

# A Bridge over Troubled Waters

*Dispute Resolution in the Law of International  
Watercourses and the Law of the Sea*

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# Basin Commissions, Dispute Settlement and the Maintenance of Peace and Security—The Case of the Lake Chad Basin Commission

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For more than two centuries, basin commissions have been perceived as important institutional frameworks for interaction, exchange and cooperative activity between riparian States.\* Being among the first international institutions to be established, basin commissions have helped – and continue to help – strengthen cooperation among riparian countries, as well as to facilitate other concerned actors' involvement in this endeavour. As the product of the will of States to cooperate in the management of a “shared resource”,<sup>1</sup> they constitute a framework of exchange, action and conduct, which can evolve and strengthen over time. The profile of these organizations can vary from one basin to another, from one region to another, or according to the functions they exercise. As such, cooperation among different riparian States can manifest itself in different ways within each of these organizations. The prevention and settlement of disputes are among the contemporary functions assumed by many basin organizations and commissions. In this respect, they contribute to the maintenance of peace and security, as is the case with the Lake Chad Basin Commission for example.

In this chapter we will appraise the evolving role of basin commissions. We explore the function of such commissions as a forum for dialogue and cooperation (A) as well as their utility in the resolution of disputes and the maintenance of international peace and security (B). In the final section of this chapter, we focus on the Lake Chad Basin Commission (C). We examine its role as a technical forum to prevent conflict over water uses (C.1) as well as its more contemporary function in the fight against terrorism (C.2).

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\* This publication was completed prior to Komlan Sangbana joining the United Nations and was not written in his official capacity. The views expressed herein are those of Komlan Sangbana and do not necessarily represent the views of the United Nations.

1 *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) ICJ Reports 2010, para 81.

## A Basin Commissions as Fora for Dialogue and Cooperation

The establishment of basin commissions reflects states' perceived need or willingness to cooperate in the management of cross-border shared water resources. Whereas the scope of such cooperation was relatively narrow in the 19th century, it gradually broadened throughout the 20th century as a result of the increased use of international watercourses. Following calls by associations like the Institute of International Law and the International Law Association,<sup>2</sup> as well as international organizations,<sup>3</sup> riparian States responded by acknowledging the importance of basin commissions as instruments used to manage international watercourses.

The form and structure of basin commissions differ from one mechanism to another.<sup>4</sup> Commissions often comprise a decision-making body, various executive bodies as well as subsidiary organs. They may also have a conference of the Parties, a plenary organ, a chairperson of the commission, a secretariat, working or expert groups, and information and training centres. Their varied nature reinforces the perception of these institutional mechanisms as necessary for a variety of functions. Cooperation is an important hallmark of these mechanisms, whether in respect of the inter-State cooperation that is required to build them or the cooperation they facilitate with other stakeholders such as representatives of local communities. Indeed, the secretariats of basin organizations and commissions can constitute important channels for cooperation between States and other stakeholders.<sup>5</sup>

The result of cooperative endeavours, basin commissions are also the bodies within which cooperation can be furthered through dialogue and action. The

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2 Institute of International Law, 'Resolution on the International Regulations regarding the Use of International Watercourses, Institute of International Law' (1911) 24 Yearbook of the Institute of International Law 365; Work of the International Law Association, *Report of the Fifty-Seventh Conference* (Madrid 1976, London 1978) xxxvii.

3 Recommendation 51 of the Report of the United Nations Conference on the Environment of 1972, UN Doc A/CONF.48/141 Rev.1. On calls made by other international institutions, see S C McCaffrey, 'Sixth report on the law of non-navigational uses of international watercourses' (1990) 2 Yearbook of the International Law Commission 42–53.

4 See the typology of functions offered by C-A Colliard, 'Evolution et aspects actuels du régime juridique des fleuves internationaux' (1968/111) *Recueil des Cours* 125, 421–31; L Caffisch, 'Règles générales du droit des cours d'eau internationaux' (1989/v11) *Recueil des Cours* 219, 196–202.

5 See Mekong River Commission for Sustainable Development, *Public Participation in the Lower Mekong Basin* (Vientiane: Mekong River Commission, 2005). Electronic version available at <http://www.mrcmekong.org/assets/Publications/governance/Public-Participation.pdf> (accessed 13 July 2020).

scope of cooperation in the context of these institutions has become relatively large over time and their competencies more varied. If in the beginning the main function of basin commissions was concerned with navigation and fishing activity, the competence of these organizations has over time extended to hydro-plants and the production of energy, irrigation activities or environmental protection. Today, their functions can include information collection and dissemination, regulation through the adoption of standards and guidelines, acting as a broker of negotiations for the development of binding instruments or agreements, or the promotion and execution of joint operational activities.

