YEARBOOK OF THE INTERNATIONAL LAW COMMISSION

1974

Volume II
Part Two

Report of the Secretary-General on the Legal Problems relating to the Utilization and Use of International Rivers
and
documents of the twenty-sixth session of the Commission prepared by the Secretariat

UNITED NATIONS

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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

The word *Yearbook* followed by suspension points and the year (e.g. *Yearbook . . . 1970*) indicates a reference to the *Yearbook of the International Law Commission.*

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CONTENTS

Page

Prefatory note iv

Filling of casual vacancies (agenda item 1)

Document A/CN.4/276: Note by the Secretariat 1

Question of treaties concluded between States and international organizations or between two or more international organizations (agenda item 7)

Document A/CN.4/277: Selected bibliography on the question of treaties concluded between States and international organizations or between two or more international organizations—document prepared by the Secretariat 3

Document A/CN.4/281: Possibilities of participation by the United Nations in international agreements on behalf of a territory: study prepared by the Secretariat 8

Long-term programme of work, including: Consideration of recommendation concerning commencement of the work on the law of non-navigational uses of international watercourses (agenda item 8(*a*))

Document A/5409: Legal problems relating to the utilization and use of international rivers: report by the Secretary-General 33

Document A/CN.4/274: Legal problems relating to the non-navigational uses of international watercourses: supplementary report by the Secretary-General 265

Check list of documents referred to in this volume 367

Check list of documents of the twenty-sixth session not reproduced in volume II 368

PREFATORY NOTE

Volume II of the 1974 *Yearbook* consists of two separately published parts containing the following documents:

PART ONE *(United Nations publication, Sales No. E.75.V.1. (Part 1))*

A/9610/Rev.1	Report of the International Law Commission on the work of its twenty-sixth session (6 May–26 July 1974)
A/CN.4/278 and Add.1-6	First report on succession of States in respect of treaties, by Sir Francis Vallat, Special Rapporteur
A/CN.4/279	Third report on the question of treaties concluded between States and international organizations or between two or more international organizations, by Mr. Paul Reuter, Special Rapporteur—draft articles with commentaries
A/CN.4/280	Fifth report on the most-favoured-nation clause, by Mr. Endre Ustor, Special Rapporteur—draft articles with commentaries *(continued)*
A/CN.4/282	Seventh report on succession of States in respect of matters other than treaties, by Mr. Mohammed Bedjaoui, Special Rapporteur—draft articles on succession to public property, with commentaries
A/CN.4/L.206	Article for insertion in Part I of the draft articles on succession of States in respect of treaties, proposed by Mr. Ushakov
A/CN.4/L.214	Report on the twenty-first session of the European Committee on Legal Co-operation, by Mr. A. H. Tabibi, observer for the Commission

PART TWO *(present volume)*

A/5409	Legal problems relating to the utilization and use of international rivers: report of the Secretary-General
A/CN.4/274	Legal problems relating to the non-navigational uses of international watercourses: supplementary report submitted by the Secretary-General
A/CN.4/276	Filling of casual vacancies: note by the Secretariat
A/CN.4/277	Selected bibliography on the question of treaties concluded between States and international organizations or between two or more international organizations: document prepared by the Secretariat
A/CN.4/281	Possibilities of participation by the United Nations in international agreements on behalf of a territory: study prepared by the Secretariat

FILLING OF CASUAL VACANCIES

[Agenda item 1]

DOCUMENT A/CN.4/276

Note by the Secretariat

[*Original: English*]
[*18 March 1974*]

1. Following the death on 11 March 1974 of Professor Milan Bartoš, a seat has become vacant on the International Law Commission.

2. In this case, article 11 of the Commission's Statute is applicable. It prescribes:

In the case of a casual vacancy, the Commission itself shall fill the vacancy having due regard to the provisions contained in articles 2 and 8 of this Statute.

Article 2 reads:

1. The Commission shall consist of twenty-five members who shall be persons of recognized competence in international law.

2. No two members of the Commission shall be nationals of the same State.

3. In case of dual nationality a candidate shall be deemed to be a national of the State in which he ordinarily exercises civil and political rights.

Article 8 reads:

At the election the electors shall bear in mind that the persons to be elected to the Commission should individually possess the qualifications required and that in the Commission as a whole representation of the main forms of civilization and of the principal legal systems of the world should be assured.

3. The term of the member to be elected by the Commission will expire at the end of 1976.

QUESTION OF TREATIES CONCLUDED BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN TWO OR MORE INTERNATIONAL ORGANIZATIONS

[Agenda item 7]

DOCUMENT A/CN.4/277

Selected bibliography on the question of treaties concluded between States and international organizations or between two or more international organizations*

Document prepared by the Secretariat

[*Original: English/French/Spanish*]
[*15 March 1974*]

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* Submitted in accordance with a decision taken by the Commission at its twenty-second session (see *Yearbook ... 1970*, vol. II, p. 310, document A/8010/Rev.1, para. 89).

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DOCUMENT A/CN.4/281

Possibilities of participation by the United Nations in international agreements on behalf of a territory

Study prepared by the Secretariat

[*Original: English*]
[*10 June 1974*]

CONTENTS

	Paragraphs	Page
Abbreviations		8
Note	1–6	9
Introduction	7–8	9
PART ONE. POSSIBILITIES PROVIDED BY TREATY PROVISIONS	9–29	10
A. Article 81 of the Charter of the United Nations	9–22	10
B. Relevant provisions in treaties other than the Charter of the United Nations	23–29	13
1. Text of provisions referring to the United Nations as the administering authority of a trust territory	29	14
2. Text of provisions referring to the United Nations as the administering authority for a territory	29	15
3. Text of provisions referring to any authority responsible for a territory or for its international relations	29	17
PART TWO. ASSUMPTION BY THE UNITED NATIONS OF DIRECT ADMINISTRATION OF, OR RESPONSIBILITY FOR, A TERRITORY	30–63	17
A. West New Guinea (West Irian)	30–39	17
B. Namibia	40–63	21
1. Review of multilateral and bilateral treaties concluded by South Africa affecting Namibia	51–59	23
2. International agreements concluded by the United Nations Council for Namibia	60–63	26
Annexes		
I. Replies from Governments concerning travel and identity documents for Namibians		27
II. Text of the Agreements between the United Nations (United Nations Council for Namibia) and Governments concerning the issuance by the Council of travel and identity documents to Namibians		27

ABBREVIATIONS

FAO	Food and Agriculture Organization of the United Nations
I.C.J.	International Court of Justice
I.C.J. Pleadings	I.C.J., *Pleadings, Oral Arguments, Documents*
I.C.J. Reports	I.C.J., *Reports of Judgments, Advisory Opinions and Orders*
ILO	International Labour Organisation
IMCO	Inter-Governmental Maritime Consultative Organization
ITU	International Telecommunication Organization
OAU	Organization of African Unity
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees
WHO	World Health Organization
WMO	World Meteorological Organization

NOTE

1. Following the adoption by the United Nations Conference on the Law of Treaties of the resolution relating to article 1 of the Vienna Convention on the Law of Treaties, the General Assembly, by resolution 2501 (XXIV), of 12 November 1969, referred the question of treaties concluded between States and international organizations or between two or more international organizations to the International Law Commission to be studied "in consultation with the principal international organizations, as it may consider appropriate in accordance with its practice" (para. 5 of the resolution).

