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Replies of Governments to the Commission's questionnaire

Topic:
Law of the non-navigational uses of international watercourses

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THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

[Agenda item 4]

DOCUMENT A/CN.4/329 AND ADD.1

Replies of Governments to the Commission's questionnaire

[Original: English/French]
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Introduction

1. By paragraph 4(e) of section I of resolution 3315 (XXIX) of 14 December 1974, the General Assembly recommended that the International Law Commission should continue its study of the law of the non-navigational uses of international watercourses, taking into account General Assembly resolutions 2669 (XXV) of 8 December 1970 and 3071 (XXVIII) of 30 November 1973 and other resolutions concerning the work of the Commission on the topic, and comments received from Member States on the questions referred to in the annex to chapter V of the report of the Commission on the work of its twenty-sixth session.¹ Comments received from Member States pursuant to resolution 3315 (XXIX) were issued in document A/CN.4/294 and Add.1.²

2. By paragraph 5 of its resolution 31/97 of 15 December 1976, the General Assembly urged Member States that had not yet done so to submit to the Secretary-General their written comments on the subject of the law of the non-navigational uses of international watercourses.

3. By a circular note dated 18 January 1977, the Secretary-General invited Member States that had not yet done so to submit as soon as possible their written comments referred to in resolution 31/97.

4. At the Commission's thirtieth session, replies received to this note were circulated in document A/CN.4/314.³ An additional reply to the Secretary-General's note was reproduced in document A/CN.4/324 and circulated at the thirty-first session.⁴

5. The General Assembly, by paragraph 4(d) of section I of resolution 33/139 of 19 December 1978, recommended that the Commission should continue its work on the law of the non-navigational uses of international watercourses.

6. At its thirty-first session, in 1979, in view of the importance of the topic and the need to have at its disposal the views of as many Governments of Member States as possible, the Commission decided again to request, through the Secretary-General, the Governments of Member States which had not already done so to submit their written comments on the questionnaire formulated by the Commission in 1974.⁵

7. The Secretary-General, by a circular note dated 18 October 1979, invited the Governments of Member States which had not yet already done so, to submit, as soon as possible their written comments on the Commission's questionnaire.

8. The General Assembly, by paragraph 4(d) of resolution 34/141 of 17 December 1979, recommended that the Commission continue its work on the topic, taking into account the replies from Governments to the questionnaire prepared by the Commission and the views expressed on the topic in debates in the General Assembly.

9. By 3 July 1980, new replies to the questionnaire prepared by the Commission had been received from the Governments of the following States: Greece, Luxembourg, Niger and the Syrian Arab Republic. These replies are reproduced in the present document, which has been organized along the same lines as documents A/CN.4/294 and Add.1, A/CN.4/314 and A/CN.4/324, that is, giving first the general comments and observations and then the replies to the specific questions reproduced below.

10. The text of the questionnaire is as follows:

- A. What would be the appropriate scope of the definition of an international watercourse, in a study of the legal aspects of fresh water uses on the one hand and of fresh water pollution on the other hand?
- B. Is the geographical concept of an international drainage basin the appropriate basis for a study of the legal aspects of non-navigational uses of international watercourses?
- C. Is the geographical concept of an international drainage basin the appropriate basis for a study of the legal aspects of the pollution of international watercourses?
- D. Should the Commission adopt the following outline for fresh water uses as the basis of its study:
 - (a) Agricultural uses:
 1. Irrigation;
 2. Drainage;
 3. Waste disposal;
 4. Aquatic food production;
 - (b) Economic and commercial uses:
 1. Energy production (hydroelectric, nuclear and mechanical);
 2. Manufacturing;
 3. Construction;
 4. Transportation other than navigation;
 5. Timber floating;
 6. Waste disposal;
 7. Extractive (mining, oil production, etc.);
 - (c) Domestic and social uses:
 1. Consumptive (drinking, cooking, washing, laundry, etc.);
 2. Waste disposal;
 3. Recreational (swimming, sport, fishing, boating, etc.)?
- E. Are there any other uses that should be included?
- F. Should the Commission include flood control and erosion problems in its study?
- G. Should the Commission take account in its study of the interaction between use for navigation and other uses?
- H. Are you in favour of the Commission taking up the problem of pollution of international watercourses as the initial stage in its study?
- I. Should special arrangements be made for ensuring that the Commission is provided with the technical, scientific and economic advice which will be required, through such means as the establishment of a Committee of Experts?

¹ *Yearbook...1974*, vol. II (Part One), p. 301, document A/9610/Rev.1.

² *Yearbook... 1976*, vol. II (Part One), p. 147.

³ *Yearbook... 1978*, vol. II (Part One), p. 253.

⁴ *Yearbook... 1979*, vol. II (Part One), p. 178.

⁵ *Ibid.*, vol. II (Part Two), p. 169, document A/34/10, para. 148.