While idiosyncrasy and variety characterise the activities and functions of basin commissions, there is nevertheless an emerging trend towards harmonisation. In their own way, framework agreements such as the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes,<sup>6</sup> the 1997 Convention on the Law of Non-navigational Uses of International Watercourses (UN Convention),<sup>7</sup> and the 2000 Revised Protocol on Shared Watercourses in the Southern African Development Community,<sup>8</sup> promote the creation of basin organizations and commissions.<sup>9</sup> By outlining the functions that such organizations and commissions should assume, these conventions help to reinforce the competences of these institutions while achieving some level of harmonisation between collegial bodies. In this context, it should be emphasised that the principles of sustainable development and integrated water management, which have emerged in international practice and explicitly feature within some of these instruments, call for better institutional cooperation and more appropriate modes of action, requiring basin commissions to conduct similar core functions and thus promoting a trend towards harmonisation.

These international agreements, providing for the establishment of basin commissions, offer a basis for dialogue between riparian States on activities that each of them wishes to drive forward in its jurisdiction, particularly with regard to the distribution of rights and benefits as well as the mitigation of the risk of potential damage caused to other riparian States. They allow the

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6 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (17 March 1992) 1936 UNTS 269.

7 Convention on the Law of Non-navigational Uses of International Watercourses (adopted 21 May 1997, entered into force 17 August 2014) 36 ILM 700.

8 Revised Protocol on Shared Watercourses in the Southern African Development Community (7 August 2000) 40 ILM 321.

9 L Boisson de Chazournes, 'The Role of Diplomatic Means of Solving Water Disputes: A Special Emphasis on Institutional Mechanisms', in *The PCA/Peace Palace Papers, Resolution of International Water Disputes*, vol 5 (The Hague: Kluwer Law 2003) 91–110.

institutional implementation of notification and consultation procedures concerning planned measures. These are crucial as they facilitate the assessment of the environmental integrity of a planned measure. The International Court of Justice (ICJ) stressed this aspect in the *Case Concerning Pulp Mills on the River Uruguay*, emphasising that:

115. The obligation to notify is therefore an essential part of the process leading the parties to consult in order to assess the risks of the plan and to negotiate possible changes which may eliminate those risks or minimize their effects [...].

119. The Court notes that the environmental impact assessments which are necessary to reach a decision on any plan that is liable to cause significant transboundary harm to another State must be notified by the party concerned to the other party, through CARU, pursuant to Article 7, second and third paragraphs, of the 1975 Statute. This notification is intended to enable the notified party to participate in the process of ensuring that the assessment is complete, so that it can then consider the plan and its effects with a full knowledge of the facts (Article 8 of the 1975 Statute).<sup>10</sup>

Basin organizations also facilitate joint activities, which may be carried out by the organization itself or by member States. Therefore, in addition to the aspects of coordination necessary to prevent damage to protected interests, these collective frameworks also encourage resource development insofar as this is possible within their jurisdiction, and as such add further value to their existence. The case of the Senegal River Organization (OMVS) is quite remarkable in this context.<sup>11</sup> For example, infrastructure implemented under the auspices of the OMVS now provides potable water, clean energy and many hectares of irrigable lands.

Finally, the existence of institutional frameworks which serve as mechanisms for dialogue and consultation generally help to prevent tension that could lead to disputes. If a dispute arises, basin commissions can also help to resolve it. In the following section, we turn to examine this dispute resolution function and its implications for the maintenance of international peace and security.

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10 *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (n1).

11 M Tignino and K Sangbana, 'Le statut d'ouvrages communs et le partage des bénéfices dans les bassins du fleuve Sénégal et Niger' (2016) Geneva Water Hub 1–7, available at <https://archive-ouverte.unige.ch/unige:80736> (accessed 13 July 2020).

## B Basin Commissions, Dispute Resolution and the Maintenance of International Peace and Security

Basin commissions contribute to the prevention and settlement of trans-boundary freshwater disputes. The UN Convention illustrates this role in Article 33(2), which reads as follows: “If the parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice”.

Some basin institutions exercise a dispute resolution function as it is explicitly provided for in their constitutive text. As an example, the 1995 Mekong Agreement foresees the primary role of the Mekong River Commission, through its various bodies, as making “every effort to resolve”<sup>12</sup> a difference or a dispute. The Agreement then states that:

In the event the Commission is unable to resolve the difference or dispute within a timely manner, the issue shall be referred to the Governments to take cognizance of the matter for resolution by negotiation through diplomatic channels within a timely manner, and may communicate their decision to the Council for further proceedings as may be necessary to carry out such decision. Should the Governments find it necessary or beneficial to facilitate the resolution of the matter, they may, by mutual agreement, request the assistance of mediation through an entity or party mutually agreed upon, and thereafter to proceed according to the principles of international law.<sup>13</sup>

This is also the case for the Administrative Commission of the River Uruguay, known as the CARU, established under the 1975 Statute on the River Uruguay. In the *Pulp Mills* case, the ICJ underlined the “central role in the 1975 Statute”<sup>14</sup> of the CARU and referred to the text of the 1975 Statute, declaring that “at the proposal of either party, the Commission can act as a conciliation body in any dispute which may arise between the parties”.<sup>15</sup> Similarly again, the

12 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin (5 April 1995) 1 ILM 34, art 34.