2. At its twenty-third session, in 1971, the International Law Commission confirmed the request it had addressed to the Secretary-General at its twenty-second session that he prepare a number of documents on the subject of the question of treaties concluded between States and international organizations or between two or more international organizations for the use of members of the Commission,[1] it being understood that he would, in consultation with the Special Rapporteur, Mr. Paul Reuter, phase and select the studies required for the preparation of those documents, which would include, in addition to as full a bibliography as possible,[2] an account of the practice of the United Nations and the principal international organizations.[3]

3. In pursuance of the above-mentioned decision, the Special Rapporteur, through the Secretary-General, addressed a questionnaire to the principal international organizations for the purpose of obtaining information on their practice on the matter. He requested the same kind of information from the United Nations. The Special Rapporteur took into account the information received from consulted international organizations in his second report, submitted to the International Law Commission at its twenty-fifth session.[4]

4. Among the points included by the Special Rapporteur in the questionnaire was the following: "Possibilities that may be open to an international organization, by virtue of treaties concluded under the auspices of your organization, of participating in an agreement on behalf of a territory it represents". Referring to the replies received on this point, the Special Rapporteur in the section of his second report entitled "Participation of an international organization in a treaty on behalf of a territory it represents" noted that the Secretary-General of the United Nations had carried out research on the subject which "would appear worthy of immediate publication and would serve as a basis for considering the problem in detail".[5]

5. Taking into account the wish so expressed by the Special Rapporteur and in compliance with the decision of the Commission referred to above that a number of documents on the topic be prepared by the Secretariat "for the use of the members of the Commission", it was decided to publish in the present document of the Commission the research carried out by the Codification Division of the Office of Legal Affairs of the United Nations Secretariat on the "Possibilities of participation by the United Nations in international agreements on behalf of a territory" with a view to assisting the Commission in its work on the question of treaties concluded between States and international organizations or between two or more international organizations.

6. The designations employed and the presentation of material in this document do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory or entity or the position which States may have with regard to such legal status.

INTRODUCTION

7. In studying the possibilities of participation by the United Nations in international agreements on behalf of a territory, due consideration has been given not only to possibilities provided in this respect to the United Nations by treaty provisions but also to the actual cases in which the United Nations has assumed the direct administration of, or responsibility for, a territory. The term "territory" has been understood as excluding States and associations of States as well as subjects of international law having their own treaty-making capacity such as, for instance, the Free Territory of Trieste created by the 1947 Treaty of Peace with Italy.[6]

8. The study has been divided into two parts. Part One, devoted to possibilities provided by treaty provisions, refers to possibilities under Article 81 of the Charter of the United Nations (Section A), including developments concerning the question of the disposal of the former Italian colonies and the question of the régime and statute of the City of Jerusalem, as well as under relevant provisions in treaties other than the Charter of the United Nations (Section B), whether or not such treaties were concluded under the auspices of the United Nations. Part Two concerns cases of assumption by the United Nations of direct administration of, or responsibility for, a territory, namely West New Guinea (West Irian) (Section A) and Namibia (Section B).

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[1] *Yearbook . . . 1970*, vol. II, p. 310, document A/8010/Rev.1, para. 89.

[2] A short bibliography on the topic—as well as a historical survey of the question and a preliminary list of the relevant treaties published in the United Nations *Treaty Series*—was included in the working paper (A/CN.4/L.161 and Add.1 and 2) submitted by the Secretary General to the Commission at its twenty-third session. A selected bibliography on the question (A/CN.4/277) (see p. 3 above) was also issued at the Commission's present session.

[3] *Yearbook . . . 1971*, vol. II (Part One), p. 348, document A/8410/Rev.1, para. 118 (*b*).

[4] *Yearbook . . . 1973*, vol. II, p. 75, document A/CN.4/271. The second report was designed to supplement the previous one (*Yearbook . . . 1972*, vol. II, p. 171, document A/CN.4/258) by taking account of the fresh data provided by international organizations.

The text of the questionnaire addressed to international organizations is annexed to the second report.

[5] *Yearbook . . . 1973*, vol. II, p. 86, document A/CN.4/271, para. 70.

[6] See article 24 of annex VI to the Treaty (United Nations, *Treaty Series*, vol. 49, p. 193.

PART ONE

POSSIBILITIES PROVIDED BY TREATY PROVISIONS

A. Article 81 of the Charter of the United Nations

9. Article 81 of the Charter provides that the administering authority of a trust territory "may be one or more States or the *Organization itself*".* This provision of the Charter opens the possibility for the United Nations to assume the role of administering authority of a trust territory.

10. In the case of territories held under a League of Nations Mandate by an original Member State (or States) of the United Nations and placed under the trusteeship system of the United Nations (Cameroons under British administration, Cameroons under French administration, Nauru, New Guinea, Ruanda-Urundi, Tanganyika, Togoland under British administration, Togoland under French administration, and Western Samoa), the former mandatory State (or States) was designated as the administering authority in the trusteeship agreement approved by the General Assembly.[7] The Trusteeship Agreement for the former Japanese mandated islands in the Pacific approved by the Security Council on 2 April 1947 designated the United States of America as the Administering Authority.[8]

11. A United States proposal aimed at placing the former Italian colonies under a trusteeship by the United Nations, implying assumption by the Organization of the responsibilities of an administering authority for the territories concerned, was considered at the 1945 and 1946 sessions of the Council of Foreign Ministers concerning the preparation of the treaty of peace with Italy (attended by the Foreign Ministers of France, the USSR, the United Kingdom and the United States).[9] No agreement was reached by the Council concerning the final disposal of the former Italian colonies. The 1947 Treaty of Peace with Italy provided (art. 23)[10] that the final disposal of those colonies was to be determined jointly by the Government of the Soviet Union, the United Kingdom, the United States and France within one year of the Treaty's coming into force and in a manner laid down in the joint declaration issued by those Governments and reproduced in Annex XI to the Treaty.[11] The Joint Declaration stipulated that if no agreement had been reached within the time period indicated, the matter was to be referred to the General Assembly of the United Nations for a recommendation, which the four Governments agreed to accept. During the negotiations held between the Four Powers in accordance with the Peace Treaty no proposals were made by which the United Nations would assume the role of administering authority of any of the former Italian colonies.[12] The Four Powers, however, did not reach agreement on the matter and the question was subsequently submitted to the General Assembly, pursuant to the Joint Declaration. The outcome of the relevant deliberations in the General Assembly was the adoption on 21 November 1949 of resolution 289 A (IV) whereby it was recommended, *inter alia*: (*a*) that Libya should be constituted an independent State not later than 1 January 1952, a United Nations Commissioner and a Council being established to assist the Libyan people in the formulation of the constitution and the establishment of an independent Government; (*b*) that Italian Somaliland should ultimately become likewise an independent State but that for a period of 10 years it should be placed under the International Trusteeship System with Italy as Administering Authority; and (*c*) that a Commission should be established to, *inter alia*, ascertain more fully the wishes and the best means of promoting the welfare of the inhabitants of Eritrea.

12. With regard to Libya, section A, paragraph 10 of resolution 289 A (IV) provided that the "administering Powers",[13] in co-operation with the United Nations Commissioner in Libya, should, *inter alia*, initiate all necessary steps for the transfer of power to a duly constituted independent Government and administer the territories for the purpose of assisting in the establishment of Libyan unity and independence, co-operate in the formation of governmental institutions and co-ordinate their activities to this end. The United Nations Commissioner in Libya and the administering Powers in Libya submitted reports to the General Assembly.[14] According to resolution 387 (V) of 17 November 1950, a National Assembly was to be convened before 1 January 1951, to establish a provisional Government of Libya, 1 April 1951 being the target date for its establishment. All powers exercised by the "administering Powers" were to be progressively transferred to the duly constituted Libyan Government by 1 January 1952. A Provisional Federal Government having been established on 29 March 1951 and the Constitution of the United Kingdom of Libya having been adopted on 7 October 1951,

* Italics supplied by the Secretariat.

