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**The law of the non-navigational uses of international watercourses: Note presented by Mr.
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Note presented by Mr. Constantin A. Stavropoulos

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It would be useful for the members of the International Law Commission to have before them, during the discussions on the first report of the Special Rapporteur¹ on the topic of "The law of the non-navigational uses of international watercourses", the Draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States, prepared by UNEP. A short account of the background is provided below,² followed by the text of the draft principles.

**A. Action taken by UNEP and by
the General Assembly**

ACTION TAKEN BY THE UNEP INTERGOVERNMENTAL WORKING GROUP OF EXPERTS ON NATURAL RESOURCES SHARED BY TWO OR MORE STATES

1. Pursuant to the provisions of General Assembly resolution 3129 (XXVIII) of 13 December 1973, the Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States was established by UNEP in 1975.³ The working Group held five sessions in the period 1976-1978. Interest in the activities of the Working Group grew, and at the final session, held from 23 January to 7 February 1978, experts from 26 States took part.⁴ At that final session, the Working Group adopted 15 draft principles entitled "Draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States", which represented the consensus

of the experts. These were accompanied by a variety of declarations and reservations.⁵ In this connection, it should be noted that the principles are preceded by an explanatory note.

ACTION TAKEN BY THE UNEP GOVERNING COUNCIL

2. At its sixth session, in 1978, the UNEP Governing Council had before it a note by the Executive Director transmitting the final report of the Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States.⁶ At its 12th plenary meeting, on 19 May 1978, the Governing Council adopted by consensus decision 6/14, entitled "Co-operation in the field of the environment concerning natural resources shared by two or more States",⁷ reading as follows:

The Governing Council,

Affirming the principles of the Declaration of the United Nations Conference on the Human Environment,

Taking duly into account General Assembly resolution 3129 (XXVIII) of 13 December 1973 entitled "Co-operation in the field of the environment concerning natural resources shared by two or more States",

Expressing its satisfaction at the work done by the Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States in carrying out the tasks entrusted to it for the implementation of the above resolution,

Taking into consideration articles 3 and 30 of the Charter of Economic Rights and Duties of States, as adopted by the General Assembly in its resolution 3281 (XXIX) of 12 December 1974,

Recognizing the right of countries to provide specific solutions on a bilateral or regional basis,

Desiring to promote and develop international law regarding the conservation and harmonious exploitation of natural resources shared by two or more States,

1. *Approves* the report of the Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States on the work of its fifth session, containing the "Draft principles of conduct in the field of the environment for the guidance of States in the conservation and harmonious utilization of natural resources shared by two or more States";

2. *Authorizes* the Executive Director to transmit the report to the General Assembly at its thirty-third session as the final report of the Working Group of Experts, and invites the Assembly to adopt the draft principles.⁸

¹ See p. 155 above, document A/CN.4/367.

² For further details, see *Yearbook ... 1980*, vol. II (Part Two), pp. 123-127, commentary to art. 5, paras (11)-(31).

³ The Intergovernmental Working Group was initially composed of experts from the following 17 countries: Argentina, Brazil, Canada, France, India, Iraq, Kenya, Mexico, Morocco, Netherlands, Philippines, Poland, Romania, Senegal, Sweden, USSR and United States of America. An observer from Turkey was also present. See the report of the Working Group on its first session (UNEP/IG.2/4 paras. 2 and 5, annexed to UNEP/GC/74).

⁴ Argentina; Bangladesh; Brazil; Canada; France; Germany, Federal Republic of; Ghana; Greece; India; Iran; Iraq; Jamaica; Kenya; Mexico; Netherlands; Philippines; Poland; Romania; Senegal; Sweden; Switzerland; Uganda; USSR; United Kingdom; United States of America; Yugoslavia. Experts from Austria, Japan and Turkey participated as observers. See the report of the Working Group on its fifth session (UNEP/IG.12/2, para. 11, annexed to UNEP/GC.6/17).

⁵ *Ibid.*, para. 15.

⁶ See footnote 4 above, *in fine*.

⁷ *Official Records of the General Assembly, Thirty-third Session, Supplement No. 25 (A/33/25)*, chap. VIII, containing a brief summary of the discussion on the subject in the Governing Council.

⁸ *Ibid.*, pp. 154-155, annex I.