I. General comments and observations

Greece

[Original: French]
[8 June 1979]

The question of the law of the non-navigational uses of international watercourses is of vital importance to Greece. This law, which affects friendly relations among States, and, in particular, neighbourly intercourse, has many components and is overdue for codification in the interest of the international community. Greece hopes that the Commission, in keeping with its long-standing tradition, will perform a useful exercise in the codification and progressive development of the law on this subject as quickly as it can.

Luxembourg

[Original: French]
[5 June 1980]

An example that deserves mention is the Commission internationale pour la Protection de la Moselle contre la pollution, which was set up to guarantee the conservation of the waters of the Moselle and to ensure adequate co-operation by the competent authorities. The task of the Moselle Commission is to ensure co-operation between the three contracting Governments with a view to protecting this watercourse from pollution. In addition, the Commission collaborates with the following international commissions: (a) Commission internationale pour la protection de la Sarre contre la pollution; (b) Commission internationale pour la protection du Rhin contre la pollution; (c) Commission de la Moselle (for navigation).

II. Replies to specific questions

Question A

What would be the appropriate scope of the definition of an international watercourse, in a study of the legal aspects of fresh water uses on the one hand and of fresh water pollution on the other hand?

Greece

[Original: French]
[8 June 1979]

“International watercourse” traditionally means any watercourse—usually rivers, but also canals and lakes—separating or flowing through the territories of two or more States. This definition, however, has for some time been obsolete and has been superseded by the modern concept of an international drainage basin. This basic concept, which is broader (it also embraces the tributaries of the international river and ground water), makes for more rational and effective regulation of the legal relationships which should exist among States sharing the waters of such a basin, so as to ensure, for example, that from the qualitative or quantitative angle, the use of such waters by a State does not damage the right of other riparian States to the same waters.

Luxembourg

[Original: French]
[5 June 1980]

It can be inferred from the questionnaire that in the first instance this is a matter of defining an international watercourse. Since, in addition to the watercourse itself, the manifold uses of the tributaries also influence the flow, quality and degree of pollution of the water, it is essential to broaden the concept of an

international watercourse to include the geographical concept of a national or international drainage basin. In other words, to ensure rational use of the water, the entire catchment area will have to be regarded in that way by all countries contiguous to or forming part of it, even when the tributaries in question are very distant. All the countries concerned must therefore collaborate in drawing up a general plan for the utilization of the catchment area's resources.

Accordingly, a study will first have to be made of the various legal regimes governing the watercourse and its tributaries, and of the national laws regulating the use of their waters. It will also be necessary to study the economic, political and legal treaties concluded by countries on the joint use of waters forming a frontier between them.

As the rational exploitation of all water resources is closely dependent on the degree of pollution of the water, the elimination of such pollution is a prime requirement. An excessive salt content, for example, makes irrigation water unfit for use. The countries concerned will therefore have to modify their water-purification and preventive-measures legislation with this aim in view. International treaties must lay down permitted levels of pollution with provision for inspection of the degree of pollution, control of polluters, and enforcement measures in the event of non-compliance with the regulations.

Niger

[Original: French]
[25 January 1980]

The definition of an international watercourse should be very broad and exhaustive, for instance, along the lines of the definition proposed by the Helsinki Conference of the International Law

Association in 1966.⁶ Such a definition would cover necessary inter-State relations and would specify the rights and obligations of all the parties in all fields, including that of pollution.

Syrian Arab Republic

[Original: English]
[12 January 1980]

An international watercourse is a watercourse which passes through several neighbouring countries or forms natural common boundaries between them; each country has free use of the water.

Question B

Is the geographical concept of an international drainage basin the appropriate basis for a study of the legal aspects of non-navigational use of international watercourses?

Greece

[Original: French]
[8 June 1979]

Reply to questions B and C

Given the reply to question A, Greece's reply to questions B and C is in the affirmative. The concept of an international drainage basin is, because of its practical, unitary (despite frontiers) and functional nature, an excellent basis for a study of the legal aspects of non-navigational uses of international watercourses and the pollution of such watercourses.

Luxembourg

[Original: French]
[5 June 1979]

In this context, the geographical concept of an international drainage basin seems the appropriate basis for a study of the legal aspects of non-navigational uses.

Niger

[Original: French]
[25 January 1980]

The geographical concept of an international drainage basin seems appropriate, subject to a prior definition of such a basin as covering the entire catchment area, but also taking into account the replenishment of adjacent ground-water levels.

Syrian Arab Republic

[Original: English]
[12 January 1980]

Yes.

Question C

Is the geographical concept of an international drainage basin the appropriate basis for a study of the legal aspects of the pollution of international watercourses?

Greece

[See above, question B, Greece.]

Luxembourg

[Original: French]
[5 June 1980]

The geographical concept of an international drainage basin seems the appropriate basis for a study of the legal aspects of pollution of international watercourses.

Niger

[Original: French]
[25 January 1980]

The concept of an adjacent protective zone should be added to the concept of an international drainage basin. The criteria for such a zone would have to be defined.

Syrian Arab Republic

[Original: English]
[12 January 1980]

Yes.