[7] Questions relating to the negotiation and nature of the trusteeship agreements and to the parties thereto are irrelevant so far as the question under consideration is concerned. See United Nations, *Treaty Series*, vol. 8, p. 119 (Cameroons under British administration); *ibid.*, p. 135 (Cameroons under French administration); *ibid.*, vol. 10, p. 3 (Nauru); *ibid.*, vol. 8, p. 181 (New Guinea); *ibid.*, p. 105 (Ruanda-Urundi); *ibid.*, p. 91 (Tanganyika); *ibid.*, p. 151 (Togoland under British administration); *ibid.*, p. 165 (Togoland under French administration); and *ibid.*, p. 71 (Western Samoa).

[8] *Ibid.*, p. 189.

[9] See M. Whiteman, *Digest of International Law*, vol. III (Washington, D.C., U.S. Government Printing Office, 1964), pp. 10–12.

[10] United Nations, *Treaty Series*, vol. 49, p. 139.

[11] *Ibid.*, p. 214.

[12] See Whiteman, *op. cit.*, pp. 16–21.

[13] France and the United Kingdom. The preamble to the Agreement between the United States of America, the United Kingdom of Great Britain and Northern Ireland and France on Technical Assistance for Libya, signed at London, on 15 June 1951, stated that:

"The Government of the United States of America of the one part and the Governments of the United Kingdom of Great Britain and Northern Ireland and the French Republic of the other part, as the *Administering Powers of the three territories of Tripolitania, Cyrenaica and The Fezzan*,* have agreed as follows: . . ." Article VI provided that "The Agreement shall terminate on 31st December 1951, or the date on which Libya becomes independent, whichever is the earlier". (United Nations, *Treaty Series*, vol. 148, pp. 67 and 74.)

* *Italics supplied by the Secretariat.*

[14] Accounts of the activities of the Commissioner and the Council and of the reports made by the administering Powers are contained in the annual reports of the Secretary-General on the work of the Organization, submitted to the General Assembly (*Official Records of the General Assembly, Fifth Session, Supplement No. 1* (A/1287); *ibid., Sixth Session, Supplement No. 1* (A/1844); and *ibid., Seventh Session, Supplement No. 1* (A/2141).

the gradual transfer of power began in October of 1951 and was completed by December 1951. On 24 December 1951 the declaration of Libyan independence was issued.

13. The Trusteeship Agreement for the Territory of Somaliland under Italian Administration[15] was approved by the General Assembly on 2 December 1950. The Administering Authority (Italy), at that time a non-member of the United Nations, was to be aided and advised by an Advisory Council composed of representatives of three Member States (art. 2). Article 8 of the Trusteeship Agreement provided *inter alia* that "the Administering Authority shall seek the advice of the Advisory Council on all measures envisaged for the inauguration, development, and subsequent establishment of full self-government for the Territory".[16] The Advisory Council was to commence the discharge of its functions when the Italian Government began its provisional administration of the territory which was to occur pursuant to arrangements for the orderly transfer of administration agreed upon between Italy and the United Kingdom (the administering Power) after the Trusteeship Council and Italy had negotiated the Trusteeship Agreement, and pending approval of the Agreement by the General Assembly.[17] The Italian Minister for Foreign Affairs informed the Secretary-General, by a letter dated 22 February 1950, that the Government of the Italian Republic, subject to its ratification of the Trusteeship Agreement, had undertaken to assume the administration of the Territory of Somaliland.[18] Subsequently, the Italian Minister for Foreign Affairs informed the Secretary-General that the transfer of administration had taken place as of 1 April 1950.[19] The Trusteeship Agreement came into force on 8 January 1952, the date on which the instrument of ratification by Italy was deposited with the Secretary-General of the United Nations. Article 24 of the Trusteeship Agreement provided that it should "cease to be in force ten years after the date of the approval of the Trusteeship Agreement by the General Assembly, at the conclusion of which the Territory shall become an independent sovereign State". Somalia became independent on 1 July 1960.

14. The United Nations Commission for Eritrea established by resolution 289 A (IV) was to ascertain information from the British Administration in Eritrea, from the representatives of the population of the territory, including minorities, and from Governments and such organizations and individuals as it might deem necessary and to submit a report to the General Assembly. On 2 December 1950, the General Assembly adopted resolution 390 A (V) recommending, *inter alia*, that Eritrea should constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown. On 14 December 1950, the Assembly elected a United Nations Commission in Eritrea. The Commissioner was to consult the United Kingdom (the administering Power), the Government of Ethiopia and the inhabitants of Eritrea in connexion with the preparation of a draft Constitution to be submitted to the Eritrean Assembly. Pending the federation of Eritrea with Ethiopia, the United Kingdom was to continue to conduct the affairs of Eritrea.[20] The United Nations Commissioner presented the draft Constitution to the Eritrean Assembly which adopted it on 10 July 1952. In accordance with the provisions of paragraph 13 of Section A of General Assembly resolution 390 A (V), the United Nations Commissioner approved the Constitution on 6 August 1952 and transmitted the instrument of approval to the President of the Representative Assembly of Eritrea. On 11 August, at Addis Ababa, the Emperor of Ethiopia ratified the Constitution, which could not, however, enter into force, until the ratification of an internal Ethiopian Federal Act which was based upon paragraphs 1 to 7 of section A of resolution 390 A (V). The federation of Eritrea with Ethiopia was formally established on 11 September 1952 when the Ethiopian Emperor ratified the Federal Act. On 15 September of the same year, the United Kingdom formally handed over the administration to the Federal and Eritrean Governments.[21]

15. Thus, the United Nations was not designated as and did not act as an administering authority—under a trusteeship agreement or otherwise—for any of the former Italian colonies. The United Nations Commissioners in Libya and Eritrea, the United Nations Council for Libya and the United Nations Commission for Eritrea did not possess the status of an administering authority and did not perform the functions of such an authority. In the interim period before independence (Libya) or federation (Eritrea), the administering Powers remained: France and the United Kingdom in the case of Libya and the United Kingdom in the case of Eritrea. With regard to former Italian Somaliland, the United Kingdom continued to be responsible for the administration of the territory until the transfer of administration to Italy, the Administering Authority designated in the relevant Trusteeship Agreement. In conclusion, the United Nations did not at any time assume administrative or representative functions with regard to those territories and consequently did not have the possibility of participating in international agreements on their behalf.

16. The designation of the United Nations as administering authority of a territory was also considered in connexion with the establishment of an international régime for the City of Jerusalem. On 27 August 1947, seven of the eleven

[15] United Nations, *Treaty Series*, vol. 118, p. 255.

[16] See Sect. B, para. 8 of General Assembly resolution 289 A (IV) and article 23 of the Trusteeship Agreement.

[17] See section B, paragraph 8 of resolution 289 A (IV) and article 23 of the Trusteeship Agreement.

[18] Annual Report of the Secretary-General on the work of the Organization (*Official Records of the General Assembly, Fifth Session, Supplement No. 1* (A/1287), p. 106).

[19] *Ibid.*

[20] Paragraph 11 of section A of resolution 390 A (V) stated that "It may, in agreement with the Commissioner, negotiate on behalf of the Eritreans a temporary customs union with Ethiopia...". No such agreement or customs union was recorded.