13 *ibid* art 35.

14 *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (n 1) para 91.

15 *ibid* para 92.

Canada-U.S. International Joint Commission, established under the Boundary Waters Treaty, provides for a rather sophisticated dispute resolution procedure whose outcome may be binding on the parties.<sup>16</sup>

For other basin institutions, such a dispute resolution function may result from practice, as a response to the will of member States. It is interesting to note that the Nile Basin Initiative, although not formally established through an agreement nor having a formal dispute settlement mechanism, nevertheless played a role in diffusing the conflict over the Grand Ethiopian Renaissance Dam through its data and information sharing activities. This allowed for accurate information to be disseminated to the wider public.<sup>17</sup> Overall, empirical evidence reveals that member States have been willing to have basin commissions engaged in preventing and resolving disputes.<sup>18</sup>

This dispute resolution function is generally understood as being linked to the achievement of the object and purpose of the legal regime for the protection and management of international watercourses. It is an essential part of a general scheme put in place by States to govern a specific water basin.

Another aspect of the dispute resolution function of basin institutions is the relationship between the exercise of this function and recourse to a judicial mechanism such as international arbitration or the ICJ. As such, in the *Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria*, while recognising that basin organizations and commissions can be equipped with mechanisms for resolving disputes that may arise between riparian States, the ICJ noted that these mechanisms cannot prevent it – the principal judicial organ of the United Nations – from exercising its functions.<sup>19</sup> The Court said that, “whatever their nature, the existence of procedures of regional negotiation cannot prevent the Court from exercising the functions conferred upon it by the Charter and the Statute”.<sup>20</sup> The ICJ, on the basis of the basin agreement in question and the practice of member States, therefore rejected that the Lake

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16 Treaty between the United States and Great Britain relating to Boundary Waters, And Questions Arising between the United States and Canada (signed 11 January 1909, entered into force 5 May 1910) TS 548, arts IX and X.

17 See A Elisa Cascão and A Nicol, ‘GERD: New Norms of Cooperation in the Nile Basin?’ (2016) 41(4) *Water International* 550–573.

18 See S Blumstein and S Schmeier, ‘Disputes over International Watercourses: Can River Basin Organizations make a Difference?’, in Ariel Dinar and Yacov Tsur (eds), *Management of Transboundary Water Resources under Scarcity* (World Scientific Publishing Co 2017).

19 *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria)* (Preliminary Objections) ICJ Reports 1998, para 68.

20 *ibid.*

Chad Basin Commission had exclusive jurisdiction *ratione materiae* over disputes involving border questions.<sup>21</sup>

In doing so, the Court emphasised the need to take into account the content and practice of each basin agreement. These agreements vary significantly in their scope, terms and dispute resolution mechanisms. Thus, the 1975 Statute on the River Uruguay provides explicitly for the ICJ to potentially assume a role when “the Parties fail to reach agreement within 180 days following the notification referred to in article 11”<sup>22</sup> and when “any dispute concerning the interpretation or application of the Treaty and the Statute which cannot be settled by direct negotiations”.<sup>23</sup> For its part, the 1960 Indus Waters Treaty adopts an approach providing for the use, in some cases, of a Neutral Expert and, in other cases, recourse to arbitration, in the event that India and Pakistan are unable to settle their disputes within the Permanent Indus Commission.<sup>24</sup>

A related issue is whether basin organizations and commissions can be regarded as regional organizations or arrangements under Chapter VIII of the United Nations Charter in the area of international peace and security. For De Wet, for instance, the only organizations to qualify under the title of Chapter VIII are those with competence for the peaceful settlement of disputes relating to the maintenance of international peace and security.<sup>25</sup> This was also the position taken by the ICJ in the *Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria* mentioned above. In that case, while the Court acknowledged that the Lake Chad Basin Commission had the status of an “international organization exercising its powers within a specific geographical area”,<sup>26</sup> it nevertheless excluded the institution from the scope of Chapter VIII of the Charter because it did not have as “its purpose the settlement at

21 *ibid* paras 70–1; See the Statute of the Lake Chad Basin Commission (Fort Lamy, 22 May 1964) Journal Officiel de la République Fédérale du Cameroun 1003. Electronic version available at <http://www.fao.org/docrep/W7414B/w7414b05.htm#TopOfPage> (accessed 13 July 2020).

