

BOOK REVIEW

The Law of International Waterways

by **R. R. Baxter**

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Professor Baxter's study was undertaken in 1954 at the suggestion of the Suez Canal Company and the Carnegie Corporation but was paid for entirely by Carnegie under its International Legal Studies program. It will be recalled that this was at the beginning of a series of crises in the relations of Egypt to the Suez Canal Company and affecting the vital interests not merely of the Company but of France and the United Kingdom in particular and many other states as well, who were principal users of the Canal.

By an interesting coincidence international law scholars had begun to examine afresh the problem of water communications with particular reference to international rivers and related straits and canal questions. At Dubrovnic in 1956 the late Professor Clyde Eagleton, chairman of the International Law Association's Committee on the Legal Uses of International Rivers had added to the Committee's terms of reference "international waterways" other than rivers and this included, of course, artificially constructed passages, such as canals, as well as straits and narrow seas, not dissimilar to canals in some of the legal problems presented.

Through the work of the International Law Association the canal problem was linked to the more general question of navigational and non-navigational uses of international waterways particularly rivers questions since what they had in common was the matter of access for non-riparians and the character of control and administration where more than one riparian was involved. Perhaps even more unifying was the physical and doctrinal framework in general since these were questions involving movement of vessels, people and goods over waterways systems. For the "unity" of global waters from rivers going to the sea as well as the sea itself, gave rise to this general legal inter-action and stimulated the development of research

into related questions arising out of communications on international waterways of all types.

Professor Baxter's volume on International Waterways is confined primarily to artificially constructed canals leading from either one part of the high seas to another or connecting inland waterways with the open sea. The study stands in contrast to the somewhat earlier research of Professor J. Berber on *Rivers in International Law* published in 1959, influenced in part also by the thinking and research that followed Clyde Eagleton's work as chairman of the I.L.A. committee referred to. Finally, a series of recent volumes on fisheries, navigation on the high seas and the legal problems of bays, published since the Geneva Conferences on the Law of the Sea, of 1958 and 1960, suggest a continuing and vital concern with the unifying demography of water systems that link all of mankind from deep interiors of continents to the immense seas that dominate the physical surface of this planet. For not without reason Professor Baxter quotes the late Rachael Carson that the world is "... a planet dominated by its covering mantle of ocean, in which the continents are but transient intrusions of land above the surface of the all-encircling sea". (p. 1)

Professor Baxter has surveyed the whole development of canals, river and inter-oceanic, and in his introductory chapter has given the discussion a unity despite the great diversity in the illustrations available from Kiel to Corinth, from Panama to Suez, from Rhine to St. Lawrence. He has made an effort to demonstrate the emergence of certain interwoven customary rules despite the diversity of the enterprises, the conventional arrangements that deal with them and the specialized administrative methods operating in each system. He does not pretend that there is a common body of customary law governing rivers, canals and straits, but he does indicate, in referring to the *S.S. Wimbledon* and the *Corfu Channel* cases, that the differences have "... not prevented the establishment of certain principles of international law having common application to a particular category of international waterways or to two such types of watercourse. For the moment, however, we must content ourselves with extracting such general wisdom as can be derived from experiences, gained in connection with the shared problems of international waterways." (pp. 48-49)

What Professor Baxter has done is to take the Suez, the Panama, the St. Lawrence Seaway, the Kiel and certain related experience with the Danube and Rhine Commissions and attempt to explore varieties of operation or supervision. He divides these methods into five groups: administration by a private company (the Suez Canal);

operation of an inter-oceanic canal by a foreign sovereign (Panama Canal); operation by the territorial sovereign (the Kiel and Suez Canals); operation through international coordination (the St. Lawrence Seaway); administration through international commissions (Rhine and Danube).

In addition he is, of course, concerned with the classical problems of the right of passage in times of peace and war. He is also aware of the very important question of fiscal control since tolls and financing are at the very heart of disputes or international satisfaction; and he has two chapters on technical problems of administration of international waterways in general and of international canals in particular (Chap. VI and VII).

Finally, Professor Baxter has drawn from his years of experience as a member of the International Rivers Committee of the I.L.A. where he was inspired to prepare some draft "Articles on The Navigation of International Canals", a small code of rules designed to provide a viable framework for the relations of riparian sovereign or administrator to the users whoever they may be. (Appendix p. 343)

Naturally Professor Baxter has had the advantage of writing this book long after the dispute over the Suez Canal has come to an end thus providing perspectives that would not have been possible ten years ago when in 1954 he published his first paper on the subject dealing with international waterways in time of war. (1954, 31 BYIL, p. 187). Moreover, within that time also the Panama Canal has given rise to new levels of dispute between the territorial sovereign and the lessee in perpetuity, the United States, thus providing more data on the difficulties of such a relationship in the modern period. Then too, the St. Lawrence Seaway has emerged as a unique example of international cooperation with unilateral but coordinated legislation and machinery as its basis. This has provided an interesting lesson in the management of a situation where the logic of a bi-national supervisory and operating mechanism was defeated by political pressures in both Canada and the United States, particularly the latter, and numerous indirect devices have had to be developed to replace simple direct legal cooperation by means of an all-embracing treaty.

It is difficult to criticize Professor Baxter's valuable effort to provide a scholarly survey of the main legal and administrative problems of straits, canals and rivers, uniting them into some kind of doctrinal unity, but in a sense he has done both too much and too little. It was too much for him to exhaust in detail the facts and present the variety of canal-waterway systems with which he deals.

It was too little to put forward a concept of unity and then deal only peripherally with the related questions of international river control. The most evident difficulty with this "between-two-stools" situation is to be found in his brief, and to some extent inadequate, treatment of the St. Lawrence Seaway to which he devotes barely six pages of descriptive-analytical comment. Admitting the difficulties of finding information, the problems deserved a good deal more sophisticated and elaborate treatment. Indeed he does not quote the one paper that deals with "The Legal Framework of the St. Lawrence Seaway" nor does he refer to the valuable collection of papers produced by Professor Proehl in honour of the Seaway which includes as well as the above paper much information that might have been helpful (see Proehl, *Legal Problems of International Trade*, 1959).

Nevertheless, Professor Baxter's volume is a valuable exercise in bringing together much of the modern experience with international waterways particularly inter-oceanic canals and waterways from rivers to the open sea. He concludes by saying "There is ample room for the view that inter-oceanic canals are already governed by a common body of law, which is the product of state practice, of treaties, and of adjudication, . . . Having regard to the continuing importance of the subjection of these waterways to a regime founded on law, the codification of these rules would be a useful step in giving them greater precision and in securing general acceptance of the existing customary law." (pp. 340-341). The author's own draft Articles go a long way to meeting this possible need for a general codification and, in a world of increasing pressure for sharing the resources of the sea and of all the waters, such a codification would mark another step in the never-ending effort toward evolving the common law of mankind.

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CASE and COMMENT