[21] For an account of the activities of the United Nations Commission for Eritrea and the United Nations Commissioner in Eritrea, see reports of the Secretary-General on the work of the Organization (*Official Records of the General Assembly, Fifth Session, Supplement No. 1* (A/1287); *ibid., Sixth Session, Supplement No. 1* (A/1844); *ibid., Seventh Session, Supplement No. 1* (A/2141); and *ibid., Eighth Session, Supplement No. 1* (A/2404). See also the exchange of notes between the United Kingdom and Ethiopia constituting an agreement regarding the federation of Eritrea with Ethiopia under the sovereignty of the Ethiopian Crown, done at Addis Ababa on 27 and 29 August 1952 (United Nations, *Treaty Series*, vol. 190, p. 329).

members of the United Nations Special Committee on Palestine, established by General Assembly resolution 106 (S-I), proposed a plan of partition with economic union, which, *inter alia*, included the placing of the City of Jerusalem under an international trusteeship system by means of a trusteeship agreement by which the United Nations would be designated the administering authority, in accordance with Article 81 of the Charter.[22] Upon the recommendation of its *Ad Hoc* Committee on Palestine, which had considered the proposal of the Special Committee on Palestine, the General Assembly, by resolution 181 (II) of 29 November 1947, recommended the adoption and implementation of a plan of partition of Palestine with economic union. The plan provided, *inter alia*, that:

(*a*) The City of Jerusalem shall be established as a *corpus separatum* under a special international régime and shall be administered by the United Nations. The Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority on behalf of the United Nations;

(*b*) The Trusteeship Council shall, within five months of the approval of the plan of partition, elaborate and approve a detailed Statute of the City which shall contain *inter alia* the substance of a certain number of provisions contained in the plan;

(*c*) The Statute elaborated by the Trusteeship Council shall come into force not later than 1 October 1948. It shall remain in force in the first instance for a period of ten years, unless the Trusteeship Council finds it necessary to undertake a re-examination of these provisions at an earlier date. After the expiration of this period the whole scheme shall be subject to re-examination by the Trusteeship Council in the light of the experience acquired with its functioning. The residents of the City shall be then free to express by means of a referendum their wishes as to possible modifications of the régime of the City.

17. At its second special session, in May 1948, the General Assembly considered the recommendation of a Sub-Committee of its First Committee[23] which included a proposal that a temporary administration of Jerusalem with the United Nations acting as the administering authority be established as from 15 May 1948, the date upon which the United Kingdom intended to terminate the League of Nations Mandate, until 31 December 1949, unless decided otherwise by the General Assembly. That proposal, however, was not adopted by the General Assembly, having failed to receive the necessary two-thirds majority.[24]

18. As indicated above, General Assembly resolution 181 (II) entrusted the Trusteeship Council with the task of preparing a detailed Statute for the City of Jerusalem. The Council prepared a draft[25] which, without being formally adopted, was transmitted to the General Assembly by Trusteeship Council resolution 34 (II) of 21 April 1948. At its second special session, the General Assembly did not give any further instructions on the matter to the Trusteeship Council which, subsequently, did not take further action concerning the draft statute, until so instructed by the General Assembly in resolution 303 (IV) referred to below.[26]

19. At its third session, the General Assembly, by resolution 194 (III) of 11 December 1948, entrusted to a United Nations Conciliation Commission for Palestine the task of, *inter alia*, presenting proposals for a permanent international régime for the Jerusalem area. In 1949, that Commission approved a draft instrument establishing such a régime.[27] According to that draft instrument, the Jerusalem area would have been divided into two zones, one Arab and one Jewish, to be administered by the respective authorities. In addition, there would have been established four principal organs (a United Nations Commissioner, a General Council, an International Tribunal and a Mixed Tribunal) to exercise certain specific functions designed to protect the interests of the international community and to facilitate peaceful relations between the two zones.

20. At its fourth session, the General Assembly, on the recommendation of its *Ad Hoc* Political Committee,[28] adopted resolution 303 (IV) of 9 December 1949 by which it *inter alia* restated its intention that Jerusalem should be placed under a permanent international régime and confirmed specifically certain provisions of resolution 181 (II), including the establishment of the City of Jerusalem as a *corpus separatum* under a special international régime to be administered by the United Nations, The Trusteeship Council being designated to discharge the responsibilities of administering authority. By the same resolution, the General Assembly requested the Trusteeship Council to complete its preparation of, and approve, a Statute for Jerusalem and to proceed immediately with its implementation.

21. On 4 April 1950, the Trusteeship Council approved a draft Statute for the City of Jerusalem. The Statute, *inter alia*, constituted the City of Jerusalem as a *corpus separatum* under the administration of the United Nations. The special report of the Trusteeship Council on the matter[29] was considered in 1950 at the General Assembly's fifth session by the *Ad Hoc* Political Committee. The President of the Trusteeship Council indicated to the Committee that the Council had been unable to comply with the General Assembly's instruction to proceed immediately to the implementation of the Statute, for lack of the necessary means of implementation.[30]

22. Following consideration of two draft resolutions,

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[22] *Official Records of the General Assembly, Second Session, Supplement No. 11* (A/364 and Add.1–4), vol. I, pp. 47–58.

[23] *Ibid., Second Special Session, Annex to volumes I and II*, p. 37, document A/C.1/298.

[24] At that session, the First Committee also had before it a working paper submitted by the United States of America (*ibid.*, p. 12, document A/C.1/277), containing a draft trusteeship agreement for Palestine as a whole, the United Nations being designated as the administering authority. That proposal was not voted upon by the First Committee (*ibid.*, p. 7, document A/552).

[25] See para. 20 below.

[26] *Official Records of the Trusteeship Council, Third Part of the Second Session, Annex*, document T/118/Rev.2.

[27] *Official Records of the General Assembly, Fourth Session*, Ad Hoc *Political Committee, Annex*, document A/973 and Add.1.

[28] *Ibid., Plenary Meetings, Annex*, p. 35, document A/1222 and Add.1.

[29] *Ibid., Fifth Session, Supplement No. 9* (A/1286).

[30] A/AC.38/L.69.

submitted respectively by Sweden and Belgium,[31] the *Ad Hoc* Political Committee recommended to the General Assembly a draft resolution by which the General Assembly would have considered that "for lack of the necessary co-operation by the States concerned, the Trusteeship Council has been unable to give effect to the Statute which it had prepared" and would have instructed "four persons, to be appointed by the Trusteeship Council, to study, in consultation with the Governments at present in *de facto* control of the Holy Places and with other States, authorities and religious bodies concerned, the conditions of a settlement capable of ensuring the effective protection, under the supervision of the United Nations, of the Holy Places and of spiritual and religious interests of the Holy Land".[32] The recommended draft resolution, having failed to obtain the required two-thirds majority, was not adopted by the General Assembly.[33]

B. Relevant provisions in treaties other than the Charter of the United Nations[34]

23. Several treaties contain provisions opening to the United Nations the possibility of participating therein "on behalf" of a territory it represents. Such provisions could be classified in three categories: (*a*) those which refer to the United Nations as the administering authority of a trust territory; (b) those which refer to the United Nations as the administering authority for a territory; (*c*) those which refer to any authority responsible for the administration of a territory or for its international relations. Provisions of that kind may be found in the constituent instruments of some specialized agencies (FAO, ILO, ITU, WHO, WMO, UNESCO, IMCO), in treaties other than constituent instruments of specialized agencies, concluded under the auspices of the United Nations (1949 Convention on Road Traffic; 1949 Protocol on Road Signs and Signals), and in treaties concluded under the auspices of IMCO or dealing with matters relating to the activities of that specialized agency. On one occasion, a United Nations body having responsibilities for the international relations of a territory has made use of the possibilities opened by a provision of that kind, namely the United Nations Council for Namibia in connexion with the admission of Namibia as an associate member of WHO.[35]

24. A territory placed under the administration of the United Nations or for which the Organization is internationally responsible, as the case may be, may become a member (WMO Convention) or an associate member (FAO Constitution; WHO Constitution; ITU Convention; UNESCO Constitution; IMCO Convention) of a specialized agency in accordance with the provisions set forth in the relevant constituent instrument. In some instances, such provisions require only that the United Nations: (*a*) should apply the constituent instrument to the territory and that the latter should have a separate meteorological service (WMO Convention); (*b*) should accept the constituent instrument on behalf of the territory (IMCO Convention); or (*c*) should accede to the constituent instrument on behalf of the territory and sponsor an application for associate membership (ITU Convention). In other cases, the constituent instruments provide for the approval of the admission by the assembly or conference of the specialized agency following: (*a*) a declaration made by the United Nations in a formal instrument accepting on behalf of the territory the obligations of the constituent instrument and assuming responsibility for ensuring the observance of certain provisions of that instrument with regard to the territory (FAO Constitution); or (*b*) an application made by the United Nations on behalf of the territory (WHO Constitution; UNESCO Constitution).

