Preface

The volume presented here may serve as a timely reminder that the author of the articles collected is a leading authority on the law of international waterways (or 'watercourses', to use a more contemporary term). Those who have entered this field at a later stage owe him an immense debt of gratitude for his lucid and substantial contributions to it and, perhaps most importantly, his steadfast refusal to succumb to fashions. Thus, while it is clear that the environment in and about international waterways is of considerable importance, such waterways represent an economic asset as well, and any international regulation of their uses, to be viable in the long run, must strike a fair balance between existing utilizations by one watercourse State and planned uses by another. Professor Bourne has never lost sight of these imperatives.

This collection of articles covers the essence of the law of international waterways, except for issues of navigation (apart from the International Law Association’s work in this area) and boundary questions.

The volume opens with a foreword, in which its editor summarises the main developments in the field since the writing of Professor Bourne’s articles.

Then follows Part I, devoted to the ‘drainage basin approach.’ As recent multilateral negotiations have shown, the international community is not yet ready to embrace this comprehensive approach, despite the necessity of dealing with hydrographic systems as a whole rather than piecemeal and despite the adoption of the concept in a few treaties.

The second part of the present collection deals with substantive rules governing the use of international waterways for purposes other than navigation, in particular, the principle of equitable utilisation and the no-harm rule, with the protection and preservation of the environment, and with the issue of whether planned constructions or activities must remain in limbo if and as long as their legal justification is in dispute.

Procedural rules are addressed in the third and fourth parts. The third part deals with what one might call ‘transparency’ provisions: the duties of watercourse States to exchange data and information, and their obligation to consult and negotiate, a duty flowing from the international law of cooperation in general which, however, has particular relevance in the context of the allocation of shared resources such as watercourses. The fourth part is devoted to means of dispute settlement, that is, mediation and conciliation on the one hand, and adjudication on the other. While international water law, being concerned with the allocation of shared resources and involving major economic and social interests, is highly conflict-prone, disputes will
not always be settled by consultation and negotiation, as is evidenced in the parallel field of maritime delimitation. This explains why the mentality of States should change in this respect. But it also shows why most States are so reluctant to submit to third-party settlement procedures. Article 33 of the International Law Commission’s Draft Articles on International Watercourses bears testimony to this reluctance. Most States are light years away from the models of cooperation and dispute settlement offered by the North-American sub-region.

Over the years, the International Law Association, whose activities are dealt with in Part V, made a significant contribution to the development of the law of international waterways, deriving considerable profit from Professor Bourne’s collaboration. It is a great pity that the International Law Commission, when preparing its Draft Articles on the non-navigational uses of international waterways, could not directly benefit from his knowledge and experience. This observation attests to the need for the Commission to revise its working methods and, in particular, to consult acknowledged outside experts.

The sixth part of the collection shows that Professor Bourne has been heavily involved in the problems generated by the watercourses which his country, Canada, shares with the United States, and has tendered advice to his Government. One hopes that the latter will continue to seek - and heed - his views.

As the reader shall discover, the present volume is a must for anyone seriously interested in the law of international waterways. It evidences a constant scholarly preoccupation with almost all aspects of that law. Above all, it reflects standards of conciseness, clarity, elegance and scholarship which rightly are the envy of Professor Bourne’s colleagues.

Lucius Caflisch
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