned on a basin wide scale. This follows from the primary characteristic of drainage—that interference with water and its movement at any point has repercussions elsewhere in the river basin. Moreover, since unified basin development is being carried out in many river basins and is planned in many more; since only a few areas larger than or different from the river basin have as yet been made units of integrated water resources planning; and since most major river basins are large enough to absorb the benefits of optimal water resources development, it is felt that the basin will remain a legal entity in the foreseeable future.³

Professor Teclaff sets about his task by discussing “the physical unity of the river basin,”⁴ “the river basin as the basis of water control for agriculture in antiquity,”⁵ “navigation and the basin,”⁶ “non-navigational uses and the application of water law to the basin,”⁷ and “multipurpose uses and basin-wide development,”⁸ before he draws the mass of material together in a regrettably brief final chapter, “bringing the legal unity of the river basin into focus.”⁹

The product can only be described as “encyclopedic”; and the complimentary term “comprehensive” and the partially uncomplimentary term “general” which “encyclopedic” encompasses apply equally to the work.

To take the negative aspect first, the author seems frequently satisfied with generalities, and quotes and summarizes countless sources with little or no attempt to analyze or evaluate. To quote just one example, the author in discussing the “international river basin” states:

Kaufmann, writing in the 1930's, refers to the unity of international rivers (not river systems) as

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3. TECLAFF 203.
 4. TECLAFF, Chapter II.
 5. TECLAFF, Chapter III.
 6. TECLAFF, Chapter IV.
 7. TECLAFF, Chapter V.
 8. TECLAFF, Chapter VI.
 9. TECLAFF, Chapter VII.

the basis for a community of voisinage relations, which in turn create mutual legal obligations. Bjorksten had earlier stated that, thanks to the physical unity of the waterway (again, not of a system of waterways), the effect of any interference with water might be projected beyond a state's frontiers, resulting in international conflict. This, in turn, might lead in certain circumstances to the restriction of a state's freedom of action as far as international rivers were concerned. For Andrassy, writing at mid-century, the physical unity of territory in general creates a unity of cause and effect, which brings about the law of voisinage. But already in the early 1930's Smith not only recognized the physical unity of the river basin, thus going beyond the concept of river or even river system; as a consequence of this unity, he also directly and explicitly advocated the treatment of a river basin as a whole without regard to political frontiers. Brierly accepts Smith's view, seeing evidence of the treatment of the river basin as a whole in the modern practice of states as shown in their water disputes, and so does Lauterpacht, in the eighth edition of Oppenheim's *International Law*.¹⁰

Generalities often breed irrelevancies and *The River Basin in History and Law* does not escape this fate. The following paragraph is taken from the discussion of the Tigris-Euphrates Basin and is not atypical of the miscellaneous-facts approach which characterizes the first one-third of the book:

Timber bulked large in the downriver traffic, not merely for its own sake, but made up into rafts for the transport of other goods. Most of the fine timber came from beyond the basin, in the mountains of Lebanon and Syria to the west. Another important item was wine. One of the earliest chronological tablets states that the fourth kingdom of Kish was founded by a female wine merchant, Azag-Bau, under whose dynasty there was a rapid development of Sumerian law and commerce. An administrative

10. TECLAFF 152. Professor Teclaff does continue "On the whole, however, writers on general international law tend to confine themselves to generalities, and the concept of unity of an international river basin and ideas concerning its treatment as a unit come more clearly from the debates and pronouncements of the international conferences and societies." *Id.* Still, the reader yearns for an explanation.

record from Umma, in the delta area of the basin, speaks of rations for camp followers, comprising wine from the land of Bilak. Bilak is believed to be the classical Bilechas, the name of a tributary of the middle Euphrates, on which was situated the city of Harran. Harran actually took its name from a Babylonian word meaning "journey," so common were the Babylonian merchants in that far-off community. According to Hawkes and Woolley it was almost a sister city of Ur and maintained its Babylonian connections down to the sixth century B.C.¹¹

At other points the book reads like a statistical abstract:

Quantities of water were used in mining activities in the western United States, where problems arose through diversion of streams and undesirable effects, such as accumulation of debris from hydraulic mining operations. Output of gold (in fine troy ounces) rose from 24,000 ounces in 1840 to ten times that much in 1850, after the California discoveries, then leveled off and gradually diminished until, in 1890, it was 1,589,000 ounces. Silver output, on the other hand, rose spectacularly in the latter part of the century—from 116,000 ounces in 1860, to 12,375,000 in 1870, 30,319,000 in 1880, and 54,516,000 in 1890.

The nineteenth century was an era also of immense increases in population and of a greatly speeded up growth of cities, with consequent demands for urban water supply. The population of Europe as a whole rose from 188,000,000 in 1800, to 266,000,000 in 1850, and to 401,000,000 by 1900. That is, it grew by forty per cent in the first half of the nineteenth century and by fifty per cent in the second half. United States population, swelled by the influx of Europe's surplus, grew even more spectacularly—from 5,297,000 in 1800 to 23,261,000 in 1850, and 76,094,000 by the end of the century. In the water-scarce West the numbers multiplied many times over in some states. Utah grew from 11,000 inhabitants in 1850 to 277,000 in 1900; New Mexico from 61,500 to 195,000 within the same period; California from 92,600 to 1,485,000; and Texas from 212,000 to 3,000,000.¹²

11. TECLAFF 43.

12. TECLAFF 81-82.

To return to the positive aspect of "encyclopedic," Professor Teclaff's historical treatment is astounding and enviable in its comprehensiveness. So much so, that it is difficult to discuss this aspect without making long lists of sources and subjects discussed. Perhaps it will give the potential reader some idea of the vast wealth of knowledge the book offers to mention that there is a 351 item bibliography¹³ which is so diverse it reads like the card catalogue of an ideal library specializing in the subject. In addition there is a unique "Table of Treaties"¹⁴ listing 105 treaties dating from 1616 to 1964 which relate to river basins.

The relative brevity of the table of cases,¹⁵ 47 entries, correctly indicates that the legal analysis in the book is principally in historical terms. In fact, disappointingly little space is devoted to describing existing water laws as they relate to present day river basin development problems. One happy exception is the seven page summary of French, German, Italian and Polish laws relating to administrative allocation of water.¹⁶

All in all, perhaps the greatest value of Professor Teclaff's work is that it charts, although it does not fully describe, an aspect of the comparative study of water law and development that has gone largely unnoticed. It should add to the substantive knowledge of most readers and should stimulate all readers to search more deeply into the myriad glimpse the author gives of river basin development on both a horizontal and vertical perspective.

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13. TECLAFF 204-17.

14. TECLAFF xvii-xxiv.

15. TECLAFF xv-xvi.

16. TECLAFF 90-96.

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