25. The ILO Constitution regulates the participation of a territory under the administration of an international authority, including the United Nations, in the labour conventions. A declaration by the United Nations accepting the obligation of any labour convention in respect of such a territory involves the acceptance "on behalf" of the territory concerned of the obligations stipulated by the terms of the convention and the obligations under the ILO Constitution which apply to ratified labour conventions. Provision is also made for cases in which the obligations of convention are not accepted "on behalf" of a territory, as well as for declarations of acceptance specifying modifications of the provisions of the convention required by local conditions.

26. The 1949 Convention on Road Traffic is opened for accession on behalf of any trust territory of which the United Nations is the administering authority as well as for accession by certain non-signatory States and any other State which the Economic and Social Council may by resolution declare to be eligible. Accession by States or on behalf of a trust territory of which the United Nations is the administering authority to the 1949 Protocol on Road Signs and Signals is governed *mutatis mutandis* by a similar provision.

27. The 1960 International Convention for the Safety of

[31] The Swedish draft resolution (*Official Records of the General Assembly, Fifth Session, Annexes*, agenda item 20, document A/AC.38/L.63), was based upon functional rather than territorial criteria and would have recognized the exercise of jurisdictional control of each part of the Jerusalem area by the States concerned, while providing for a United Nations Commissioner to supervise the protection of, and free access to, the Holy Places. The Belgian draft resolution, as revised (*ibid.*, document A/1724, paras. 6 and 9) would have recalled General Assembly resolution 181 (II), 194 (III) and 303 (IV) and would have instructed four persons to study the conditions of a settlement capable of ensuring the effective protection under United Nations supervision of the Holy Places. This draft resolution provided the basis for the draft resolution recommended by the *Ad Hoc* Political Committee (*ibid.*, para. 12).

[32] *Ibid.*

[33] By resolutions 2253 (ES-V) of 4 July 1967 and 2254 (ES-V) of 14 July 1967, the General Assembly called upon Israel to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem. By resolution 252 (1968) of 21 May 1968, the Security Council considered that all legislative and administrative measures and actions taken by Israel which tended to change the legal status of Jerusalem were invalid and could not change that status. That resolution was reaffirmed by Security Council resolutions 267 (1969) of 3 July 1969 and 298 (1971) of 25 September 1971.

[34] The information provided below is not intended to be exhaustive, although a wide range of treaties has been examined, including both treaties for which the Secretary-General performs depositary functions and treaties annexed to General Assembly resolutions.

[35] See paras. 47–49 below.

Life at Sea, the 1954 International Convention for the Prevention of Pollution of the Sea by Oil, as amended in 1962, the 1965 Convention on Facilitation of International Maritime Traffic, the 1966 International Convention on Load Lines, the 1969 International Convention relating to Intervention on the High Seas in Case of Oil Pollution Casualties, the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material deal with the participation of territories, including those for which the United Nations acts as the administering authority, in terms of "extension" or "application" of the conventions.

28. Termination of the "extension" or "application" of the instrument concerned to a territory for which the United Nations is the administering authority is expressly regulated in some treaties: for instance, the IMCO Convention and conventions concluded under the auspices of IMCO or dealing with matters relating to its activities. The ILO Constitution also contains provisions concerning declarations by the international authority of a territory modifying the terms of any former declaration accepting the obligations of a labour convention in respect of the territory or terminating the acceptance of the obligations of the convention "on behalf" of the territory concerned.

29. The text of a certain number of provisions is reproduced below under headings corresponding to the three categories referred to above.[36]

1. Text of provisions referring to the United Nations as the administering authority for a trust territory

(a) *Convention of the World Meteorological Organization, signed at Washington on 11 October 1947.* [37]

PART III

MEMBERSHIP

Article 3

MEMBERS

The following may become Members of the Organization by the procedure set forth in the present Convention:

...

(*f*) Any trust territory or group of trust territories maintaining its own meteorological service and administered by the United Nations to which the United Nations applies the present Convention in accordance with Article 34.

...

PART XIX

RATIFICATION AND ACCESSION

...

Article 34

Subject to the provisions of Article 3 of the present Convention,

...

(*c*) the United Nations may apply the present Convention to any trust territory or group of trust territories for which it is the administering authority. The Government of the United States of America will notify all signatory and acceding States of any such application.

(b) *Convention on the Inter-Governmental Maritime Consultative Organization, done at Geneva on 6 March 1948.*[38]

PART III

MEMBERSHIP

...

Article 9

Any territory or group of territories to which the Convention has been made applicable under Article 58, by the Member having responsibility for its international relations or by the United Nations, may become an Associate Member of the Organizaton by notification in writing given by such Member or by the United Nations, as the case may be, to the Secretary-General of the United Nations.

...

PART XVI

MISCELLANEOUS PROVISIONS

Article 57

SIGNATURE AND ACCEPTANCE

Subject to the provisions of Part III the present Convention shall remain open for signature or acceptance and States may become parties to the Convention by:

(*a*) Signature without reservation as to acceptance;

(*b*) Signature subject to acceptance followed by acceptance; or

(*c*) Acceptance.

Acceptance shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

Article 58

TERRITORIES

...

(*d*) In cases where under a trusteeship agreement the United Nations is the administering authority, the United Nations may accept the Convention on behalf of one, several, or all of the trust territories in accordance with the procedure set forth in Article 57.

Article 59

WITHDRAWAL

...

(*b*) The application of the Convention to a territory or group of territories under Article 58 may at any time be terminated by written notification given to the Secretary-General of the United Nations by the Member responsible for its international relations or, in the case of a trust territory of which the United Nations is the administering authority, by the United Nations. The Secretary-General of the United Nations will immediately inform all Members and the Secretary-General of the Organization of such notification. The notification shall take effect upon the expiration of twelve months from the date on which it is received by the Secretary-General of the United Nations.

(c) *Convention on Road Traffic, signed at Geneva on 19 September 1949.*[39]

CHAPTER VII

FINAL PROVISIONS

Article 27

...

3. From 1 January 1950, this Convention shall be open for accession by those of the States referred to in paragraph 1 of this article which have not signed this Convention and by any other State which the Economic and Social Council may by resolution declare to be eligible. It shall also be open for accession on behalf of any Trust Territory of which the United Nations is the Administering Authority.

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[36] See para. 23.

[37] United Nations, *Treaty Series*, vol. 77, p. 143.

[38] *Ibid.*, vol. 289, p. 3.

[39] *Ibid.*, vol. 125, p. 3. To be terminated and replaced, in relations between the Contracting Parties, by the Convention on Road Traffic, done at Vienna on 8 November 1968 (*United Nations Conference on Road Traffic, Final Act and Related Documents* (United Nations, publication, Sales No. E/F.69.VIII.1), p. 11). The 1968 Convention, which is not yet in force, does not contain a provision similar to the last sentence of paragraph 3 of article 27 of the 1949 Convention.

(d) *Protocol on Road Signs and Signals, signed at Geneva on 19 September 1959.*[40]

Article 56

...

3. From 1 January 1950, this Protocol shall be open for accession by States signatories to the Convention on Road Traffic and by States acceding or having acceded to it. It shall also be open for accession on behalf of any Trust Territory of which the United Nations is the Administering Authority and on behalf of which the said Convention has been acceded to.

(e) *International Telecommunication Convention, done at Montreux on 12 November 1965.*[41]

Article 1

COMPOSITION OF THE UNION

...