22 Statute of the River Uruguay, Signed at Salto on 26 February 1975 339 UNTS (1982), art 12. Electronic version available at [http://www.internationalwaterlaw.org/documents/regionaldocs/Uruguay\\_River\\_Statute\\_1975.pdf](http://www.internationalwaterlaw.org/documents/regionaldocs/Uruguay_River_Statute_1975.pdf) (accessed 13 July 2020).

23 *ibid* art 60.

24 Indus Waters Treaty (19 September 1960) available at <http://tinyurl.com/3sb34g4> (accessed 13 July 2020).

25 E De Wet, ‘The Relationship between the Security Council and Regional Organizations During Enforcement Action under Chapter VII of the United Nations Charter’ (2002) 71 Nordic Journal of International Law 1–37 and 7.

26 *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria)* (1999) para 67.

a regional level of matters relating to the maintenance of international peace and security”.<sup>27</sup>

This approach appears to be too restrictive in view of the evolution of the system of collective security.<sup>28</sup> Indeed, the notions of the maintenance of international peace and security and threats to international peace have acquired an increasingly broad scope, as illustrated by the practice of the Security Council.<sup>29</sup> Reference should be made to the debates dedicated to climate change and fresh water issues, held at the Security Council.<sup>30</sup> Issues of water access and water management are no doubt linked to more traditional collective security issues. As a result, regional organizations could be called upon to intervene in areas that, until recently, were outside the traditional scope of collective security. In addition, regional organizations are in the main strengthening regional cooperation – if not facilitating regional integration – and thus contribute to the maintenance of peace and security in this way.

As has become evident, the competence of regional institutions can and has evolved, and as such may encompass dispute settlement functions in the field of collective security. This is arguably the case with the Lake Chad Basin Commission between Cameroon, Niger, Nigeria and Chad in seeking “de garantir la paix en évitant les conflits pouvant surgir de l’exploitation des ressources de la région”,<sup>31</sup> an example which we will analyze in the following section.

This said, in any case characterisation as a regional organization or arrangement under Chapter VIII of the UN Charter would not *per se* affect a possible referral to the ICJ. In the case between Cameroon and Nigeria, the Court relied on its decision in the *Case Concerning Military and Paramilitary Activities In and Against Nicaragua* when it considered that it was not appropriate to require the exhaustion of regional negotiations prior to it seizing jurisdiction.<sup>32</sup>

27 *ibid.*

28 See *ibid.*, per Judge Ajibola (dissenting), para 406.

29 See for the practice of the Security Council: R Cryer, ‘The Security Council and Article 39: A Threat to Coherence?’ (1996) 1 *Journal of Armed Conflict Law* 161–95; C M Bailliet (ed), *Security: A Multidisciplinary Normative Approach* (Martinus Nijhoff Publishers 2009).

30 L Boisson de Chazournes, ‘Ressources en eau et maintien de la paix et de la sécurité internationales : à propos de quelques interfaces’ in N Kridis (ed), *Maintien de la paix et de la sécurité internationales et la gestion des ressources en eau* (Maison du Livre 2018) 15–26.

31 Convention Establishing the Lake Chad Basin Commission between Cameroon, Niger, Nigeria and Chad (22 May 1964) available at [https://www.cblt.org/sites/default/files/documentbase\\_eng.pdf](https://www.cblt.org/sites/default/files/documentbase_eng.pdf) (accessed 13 July 2020).

32 *Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America)* (Jurisdiction of the Court and Admissibility of the Application, Judgment) [1984] ICJ Reports 392, para 108; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria)* (n 19) para 68.

In sum, basin commissions play an important role in the prevention and resolution of conflicts. However, they are often only a first step in the range of mechanisms to which States may have recourse. They are one of many modes of dispute resolution, and may not exclude recourse to other mechanisms unless this is explicitly provided for in a treaty. As such, basin commissions are connected to the institutions and procedures of international law and, accordingly, respect for the rules they promote benefits the development and implementation of international law.

In the following section, the Lake Chad Basin Commission will be presented. It is an interesting yet peculiar case of a basin commission which is involved in a wide array of activities, including the prevention and resolution of disputes as well as peace and security activities.

### C The Case of the Lake Chad Basin Commission

The Lake Chad Basin Commission (LCBC) was established on May 22, 1964 by the Fort Lamy Convention and its accompanying Statute serve to effectively manage the Lake Chad waters and foster cooperation at the regional level. The Commission's secretariat is located in N'Djamena, Chad.