ACTION TAKEN BY THE GENERAL ASSEMBLY

3. By its resolution 33/87 of 15 December 1978, the General Assembly requested the Secretary-General to submit the principles to Member States for consideration and comment. Thirty-six Governments commented on the report of the Intergovernmental Working Group of Experts. The report of the Secretary-General on co-operation in the field of the environment concerning natural resources shared by two or more States contains the following summary of replies received:

(a) Thirty of the 36 Governments whose views were received were generally in favour of the adoption of the principles. Without derogating from their favourable views on the principles, some of those Governments, however, expressed reservations on specific principles, or suggested alternative formulations of some of them. Some expressed the view that the adoption of the principles should not preclude the solution of specific problems on shared natural resources through bilateral agreements based on principles other than the 15 principles.

(b) Many Governments expressed views on the legal status of the principles. On this issue most of the Governments that regarded the principles as acceptable also wanted the principles to be regarded as guidelines only and not as an international code of conduct which was necessarily binding on States. Nearly all the Governments in favour of the principles wanted those principles to be used as the negotiating basis for the preparation of bilateral or multilateral treaties among States with regard to their conduct when dealing with natural resources they shared in common. Some of them even indicated that similar principles were already being used by States to make treaties relating to shared natural resources.

...

4. Two States expressed strong opposition to the principles. A number of States were concerned that there was no definition of shared natural resources.⁹ The Secretary-General's report suggested that the General Assembly might wish to adopt the principles.

5. A draft resolution was introduced in the Second Committee which would have had the General Assembly adopt the draft principles for the guidance of States and request States Members "to respect the principles in their inter-State relations".¹⁰ The draft resolution attracted both considerable support and opposition.

6. Efforts were made in the Second Committee to find a compromise solution. Finally, the representative of Pakistan, on behalf of the sponsors, introduced a revised version of the draft resolution as the highest measure of agreement that could be reached in informal discussions. The operative paragraphs as proposed by the representative of Pakistan included the following:

The General Assembly,

...

2. *Adopts* the draft principles as guidelines and recommendations in the conservation and harmonious utilization of natural resources

⁹ A/34/557 and Corr.1, para. 6.

¹⁰ *Ibid.*, annex. The Working Group had stated in its final report that, for want of time, it had not been in a position to enter into an in-depth discussion of the question of the definition of shared natural resources, and had therefore not reached a conclusion (UNEP/IG.12/2, para. 16, annexed to UNEP/GC.6/17).

¹¹ *Official Records of the General Assembly, Thirty-fourth Session, Annexes*, agenda item 60, document A/34/837, para. 18.

shared by two or more States without prejudice to the binding nature of those rules already recognized as such in international law;

3. *Requests* all States to use the principles as guidelines and recommendations in the formulation of bilateral or multilateral conventions regarding natural resources shared by two or more States, on the basis of the principle of good faith and in the spirit of good neighbourliness and in such a way as to enhance and not to affect adversely development and the interests of all countries, in particular the developing countries;

...

The representative of Pakistan stated that agreement could not be reached on the proposed text because some delegations continued to press for the replacement of the word "*Adopts*" by the phrase "*Takes note of*". The representative of Brazil proposed that paragraph 2 of the resolution be so amended. The Brazilian amendment was adopted in the Second Committee by 59 votes to 25, with 27 abstentions.¹³

7. On 18 December 1979, the General Assembly adopted without a vote, as resolution 34/186, the revised draft resolution submitted by the Second Committee. That resolution, entitled "Co-operation in the field of the environment concerning natural resources shared by two or more States", reads as follows:

The General Assembly,

Recalling the relevant provisions of its resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, in which it reaffirmed the principle of full permanent sovereignty of every State over its natural resources and the responsibility of States as set out in the Declaration of the United Nations Conference on the Human Environment to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States and to co-operate in developing the international law regarding liability and compensation for such damages,

Recalling its resolution 3129 (XXVIII) of 13 December 1973 on co-operation in the field of the environment concerning natural resources shared by two or more States,

Recalling also the Charter of Economic Rights and Duties of States, contained in its resolution 3281 (XXIX) of 12 December 1974,

Noting that the Governing Council of the United Nations Environment Programme, by its decision 6/14 of 19 May 1978, invited the General Assembly to adopt the draft principles of conduct in the field of the environment for the guidance of States in the conservation and harmonious utilization of natural resources shared by two or more States, including the explanatory note, contained in the report of the Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States established under Governing Council decision 44 (III) of 25 April 1975,

Taking note of the report of the Secretary-General requested by the General Assembly in its resolution 33/87 of 15 December 1978 and containing summaries of the comments made by Governments regarding the draft principles, as well as other significant information, recommendations and suggestions in connection therewith,

Desiring to promote effective co-operation among States for the development of international law regarding the conservation and harmonious utilization of natural resources shared by two or more States,

Recognizing the right of States to provide specific solutions on a bilateral or regional basis,

Recalling that the principles have been drawn up for the guidance of States in the conservation and harmonious utilization of natural resources shared by two or more States,

1. *Takes note* of the report as adopted of the Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States established under decision 44 (III) of the Governing Council of the United Nations Environment Programme in conformity with General Assembly resolution 3129 (XXVIII);

¹² *Ibid.*, para. 19.