3. An Associate Member of the Union shall be:

...

(*c*) any trust territory on behalf of which the United Nations has acceded to this Convention in accordance with Article 21, and the application of which for Associate Membership has been sponsored by the United Nations.

...

Article 21

APPLICATION OF THE CONVENTION TO TRUST TERRITORIES OF THE UNITED NATIONS

The United Nations shall have the right to accede to this Convention on behalf of any territory or group of territories placed under its administration in accordance with a trusteeship agreement as provided for in Article 75 of the Charter of the United Nations.

2. TEXT OF PROVISIONS REFERRING TO THE UNITED NATIONS AS THE ADMINISTERING AUTHORITY FOR A TERRITORY

(a) *International Convention for the Safety of Life at Sea, signed at London on 17 June 1960.*[42]

Article XIII

TERRITORIES

(*a*) (i) The United Nations in cases where they are the administering authority for a territory or any Contracting Government responsible for the international relations of a territory shall as soon as possible consult with such territory in an endeavour to extend the present Convention to that territory and may at any time by notification in writing given to the Organization declare that the present Convention shall extend to such territory.

(ii) The present Convention shall from the date of the receipt of the notification or from such other date as may be specified in the notification extend to the territory named therein.

(*b*) (i) The United Nations or any Contracting Government which has made a declaration under paragraph (*a*) of this Article, at any time after the expiry of a period of five years from the date on which the Convention has been so extended to any territory, may by a notification in writing given to the Organization declare that the present Convention shall cease to extend to any such territory named in the notification.

(ii) The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Organization.

(*c*) The Organization shall inform all the Contracting Governments of the extension of the present Convention to any territories under paragraph (*a*) of this Article, and of the termination of any such extension under the provisions of paragraph (*b*), stating in each case the date from which the present Convention has been or will cease to be so extended.

(b) *Amendments to Articles I, II, III, IV, V, VI, VII, VIII, IX, X, XIV, XVI and XVIII and to Annexes A and B of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, adopted on 11 April 1962 by the Conference of Contracting Governments to the said Convention, held at London, from 4 to 11 April 1962.*[43]

13. The existing text of Article XVIII of the Convention[44] is replaced by the following:

Article XVIII

(1) (*a*) The United Nations in cases where they are the administering authority for a territory or any Contracting Government responsible for the international relations of a territory shall as soon as possible consult with such territory in an endeavour to extend the present Convention to that territory and may at any time by notification in writing given to the Bureau declare that the Convention shall extend to such territory.

(*b*) The present Convention shall from the date of the receipt of the notification or from such other date as may be specified in the notification extend to the territory named therein.

(2) (*a*) The United Nations in cases where they are the administering authority for a territory or any Contracting Government which has made a declaration under paragraph (1) of this Article, at any time after the expiry of a period of five years from the date on which the present Convention has been so extended to any territory, may by a notification in writing given to the Bureau after consultation with such territory declare that the Convention shall cease to extend to any such territory named in the notification.

(*b*) The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Bureau.

---

[40] United Nations, *Treaty Series*, vol. 182, p. 229 and vol. 514, p. 254. To be terminated and replaced, in relations between the Contracting Parties, by the Convention on Road Signs and Signals done at Vienna on 8 November 1968 (*United Nations Conference on Road Traffic, Final Act and Related Documents* (*op. cit.*), p. 79). The 1968 Convention, which is not yet in force, does not contain a provision similar to the last sentence of paragraph 3 of article 56 of the 1949 Protocol.

[41] United Nations, *Juridical Yearbook, 1965* (United Nations publication, Sales No. 67.V.3), p. 173.

[42] United Nations, *Treaty Series*, vol. 536, p. 27.

[43] United Nations, *Treaty Series*, vol. 600, p. 332.

[44] The original text of article XVIII of the 1954 Convention (United Nations, *Treaty Series*, vol. 327, p. 3), reads as follows:

"*Article XVIII*

"(1)-(*a*) Any Government may, at the time of signature or acceptance of the present Convention, or at any time thereafter, declare by notification in writing given to the Bureau that the Convention shall extend to any of the territories for whose international relations it is responsible.

"(*b*) The Convention shall, from the date of the receipt of the notification, or from such other date as may be specified in the notification, extend to the territories named therein.

"(2)-(*a*) Any Contracting Government which has made a declaration under paragraph (1) of this Article may, at any time after the expiration of a period of five years from the date on which the Convention has been so extended to any territory, give notification in writing to the Bureau, declaring that the Convention shall cease to extend to any such territory named in the notification.

"(*b*) The Convention shall cease to extend to any territory mentioned in such notification twelve months, or such longer period as may be specified therein, after the date of receipt of the notification by the Bureau.

"(3) The Bureau shall inform all Contracting Governments of the extension of the Convention to any territories under paragraph (1) of this Article, and of the termination of any such extension under paragraph (2) of this Article, stating in each case the date from which the Convention has been, or will cease to be, so extended."

(3) The Bureau shall inform all the Contracting Governments of the extension of the present Convention to any territory under paragraph (1) of this Article, and of the termination of any such extension under the provisions of paragraph (2) stating in each case the date from which the Convention has been or will cease to be so extended.

(c) *Convention on facilitation of international maritime traffic, signed at London, on 9 April 1965.*[45]

Article XIII

(1) (*a*) The United Nations in cases where they are the administering authority for a territory, or any Contracting Government responsible for the international relations of a territory, shall as soon as possible consult with such territory in an endeavour to extend the present Convention to that territory, and may at any time by notification in writing given to the Secretary-General declare that the Convention shall extend to such territory.

(*b*) The present Convention shall from the date of the receipt of the notification or from such other date as may be specified in the notification extend to the territory named therein.

(*c*) The provisions of Article VIII of the present Convention shall apply to any territory to which the Convention is extended in accordance with the present Article; for this purpose, the expression "its own formalities, documentary requirements or procedures" shall include those in force in that territory.

(*d*) The present Convention shall cease to extend to any territory one year after the receipt by the Secretary-General of a notification to this effect, or on such later date as may be specified therein.

(2) The Secretary-General shall inform all the Contracting Governments of the extension of the present Convention to any territory under paragraph 1 of this Article, stating in each case the date from which the Convention has been so extended."

(d) *International Convention on Load Lines, done at London on 5 April 1966.*[46]

Article 32

TERRITORIES

(1) (*a*) The United Nations, in cases where they are the administering authority for a territory, or any Contracting Government responsible for the international relations of a territory, shall as soon as possible consult with such territory in an endeavour to extend the present Convention to that territory and may at any time by notification in writing to the Organization declare that the present Convention shall extend to such territory.

(*b*) The present Convention shall, from the date of the receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.

(2) (*a*) The United Nations, or any Contracting Government which has made a declaration under sub-paragraph (a) of paragraph (1) of this Article, at any time after the expiry of a period of five years from the date on which the Convention has been so extended to any territory, may by notification in writing to the Organization declare that the present Convention shall cease to extend to any such territory named in the notification.

(*b*) The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Organization.

(3) The Organization shall inform all the Contracting Governments of the extension of the present Convention to any territories under paragraph (1) of this Article, and of the termination of any such extension under the provision of paragraph (2), stating in each case the date from which the present Convention has been or will cease to be so extended.

[45] United Nations, *Treaty Series*, vol. 591, p. 265.

[46] *Ibid.*, vol. 640, p. 133.

(e) *International Convention Relating to Intervention on the High Seas in Case of Oil Pollution Casualties, done at Brussels, on 29 November 1969.*[47]

Article XIII

1. The United Nations where it is the administering authority for a territory, or any State Party to the present Convention responsible for the international relations of a territory, shall as soon as possible consult with the appropriate authorities of such territories or take such other measures as may be appropriate, in order to extend the present Convention to that territory and may at any time by notification in writing to the Secretary-General of the Organization declare that the present Convention shall extend to such territory.