The Lake Chad Basin is located in a vast Sahelian region in the centre of central North Africa, just south of the Sahara Desert. Lake Chad is composed of two basins – north and south – separated by a zone of shallows known as the “Great Barrier”. The main inflows come from the Chari and Logone rivers from the south (80–90%), while the remaining inflows are from smaller tributaries and rainfall. The active basin of Lake Chad over which the LCBC has jurisdiction (conventional basin) covers an area of 984,455 km<sup>2</sup> and is shared by five States, namely Chad; Niger; CAR; Nigeria; and Cameroon.<sup>33</sup> In 2008, Libya joined the LCBC and became its sixth member.

33 In effect, the ‘hydro-geographic’ basin is bigger than the ‘active basin’. It covers 2,434,000 km<sup>2</sup> shared by the six LCBC Member States (Cameroon, CAR, Chad, Libya, Niger and Nigeria) in addition to Algeria and Sudan. See Lake Chad Basin presentation on the LCBC website: <http://www.cbtl.org/fr/le-bassin-du-lac-tchad> (accessed 13 July 2020); see also LCBC, Lake Chad Development and Climate Resilience Action Plan (LCBC 2015) 1–8; J Lemoalle and G Magrin (eds), *Development of Lake Chad: Current situation and possible outcomes* (IRD Éditions 2014) 137–142.

### 1 *Creation of the Lake Chad Basin Commission as a Technical Forum to Prevent Conflict over Water Uses*

According to the 1964 Statute, the main task of the LCBC is to ensure the most efficient use of the Basin's waters, to coordinate development and to assist in the settlement of any dispute that might arise between the riparian countries.<sup>34</sup> Therefore, the Commission was set up as a tool to facilitate dialogue and peace in the region and to assist in the prevention and resolution of interstate conflicts over water uses. The LCBC was created with a broad technical mandate to promote the common management of water resources, including the preparation of general regulations and policies to manage shared waters, the drafting of common rules regarding the different uses of waters, collecting, evaluating and disseminating information on projects prepared by Member States and recommending plans for common projects and joint research programmes in the Lake Chad Basin. The most recent instrument adopted in the context of this broad technical mandate is the Water Charter for the Lake Chad Basin (Water Charter).<sup>35</sup> Adopted in N'Djamena on 12 April 2012, the Water Charter defines the overall legal regime governing the management of the basin. The Water Charter aims to help the LCBC achieve its Vision 2025 and Strategic Action Plan with an approach inspired by the principles of Integrated Water Resource Management.<sup>36</sup> Among the issues that the Charter seeks to address are: water sharing rules between States and users; wetlands and groundwater management rules; criteria to review new projects which might impact water resources; harmonization of monitoring and communication tools; and navigation and transport rules.

Several mechanisms have been put in place by LCBC legal instruments to prevent conflict over uses between States, including the obligation of member States to inform the Commission prior to commencing projects. According to Article 5 of the Statute Relating to the Development of the Lake Chad Basin (1964): "The Member States agree not to undertake in that part of the Basin falling within their jurisdiction any work in connection with the development of water resources or the soil likely to have a marked influence upon the system of the water courses and levels of the Basin without adequate notice and

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34 Convention and Statute relating to the Development of the Lake Chad Basin (22 May 1964) art IX, available at [https://www.cblt.org/sites/default/files/documentbase\\_eng.pdf](https://www.cblt.org/sites/default/files/documentbase_eng.pdf) (accessed 13 July 2020).

35 Water Charter for the Lake Chad Basin, 12 April 2012, available at <https://www.africanwaterfacility.org/fileadmin/uploads/awf/Projects/MULTIN-LAKECHAD-Water-Charter.pdf> (accessed 13 July 2020).

36 *ibid* art 6.

prior consultations with the Commission ...". This obligation has also been integrated in Article 54 of the 2012 Water Charter. Moreover, Article 52 of the Water Charter provides that:

All measures planned by a State Party concerning the Lake or associated watercourses and liable to cause significant harmful effects in another Basin country shall be subject to prior authorization from the Commission issued upon recommendation of the Water Resources Advisory Committee and the Environment, Science and Planning Advisory Committee.

For this purpose, the Charter gives a mandate to the Commission to list the types of planned measures for which prior notification is compulsory and to update the list regularly.<sup>37</sup> Prior notification is an important tool to ensure effective management and maintain a spirit of dialogue among riparian States. As underlined by the ICJ in the *Pulp Mills* case with respect to the obligation to give prior notification to the relevant basin organization, "the obligation to inform CARU allows for the initiation of co-operation between the Parties which is necessary in order to fulfil the obligation of prevention".<sup>38</sup>

The LCBC was also provided with a specific mandate in dispute resolution. According to Article 9(h) of the 1964 Statute, the Commission shall examine complaints and assist in settling disputes. While the content and extent of this competence was not clearly determined, analysis of the provisions of the recent Water Charter provide some insights. According to Article 87 of the Water Charter, entitled "Dispute Resolution by the Lake Chad Basin Commission":

If the parties fail to come to an agreement after negotiation, any party thereto shall bring the case to the Commission, which shall conduct good offices or mediation procedure in attempt to reach a settlement.