¹³ *Ibid.*, paras. 20 and 23.

2. *Takes note* of the draft principles as guidelines and recommendations in the conservation and harmonious utilization of natural resources shared by two or more States without prejudice to the binding nature of those rules already recognized as such in international law;

3. *Requests* all States to use the principles as guidelines and recommendations in the formulation of bilateral or multilateral conventions regarding natural resources shared by two or more States, on the basis of the principle of good faith and in the spirit of good neighbourliness and in such a way as to enhance and not adversely affect development and the interests of all countries, in particular the developing countries;

4. *Requests* the Governing Council of the United Nations Environment Programme to submit to the General Assembly at its thirty-sixth session, through the Economic and Social Council, a report on the progress made in the implementation of the present resolution.

8. The UNEP Governing Council submitted to the General Assembly, at its thirty-seventh session, the progress report requested in paragraph 4 of resolution 34/186.¹⁴ The report indicated that 27 States had replied to a request for relevant information on progress made in the implementation of resolution 34/186. Of that number, according to the report, eight had expressed support for the principles without citing specific examples of their use, 13 had expressed support for the principles and given examples of their application, five had reported that they had had no experience in implementing the principles and one had reported that it had not applied the principles as guidelines and recommendations in the formulation of bilateral or multilateral conventions regarding shared natural resources because it considered the definition of "shared natural resources" to be inappropriate.

9. On 20 December 1982, the General Assembly adopted without a vote resolution 37/217, entitled "International co-operation in the field of the environment", which reads in part:

The General Assembly,

...

6. *Takes note* of Governing Council decision 10/14 of 31 May 1982 on programme matters, comprising seven specific subsections, and in this context:

(a) *Takes note* of the progress report on co-operation in the field of the environment concerning natural resources shared by two or more States, reiterates the terms of its resolution 34/186 of 18 December 1979 as a whole, and requests the Governing Council to submit a further progress report on its implementation to the General Assembly at its fortieth session;

...

B. Draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States

EXPLANATORY NOTE

The draft principles of conduct, in this note further referred to as "the principles", have been drawn up for the guidance of States in the field of the environment with respect to the conservation and harmonious utilization of natural resources shared by two or more States.

The principles refer to such conduct of individual States as is considered conducive to the attainment of the said objective in a manner which does not adversely affect the environment. Moreover, the principles aim to encourage States sharing a natural resource to co-operate in the field of the environment.

An attempt has been made to avoid language which might create the impression of intending to refer, as the case may be, either to a specific legal obligation under international law or to the absence of such obligation.

The language used throughout does not seek to pre-judge whether or to what extent the conduct envisaged in the principles is already prescribed by existing rules of general international law. Neither does the formulation intend to express an opinion as to whether or to what extent and in what manner the principles—as far as they do not reflect already existing rules of general international law—should be incorporated in the body of general international law.

DEFINITION

In the present text, the expression "significantly affect" refers to any appreciable effects on a shared natural resource and excludes *de minimis* effects.

Principle 1

It is necessary for States to co-operate in the field of the environment concerning the conservation and harmonious utilization of natural resources shared by two or more States. Accordingly, it is necessary that, consistent with the concept of equitable utilization of shared natural resources, States co-operate with a view to controlling, preventing, reducing or eliminating adverse environmental effects which may result from the utilization of such resources. Such co-operation is to take place on an equal footing and taking into account the sovereignty, rights and interests of the States concerned.

Principle 2

In order to ensure effective international co-operation in the field of the environment concerning the conservation and harmonious utilization of natural resources shared by two or more States, States sharing such natural resources should endeavour to conclude bilateral or multilateral agreements between or among themselves in order to secure specific regulation of their conduct in this respect, applying as necessary the present principles in a legally binding manner, or should endeavour to enter into other arrangements, as appropriate, for this purpose. In entering into such agreements or arrangements, States should consider the establishment of institutional structures, such as joint international commissions, for consultations on environmental problems relating to the protection and use of shared natural resources.

Principle 3

1. States have, in accordance with the Charter of the United Nations and the principles of international law,

¹⁴ A/37/396, annex.

the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

2. The principles set forth in paragraph 1, as well as the other principles contained in this document, apply to shared natural resources.