2. The present Convention shall, from the date of receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.

3. The United Nations, or any Party which has made a declaration under paragraph 1 of this Article may at any time after the date on which the Convention has been so extended to any territory declare by notification in writing to the Secretary-General of the Organization that the present Convention shall cease to extend to any such territory named in the notification.

4. The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Secretary-General of the Organization.

(f) *International Convention on Civil Liability for Oil Pollution Damage, done at Brussels on 29 November 1969.*[48]

Article XVII

1. The United Nations, where it is the administering authority for a territory, or any Contracting State responsible for the international relations of a territory, shall as soon as possible consult with the appropriate authorities of such territory or take such other measures as may be appropriate, in order to extend the present Convention to that territory and may at any time by notification in writing to the Secretary-General of the Organization declare that the present Convention shall extend to such territory.

2. The present Convention shall, from the date of receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.

3. The United Nations, or any Contracting State which has made a declaration under paragraph 1 of this Article may at any time after the date on which the Convention has been so extended to any territory declare by notification in writing to the Secretary-General of the Organization that the present Convention shall cease to extend to any such territory named in the notification.

4. The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Secretary-General of the Organization.

(g) *Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, done at Brussels on 17 December 1971.*[49]

Article 8

1. The United Nations where it is the administering authority for a territory, or any Contracting Party to the present Convention responsible for the international relations of a territory, may at any time by notification in writing to the Secretary-General of the Organization declare that the present Convention shall extend to such territory.

[47] United Nations, *Juridical Yearbook, 1969* (United Nations publication, Sales No. E.71.V.4), p. 166.

[48] *Ibid.*, p. 174.

[49] United Nations, *Juridical Yearbook, 1972* (United Nations publication, Sales No. E.74.V.1), p. 100.

2. The present Convention shall, from the date of receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.

3. The United Nations, or any Contracting Party which had made a declaration under paragraph 1 of this Article may at any time after the date on which the Convention has been so extended to any territory declare by notification in writing to the Secretary-General of the Organization that the present Convention shall cease to extend to any such territory named in the notification.

4. The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Secretary-General of the Organization.

3. Text of provisions referring to any authority responsible for a territory or for its international relations

(a) *Constitution of FAO, signed at Quebec on 16 October 1945.*[50]

Article II

Membership and associate membership

...

3. The Conference may, under the same conditions regarding the required majority and quorum as prescribed in paragraph 2 above, decide to admit as an Associate Member of the Organization any territory or group of territories which is not responsible for the conduct of its international relations upon application made on its behalf by the Member Nation or authority having responsibility for its international relations, provided that such Member Nation or authority has submitted a declaration made in a formal instrument that it will accept on behalf of the proposed Associate Member the obligations of the Constitution as in force at the time of admission, and that it will assume responsibility for ensuring the observance of the provisions of paragraph 4 of article VIII, paragraphs 1 and 2 of Article XVI, and paragraphs 2 and 3 of Article XVIII of this Constitution with regard to the Associate Member.

(b) *Instrument for the amendment of the Constitution of the ILO adopted by the International Labour Conference at its twenty-ninth session, Montreal, 9 October 1946.*[51]

Article 35

...

5. A declaration accepting the obligations of any Convention may be communicated to the Director-General of the International Labour Office—

(*a*) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or

(*b*) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

6. Acceptance of the obligations of a Convention in virtue of paragraph 4 or paragraph 5 shall involve the acceptance on behalf of the territory concerned of the obligations stipulated by the terms of the Convention and the obligations under the Constitution of the Organisation which apply to ratified Conventions. A declaration of acceptance may specify such modifications of the provisions of the Convention as may be necessary to adapt the Convention to local conditions.

7. Each Member or international authority which has communicated a declaration in virtue of paragraph 4 or paragraph 5 of this Article may from time to time, in accordance with the terms of the Convention, communicate a further declaration modifying the terms of any former declaration or terminating the acceptance of the obligations of the Convention on behalf of the territory concerned.

8. If the obligations of a Convention are not accepted on behalf of a territory to which paragraph 4 or paragraph 5 of this Article relates, the Member or Members or international authority concerned shall report to the Director-General of the International Labour Office the position of the law and practice of that territory in regard to the matters dealt with in the Convention and the report shall show the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and shall state the difficulties which prevent or delay the acceptance of such Convention.

(c) *Constitution of WHO, signed at New York on 22 July 1946.*[52]

CHAPTER III

Membership and Associate Membership

...

Article 8

Territories or groups of territories which are not responsible for the conduct of their international relations may be admitted as Associate Members by the Health Assembly upon application made on behalf of such territory or group of territories by the Member or other authority having responsibility for their international relations. Representatives of Associate Members to the Health Assembly should be qualified by their technical competence in the field of health and should be chosen from the native population. The nature and extent of the rights and obligations of Associate Members shall be determined by the Health Assembly.

(d) *Amendment to Article II of the Constitution of UNESCO*[53] *approved by the General Conference of the United Nations Educational, Scientific and Cultural Organization in resolution 41.1 adopted on 11 July 1951.*[54]

41.1 *The General Conference,*

...

41.11 *Decides* to insert between paragraphs 2 and 3 of Article II of the Constitution the following additional paragraph 3:

"3. Territories or groups of territories which are not responsible for the conduct of their international relations may be admitted as Associate Members by the General Conference by a two-thirds majority of Members present and voting, upon application made on behalf of such territory or group of territories by the Member or other authority having responsibility for their international relations. The nature and extent of the rights and obligations of Associate Members shall be determined by the General Conference."

Part Two

ASSUMPTION BY THE UNITED NATIONS OF DIRECT ADMINISTRATION OF, OR RESPONSIBILITY FOR, A TERRITORY

A. West New Guinea (West Irian)

30. Between 1 October 1962 and 1 May 1963, the United Nations Temporary Executive Authority (UNTEA) was directly responsible for the administration of West New Guinea (West Irian), pursuant to a bilateral treaty, the Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea

[50] Amended text, certified at Rome on 19 November 1958. See FAO, *Basic Texts*, 1970 edition (Rome).

[51] United Nations, *Treaty Series*, vol. 15, p. 35.

[52] *Ibid.*, vol. 14, p. 185.

[53] *Ibid.*, vol. 4, p. 275.

[54] *Ibid.*, vol. 575, p. 260.

(West Irian),[55] of 15 August 1962, and pursuant to General Assembly resolution 1752 (XVII), of 21 September 1962, jointly sponsored by Indonesia and the Netherlands in accordance with article I of the Agreement.

31. The Agreement between Indonesia and the Netherlands was negotiated with the assistance of the Secretary-General, signed at United Nations Headquarters, and submitted jointly by both contracting parties through the Secretary-General to the General Assembly.[56] The Agreement did not enter into force upon the exchange of instruments of ratification of the contracting parties, which took place on 20 September 1962, but upon the date of the adoption by the General Assembly of resolution 1752 (XVII), namely on 21 September 1962, in accordance with the provisions of articles XXVII and XXVIII of the Agreement.

32. The General Assembly in resolution 1752 (XVII) took note of the Agreement, acknowledged the role conferred upon the Secretary-General and authorized the Secretary-General to carry out the tasks entrusted to him in the Agreement.[57] The resolution reads as follows:

The General Assembly,

Considering that the Governments of Indonesia and the Netherlands have resolved their dispute concerning West New Guinea (West Irian),

Noting with appreciation the successful efforts of the Acting Secretary-General to bring about this peaceful settlement,

Having taken cognizance of the Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian),

1. *Takes note* of the Agreement;

2. *Acknowledges* the role conferred upon the Secretary-General in the Agreement;

3. *Authorizes* the Secretary-General to carry out the tasks entrusted to him in the Agreement.