In light of this provision, the competence of the LCBC is limited to interstate disputes since only this type of dispute was taken in account. Moreover, Article 9(g) of the 1964 Statute appears to limit LCBC's mandate to the settlement of interstate disputes through diplomatic dispute settlement procedures, notably good offices or mediation. It provides that among the functions of the Commission are "to examine complaints and to promote the settlement of disputes and the resolution of differences". This approach is coherent with basin

<sup>37</sup> *ibid* art 52(2) and (3).

<sup>38</sup> *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (n 1) 14, para 102.

commission practice, in which there is a trend towards the internalisation of water dispute resolution. The internalisation of dispute settlement within basin commissions results from the growing recognition in basin agreements of the capacity of those institutions to settle disputes between their member States.<sup>39</sup> Basin organizations therefore contribute to maintaining the spirit of cooperation between States. Concretely, internalisation consists of the prior intervention of the basin organisation to solve the dispute. Only when the organisation fails to solve the dispute can it be submitted to a third party for resolution. In the case of the LCBC, the Commission intervenes at the first stage in the process of dispute resolution before the involvement of a third party. If the Commission fails to settle the dispute, the case could then be submitted to a competent regional or sub-regional organisation<sup>40</sup> and, ultimately, to the ICJ.<sup>41</sup>

## 2 *From Technical Forum to Military Platform: The Lake Chad Basin Commission and the Fight against Terrorism*

While the prevention and resolution of conflicts over water uses between riparian countries remains the core objective of the LCBC, the Lake Chad region is also characterized by a combination of major security and socio-political challenges involving non-state actors. The emergence and expansion of the Islamist group Boko Haram has raised peace and security concerns in the Lake Chad Basin. Originating in north-east Nigeria, the Boko Haram insurgency has been ongoing for the past seven years, gradually spreading to other parts of the country as well as to a large portion of the Lake Chad Basin, threatening the stability of the region.<sup>42</sup> Several studies have highlighted the fact that the emergence and expansion of this group is largely the result of the social inequalities among populations in this area and the disinvestment of states in these outlying regions.<sup>43</sup> These factors, together with the

39 For a detailed analysis of the practice of basin organizations on the internalisation of dispute resolution see K Sangbana, *La protection des eaux douces transfrontières contre la pollution: dimensions normatives et institutionnelles* (Schulthess 2017) 261–275.

40 Water Charter of the Lake Chad Basin (n 35) art 88 provides: 'if the Commission is unable to settle the dispute, any party to the dispute may bring the case before the competent regional and sub-regional authorities, which shall in turn undertake the conduct of good offices or mediation procedures'.

41 *ibid* art 89 provides: 'if all the aforementioned dispute resolution mechanisms fail, the States concerned in the dispute shall bring the case for arbitration or judicial resolution by the International Court of Justice'.

42 GRIP, 'La CBLT et les défis sécuritaires du bassin du lac Tchad' (December 2014) Note n°14 GRIP, 5.

43 See G-H Mbia Yebega, 'Boko Haram : il ne faut pas se tromper de combat' (2014) Irenees.net, available at [http://www.irenees.net/bdf\\_fiche-analyse-1080\\_en.html](http://www.irenees.net/bdf_fiche-analyse-1080_en.html) (accessed 13

impact of climate change on the economic and social structures in the basin, have made the local populations vulnerable and underline the evident link between socio-economic development and security issues. It is in this context that the LCBC has emerged as the first strategic framework for the maintenance of peace and security in the Lake Chad Basin region, first by providing tools to address the root causes of the emergence and expansion of Boko Haram and, second, by serving as a collective security tool coordinating military operations.

The LCBC's contribution as a mechanism for promoting socio-economic development in the Lake Chad Basin reflects a preventative approach in securing the Lake Chad Basin. It must be said that the LCBC, through the tasks assigned to it in its constitutive instruments, is fully in line with this objective. As mentioned above, the main task of the Commission is to promote and co-ordinate the development of the Lake Chad Basin in order to ensure the socio-economic development of the region. According to Article 4(k) of the Water Charter, the Charter has as its specific objective "improving the socio-economic conditions of the populations which includes: ... (iv) food security, ensuring safe, regular food supplies to all people, (v) poverty eradication and improved life-styles to raise living standards and maintain conditions for peaceful cooperation in the member States".