Question D

Should the Commission adopt the following outline for fresh water uses as the basis of its study:

(a) *Agricultural uses:*

1. *Irrigation;*
2. *Drainage;*
3. *Waste disposal;*
4. *Aquatic food production;*

(b) *Economic and commercial uses:*

1. *Energy production (hydroelectric, nuclear and mechanical)*
2. *Manufacturing;*
3. *Construction;*
4. *Transportation other than navigation;*
5. *Timber floating;*
6. *Waste disposal;*
7. *Extractive (mining, oil production, etc.);*

(c) *Domestic and social uses:*

1. *Consumptive (drinking, cooking, washing, laundry, etc.);*
2. *Waste disposal;*
3. *Recreational (swimming, sport, fishing, boating, etc.)?*

⁶ *Yearbook... 1974*, vol. II (Part Two) pp. 357 *et seq.*, document A/CN.4/274, Part Four, sect.C.1.

Greece

[Original: French]
[8 June 1979]

Reply to questions D and E

Greece has no specific comments. On the whole, the list of uses, which is not exhaustive, is acceptable. Since, however, these uses are often mutually incompatible, to formulate legal principles for them requires that they be studied from the quantitative (uses affecting flow) and qualitative (uses tainting the water or impairing its quality) angles.

Luxembourg

[Original: French]
[5 June 1980]

The outline prepared by the Commission can serve as a basis for the study in question.

Niger

[Original: French]
[25 January 1980]

The outline proposed as the basis for the study seems satisfactory. However, the Niger would like the special needs of disadvantaged areas contiguous to watercourses, such as arid regions of the Sahelian type, to be taken into consideration.

Syrian Arab Republic

[Original: English]
[12 January 1980]

Yes.

Question E

Are there any other uses that should be included?

Greece

[See above, question D, Greece.]

Luxembourg

[Original: French]
[5 June 1980]

The enumeration of fresh water uses is fairly complete and provides a sound basis for the study in question.

Niger

[Original: French]
[25 January 1980]

No.

Syrian Arab Republic

[Original: English]
[12 January 1980]

We do not see any other uses that should be included.

Question F

Should the Commission include flood control and erosion problems in its study?

Greece

[Original: French]
[8 June 1979]

Greece's reply to this question is also in the affirmative.

Luxembourg

[Original: French]
[5 June 1980]

If water resources are to be rationally exploited, the Commission will necessarily have to extend its study to related problems such as flood control, regulation of water levels by means of dams and dykes, erosion, soil conservation measures on farms situated in the drainage basin, the effect on water levels of various kinds of vegetation (forest, pasture, crop-land), conservation of nature, watercourse management, public health, effects on fish life and migration, etc.

In addition, the Commission should consider the establishment of water reserves for regulating flow during low-water periods to make good water losses due to evaporation in cooling towers or resulting from irrigation or crop spraying.

Niger

[Original: French]
[25 January 1980]

Yes.

Syrian Arab Republic

[Original: English]
[12 January 1980]

Yes.

Question G

Should the Commission take account in its study of the interaction between use for navigation and other uses?

Greece

[Original: French]
[8 June 1979]

Yes, it would definitely be advisable to take account of the interaction between use for navigation and other uses.

Luxembourg

[Original: French]
[5 June 1980]

Multiple-purpose water use involves co-ordination between navigation and other water users.

Niger

[Original: French]
[25 January 1980]

Yes.

Syrian Arab Republic

[Original: English]
[12 January 1980]

It is of considerable interest to do so.

Question H

Are you in favour of the Commission taking up the problem of pollution of international watercourses as the initial stage in its study?

Greece

[Original: French]
[8 June 1979]

If the two questions cannot be studied simultaneously, the study of the uses of international watercourses should take precedence over the study of the pollution of such watercourses.

Luxembourg

[Original: French]
[5 June 1981]

Since most agricultural, domestic and social uses are only possible if the water is wholesome, it is above all essential to resolve first the problem of watercourse pollution.

Niger

[Original: French]
[25 January 1980]

It would appear that a detailed study of the use of watercourses should disclose which sectors are most

adversely affected by pollution. Once this information was obtained, it would serve as a basis for solving the problem of pollution, which would be studied next.

Syrian Arab Republic

[Original: English]
[12 January 1980]

Not necessary.

Question I

Should special arrangements be made for ensuring that the Commission is provided with the technical, scientific and economic advice which will be required through such means as the establishment of a Committee of Experts?

Greece

[Original: French]
[8 June 1979]

In view of the complexity of the issue, Greece has no objection, if the Commission considers it necessary. If such a committee of experts is established, Greece would like to belong to it.

Luxembourg

[Original: French]
[5 June 1980]

A committee of experts for gathering all the necessary technical, scientific, economic and legal advice does not seem essential, since States Members of the United Nations are morally bound, by virtue of their membership, to provide the Organization with the information it requests of them.

Niger

[Original: French]
[25 January 1980]

The establishment of a committee of experts would be useful, but arrangements should be made for contacts between the committee and Member States (either directly or through the Commission and the United Nations).

Syrian Arab Republic

[Original: English]
[12 January 1980]

Yes.