3. Accordingly, it is necessary for each State to avoid to the maximum extent possible and to reduce to the minimum extent possible the adverse environmental effects beyond its jurisdiction of the utilization of a shared natural resource so as to protect the environment, in particular when such utilization might:

(a) cause damage to the environment which could have repercussions on the utilization of the resource by another sharing State;

(b) threaten the conservation of a shared renewable resource;

(c) endanger the health of the population of another State.

Without prejudice to the generality of the above principle, it should be interpreted taking into account, where appropriate, the practical capabilities of States sharing the natural resource.

Principle 4

States should make environmental assessments before engaging in any activity with respect to a shared natural resource which may create a risk of significantly* affecting the environment of another State or States sharing that resource.

Principle 5

States sharing a natural resource should, to the extent practicable, exchange information and engage in consultations on a regular basis on its environmental aspects.

Principle 6

1. It is necessary for every State sharing a natural resource with one or more other States:

(a) to notify in advance the other State or States of the pertinent details of plans to initiate, or make a change in the conservation or utilization of the resource which can reasonably be expected to affect significantly* the environment in the territory of the other State or States; and

(b) upon request of the other State or States, to enter into consultations concerning the above-mentioned plans; and

(c) to provide, upon request to that effect by the other State or States, specific additional pertinent information concerning such plans; and

(d) if there has been no advance notification as envisaged in subparagraph (a) above, to enter into consultations about such plans upon request of the other State or States.

2. In cases where the transmission of certain information is prevented by national legislation or international conventions, the State or States withholding such information shall nevertheless, on the basis, in particular, of the principle of good faith and in the spirit of good neighbourliness, co-operate with the other interested State or States with the aim of finding a satisfactory solution.

Principle 7

Exchange of information, notification, consultations and other forms of co-operation regarding shared natural resources are carried out on the basis of the principle of good faith and in the spirit of good neighbourliness and in such a way as to avoid any unreasonable delays either in the forms of co-operation or in carrying out development or conservation projects.

Principle 8

When it would be useful to clarify environmental problems relating to a shared natural resource, States should engage in joint scientific studies and assessments, with a view to facilitating the finding of appropriate and satisfactory solutions to such problems on the basis of agreed data.

Principle 9

1. States have a duty urgently to inform other States which may be affected:

(a) of any emergency situation arising from the utilization of a shared natural resource which might cause sudden harmful effects on their environment;

(b) of any sudden grave natural events related to a shared natural resource which may affect the environment of such States.

2. States should also, when appropriate, inform the competent international organizations of any such situation or event.

3. States concerned should co-operate, in particular by means of agreed contingency plans, when appropriate, and mutual assistance, in order to avert grave situations, and to eliminate, reduce or correct, as far as possible, the effects of such situations or events.

Principle 10

States sharing a natural resource should, when appropriate, consider the possibility of jointly seeking the services of any competent international organization in clarifying the environmental problems relating to the conservation or utilization of such natural resource.

* See definition of this term above.

Principle 11

1. The relevant provisions of the Charter of the United Nations and of the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations apply to the settlement of environmental disputes arising out of the conservation or utilization of shared natural resources.

2. In case negotiations or other non-binding means have failed to settle a dispute within a reasonable time, it is necessary for States to submit the dispute to an appropriate settlement procedure which is mutually agreed by them, preferably in advance. The procedure should be speedy, effective and binding.

3. It is necessary for the States parties to such a dispute to refrain from any action which may aggravate the situation with respect to the environment to the extent of creating an obstacle to the amicable settlement of the dispute.

Principle 12

1. States are responsible for the fulfilment of their international obligations in the field of the environment concerning the conservation and utilization of shared natural resources. They are subject to liability in accordance with applicable international law for environmental damage resulting from violations of these obligations caused to areas beyond their jurisdiction.

2. States should co-operate to develop further international law regarding liability and compensation for

the victims of environmental damage arising out of the utilization of a shared natural resource and caused to areas beyond their jurisdiction.

Principle 13

It is necessary for States, when considering, under their domestic environmental policy, the permissibility of domestic activities, to take into account the potential adverse environmental effects arising out of the utilization of shared natural resources, without discrimination as to whether the effects would occur within their jurisdiction or outside it.

Principle 14

States should endeavour, in accordance with their legal systems and, where appropriate, on a basis agreed by them, to provide persons in other States who have been or may be adversely affected by environmental damage resulting from the utilization of shared natural resources with equivalent access to and treatment in the same administrative and judicial proceedings, and make available to them the same remedies as are available to persons within their own jurisdictions who have been or may be similarly affected.

Principle 15

The present principles should be interpreted and applied in such a way as to enhance and not to affect adversely development and the interests of all countries, and in particular of the developing countries.