The programs and projects to be developed under the LCBC therefore go beyond water allocation issues and address economic development needs. One of the programs developed to address the root causes of the emergence and expansion of terrorism activities was the *Emergency Program on Priority Development for the Youth and Vulnerable Populations of the Lake Chad Region*.<sup>44</sup> The program was intended to contribute to food security, employment, and the social inclusion of the youth by improving, in a sustainable way, the living conditions of the Lake Chad population through a series of actions, including the realization of agricultural production microprojects and capacity building for the local population. Thus, from an organization managing water resources, the Commission has evolved into a regional development organization. The role played by the LCBC is common to basin organizations in West Africa, where these organizations are primarily perceived as tools to promote socio-economic development.

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July 2020); M A A Koundy, 'Boko Haram, l'histoire d'une méconnaissance des droit de l'homme' (July 2016) Irenees.net, available at [http://www.irenees.net/bdf\\_fiche-analyse-1082\\_en.html](http://www.irenees.net/bdf_fiche-analyse-1082_en.html) (accessed 13 July 2020).

44 LCBC, *Emergency Program on Priority Development for the Youth and Vulnerable Populations of the Lake Chad Region* (LCBC 2016).

The second contribution of the LCBC in the fight against the Boko Haram threat is more peculiar. Given the increasing threat posed by the Boko Haram group to the region, LCBC member States decided to step up their military response by reactivating the Multinational Joint Task Force. The decision to establish such a force took place in 1994 to combat organised crime and banditry in the region, but this decision had very few tangible effects due to certain rivalries and disputes among States, such as the territorial dispute between Cameroon and Nigeria concerning the Bakassi Peninsula and in the Lake Chad region.<sup>45</sup> During their 14th ordinary summit on 30 April 2012 in N'Djamena, the LCBC's Heads of State and government decided to reactivate and operationalise the Multinational Joint Task Force and to expand its mandate so as to include the fight against Boko Haram.<sup>46</sup> In October 2014, the force was renamed the Multinational Joint Task Force against Boko Haram (MNJTF) during the extraordinary summit of the LCBC member States and Benin in Niamey, Niger. The LCBC Executive Secretary acts as the Head of Mission.<sup>47</sup>

Notwithstanding that the MNJTF is an initiative of the LCBC, only four of the six member States – Cameroon, Niger, Nigeria and Chad, joined by non-member Benin – are part of the force. As a result, the MNJTF appears as a coalition of States that came into being to confront a common threat.<sup>48</sup> The MNJTF is described as an offensive stabilization mechanism with the objective of combating Boko Haram and other groups labelled as terrorists operating around the Lake Chad Basin.<sup>49</sup> The mandate of the MNJTF is to:

create a safe and secure environment in the areas affected by the activities of Boko Haram and other terrorist groups ..., facilitate the implementation of overall stabilization programmes by the LCBC Member states and Benin in the affected areas, including the full restoration of state authority and the return of internally displaced people and refugees; and facilitate, within the limit of its capabilities,

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45 See Lemoalle and Magrin (n 33) 166.

46 Final Statement of the 14th Summit of the Heads of State and Government of the LCBC Member States, N'Djamena (30 April 2012) available at [http://www.cblt.org/sites/default/files/communiqué\\_final\\_14\\_sommet\\_fr.pdf](http://www.cblt.org/sites/default/files/communiqué_final_14_sommet_fr.pdf) (accessed 13 July 2020).

47 LCBC, 'La lutte contre Boko Haram, état des lieux et de la situation: efforts de la Commission du bassin du lac Tchad' (June 2016) *LCBC Document – Restricted Access*, Bangui.

48 W Assanvo and others, *West Africa Report: Assessing the Multinational Joint Task Force against Boko Haram* (Institute for Security Studies September 2016) 2.

49 *ibid.*

humanitarian operations and the delivery of assistance to the affected populations.<sup>50</sup>

Recognising the complexity of its mission, three components – military, police and civilian – were to be established. To date, only the first has been achieved with approximately 3,000 military personnel.<sup>51</sup> No definitive evaluation of the operation is available, but it has been hailed as a notable success in the fight against Boko Haram. Sources point out, among other achievements, that there has been the release of hostages, the liberation of certain areas previously occupied by Boko Haram and losses and defections from within the ranks of Boko Haram.<sup>52</sup>

The establishment of LCBC's MNJTF remains unprecedented and raises several questions. First, no provision of the statute explicitly permitted LCBC to exercise such a mandate. This said, it is important to note that the decision LCBC took to coordinate military operations against Boko Haram appears to have occurred more by accident than design. Finding a common strategy to combat the Boko Haram phenomenon has long been hindered by the fact that the States directly affected have not found an appropriate forum for cooperation to discuss the issue. The four States most affected by the activities of the Boko Haram group, namely Chad, Cameroon, Niger and Nigeria, belong to two different regions. Each region has an integration organization with a mandate in international peace and security maintenance, including the Economic Community of West African States (ECOWAS) for Nigeria and Niger and the Economic Community of Central African States (ECCAS) for Cameroon and Chad. All attempts to develop a common strategy through these two institutions have systematically failed. Since most of the countries concerned belong to the LCBC and Boko Haram's outreach had spread to the shores of the Lake Chad Basin, the organization appeared as the 'natural' or 'default' institutional framework to take on this task. In view of the major risks of insecurity and destabilization in the region, the LCBC has been perceived as an appropriate strategic framework for the coordination of military operations in the restoration of regional peace and security.

The second question that emerges from the establishment of the MNJTF is whether the LCBC mandate in coordinating military operations is compatible

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50 AU, Report of the Chairperson of the AU Commission on regional and international efforts to combat the Boko Haram terrorist group (29 January 2015) available at [www.peaceau.org/uploads/cps484-rpt-boko-haram-29-1-2015.pdf](http://www.peaceau.org/uploads/cps484-rpt-boko-haram-29-1-2015.pdf) (accessed 13 July 2020).

51 Information provided by LCBC staff, on file with the authors.

52 W Assanvo and others (n 48) 11–12.

with the tasks that can be assigned to a basin commission. The strategy of the LCBC to avoid overlaps between its mandate in coordinating military operations and day-to-day water management was not to involve the LCBC Secretariat in the MNJTF operations. Only the Executive Secretary acts as Head of Mission, and a military cabinet was created to assist him. However, some considerations that could hamper the exercise of the LCBC mandate to manage and protect water resources can be mentioned. The first consideration concerns the restriction on accessing and using certain data and information. Data and information which is considered important in the conduct of military operations can be subject to prior authorization of the military hierarchy, which has the discretion to decide whether to transmit it or not. This situation can often lead to tensions between the military and technical experts and affects the water management programmes. The second consideration concerns the possibility for the LCBC development schemes and its civilian staff to become potential targets for extreme Islamist actions. There is a chance they could be directly attacked as a retaliation for MNJTF operations. These considerations could raise serious reservations about linking military objectives and water management issues.

Despite these considerations, the LCBC remains today the only framework for dialogue and action at the disposal of the Lake Chad Basin States to address the Boko Haram threat. This role of the Commission has been recognized by the United Nations Security Council. In its Resolution 2349 adopted on 31 March 2017,<sup>53</sup> the Security Council praised the MNJTF actions against Boko Haram and called for the Member States of the LCBC and Benin to continue their efforts in the fight against Boko Haram. The Security Council also welcomed the multilateral and bilateral support provided for the military efforts in the region and encouraged greater support to strengthen the operational capability of the MNJTF to further the region's efforts to combat Boko Haram and the Islamic State of Iraq and the Levant (ISIL). In that respect, the Council called for the urgent deployment of the remaining MNJTF civilian personnel and encouraged Member States to contribute to the African Union Trust Fund to support the MNJTF. The Security Council therefore appears to have endorsed the LCBC MNJTF. However, it is interesting to note that in the Resolution, the Security Council emphasized the primary role of the LCBC which is to address the root causes of activities that threaten peace and security, *i.e.* socio-economic development. The Council thereby encouraged the ECOWAS

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53 UNSC Res 2349 (31 March 2017) UN Doc S/RES/2349 available at [http://digitallibrary.un.org/record/863830/files/S\\_RES\\_2349%282017%29-EN.pdf](http://digitallibrary.un.org/record/863830/files/S_RES_2349%282017%29-EN.pdf) (accessed 13 July 2020).

and the ECCAS, together with the LCBC, to develop a comprehensive and common strategy that effectively addresses the drivers that contributed to the emergence of Boko Haram and ISIL, with a particular focus on long term development needs.

In conclusion, the LCBC provides a good example of a basin commission whose competencies were expanded over time to address the specific needs of the basin. The LCBC experience shows that basin commissions can play an important role in the maintenance of peace and security since, given their original mandate, they are naturally designed to prevent the causes of activities threatening international peace and security. However, the extension of their mandate to military operations appears more like a reactionary move which requires certain adjustments to be made. In particular, as the original mandates did not envisage such a role, mechanisms like the MNJTF have had to be set up, processes around data and information have had to be established and linking military operations to water management requires a consideration of the security risks now faced by staff working in this area. Moreover, the contribution of basin commissions to such tasks must necessarily be limited in time to avoid impeding their activities in the management of shared water resources.

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