33. The role and authorized tasks of the Secretary-General were therefore those spelled out in the bilateral Agreement. The direct responsibility for the administration of West New Guinea (West Irian) between 1 October 1962 and 1 May 1963 was consequently exercised by UNTEA within the framework and in accordance with the relevant provisions set forth in the Agreement between Indonesia and the Netherlands, in particular articles II to XIII and XXII to XXVI, and related understandings to the Agreement.[58] Articles II to XIII and XXII to XXVI read as follows:

TRANSFER OF ADMINISTRATION

Article II

After the adoption of the resolution referred to in article I, the Netherlands will transfer administration of the territory to a United Nations Temporary Executive Authority (UNTEA) established by and under the jurisdiction of the Secretary-General upon the arrival of the United Nations Administrator appointed in accordance with article IV. The UNTEA will in turn transfer the administration to Indonesia in accordance with article XII.

UNITED NATIONS ADMINISTRATION

Article III

In order to facilitate the transfer of administration to the UNTEA after the adoption of the resolution by the General Assembly, the Netherlands will invite the Secretary-General to send a representative to consult briefly with the Netherlands Governor of the territory prior to the latter's departure. The Netherlands Governor will depart prior to the arrival of the United Nations Administrator.

Article IV

A United Nations Administrator, acceptable to Indonesia and the Netherlands, will be appointed by the Secretary-General.

Article V

The United Nations Administrator, as chief executive officer of the UNTEA, will have full authority under the direction of the Secretary-General to administer the territory for the period of the UNTEA administration in accordance with the terms of the present Agreement.

Article VI

1. The United Nations flag will be flown during the period of United Nations administration.

2. With regard to the flying of the Indonesian and Netherlands flags, it is agreed that this matter will be determined by agreement between the Secretary-General and the respective Governments.

Article VII

The Secretary-General will provide the UNTEA with such security forces as the United Nations Administrator deems necessary; such forces will primarily supplement existing Papua (West Irianese) police in the task of maintaining law and order. The Papuan Volunteer Corps, which on the arrival of the United Nations Administrator will cease being part of the Netherlands armed forces, and the Indonesian armed forces in the territory will be under the authority of, and at the disposal of, the Secretary-General for the same purpose. The United Nations Administrator will, to the extent feasible, use the Papuan (West Irianese) police as a United Nations security force to maintain law and order and, at his discretion, use Indonesian armed forces. The Netherlands armed forces will be repatriated as rapidly as possible and while still in the territory will be under the authority of the UNTEA.

Article VIII

The United Nations Administrator will send periodic reports to the Secretary-General on the principal aspects of the implementation of the present Agreement. The Secretary-General will submit full reports to Indonesia and the Netherlands and may submit, at his discretion, reports to the General Assembly or to all United Nations Members.

FIRST PHASE OF THE UNTEA ADMINISTRATION

Article IX

The United Nations Administrator will replace as rapidly as possible top Netherlands officials, as defined in annex A, with non-Netherlands, non-Indonesian officials during the first phase of the UNTEA administration which will be completed on 1 May 1963. The United Nations Administrator will be authorized to employ on a temporary basis all Netherlands officials other than top Netherlands officials defined in annex A, who wish to serve the UNTEA, in accordance with such terms and conditions as the Secretary-General may specify. As many Papuans (West Irianese) as possible will be brought into administrative and technical positions. To fill the remaining required posts, the UNTEA will have authority to employ personnel provided by Indonesia. Salary rates prevailing in the territory will be maintained.

Article X

Immediately after the transfer of administration to the UNTEA, the UNTEA will widely publicize and explain the terms of the present Agreement, and will inform the population concerning the transfer of administration to Indonesia and the provisions for the act of self-determination as set out in the present Agreement.

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[55] *Ibid.*, vol. 437, p. 273.

[56] See *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 89, document A/5170 and Add.1.

[57] As provided in article I.

[58] The provisions of the Agreement concerning Indonesian administration of the territory and the exercise by the territory's inhabitants of the act of self-determination, including the role of the Secretary-General relating thereto, are irrelevant to the question under consideration. With regard to these matters see *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, agenda item 98, document A/7723 and General Assembly resolution 2504 (XXIV) of 19 November 1969.

Article XI

To the extent that they are consistent with the letter and spirit of the present Agreement, existing laws and regulations will remain in effect. The UNTEA will have the power to promulgate new laws and regulations or amend them within the spirit and framework of the present Agreement. The representative councils will be consulted prior to the issuance of new laws and regulations or the amendment of existing laws.

SECOND PHASE

Article XII

The United Nations Administrator will have discretion to transfer all or part of the administration to Indonesia at any time after the first phase of the UNTEA administration. The UNTEA's authority will cease at the moment of transfer of full administrative control to Indonesia.

Article XIII

United Nations security forces will be replaced by Indonesian security forces after the first phase of the UNTEA administration. All United Nations security forces will be withdrawn upon the transfer of administration to Indonesia.

...

RIGHTS OF THE INHABITANTS

Article XXII

1. The UNTEA and Indonesia will guarantee fully the rights, including the rights of free speech, freedom of movement and of assembly, of the inhabitants of the area. These rights will include the existing rights of the inhabitants of the territory at the time of the transfer of administration to the UNTEA.

2. The UNTEA will take over existing Netherlands commitments in respect of concessions and property rights.

3. After Indonesia has taken over the administration it will honour those commitments which are not inconsistent with the interests and economic development of the people of the territory. A joint Indonesian-Netherlands commission will be set up after the transfer of administration to Indonesia to study the nature of the above-mentioned concessions and property rights.

4. During the period of the UNTEA administration there will be freedom of movement for civilians of Indonesian and Netherlands nationalities to and from the territory.

Article XXIII

Vacancies in the representative councils caused by the departure of Netherlands nationals, or for other reasons, will be filled as appropriate consistent with existing legislation by elections, or by appointment by the UNTEA. The representative councils will be consulted prior to the appointment of new representatives.

FINANCIAL MATTERS

Article XXIV

1. Deficits in the budget of the territory during the UNTEA administration will be shared equally by Indonesia and the Netherlands.

2. Indonesia and the Netherlands will be consulted by the Secretary-General in the preparation of the UNTEA budget and other financial matters relating to United Nations responsibilities under the present Agreement; however, the Secretary-General will have the final decision.

3. The Parties to the present Agreement will reimburse the Secretary-General for all costs incurred by the United Nations under the present Agreement and will make available suitable funds in advance for the discharge of the Secretary-General's responsibilities. The Parties to the present agreement will share on an equal basis the costs of such reimbursements and advances.

PREVIOUS TREATIES AND AGREEMENT

Article XXV

The present Agreement will take precedence over any previous agreement on the territory. Previous treaties and agreements regarding the territory may therefore be terminated or adjusted as necessary to conform to the terms of the present Agreement.

PRIVILEGES AND IMMUNITIES

Article XXVI

For the purposes of the present Agreement, Indonesia and the Netherlands will apply to United Nations property, funds, assets and officials the provisions of the Convention on the Privileges and Immunities of the United Nations. In particular, the United Nations Administrator, appointed pursuant to article IV, and the United Nations Representative, appointed pursuant to article XVII, will enjoy the privileges and immunities specified in section 19 of the Convention on the Privileges and Immunities of the United Nations.

34. The understandings relating to the Agreement[59] dealt with questions such as the cessation of hostilities (cease-fire), financial matters during the period of administration by UNTEA, issue of passports and consular protection during the administration by UNTEA, and modalities of transfer of authority over West New Guinea (West Irian). This last understanding reads as follows:

IV

...

Aide-mémoire [dated 15 August 1962] from the Acting Secretary-General handed to the Representative of Indonesia

1. The authority of the Government of the Netherlands over the territory will be terminated when the Special Representative of the Secretary-General takes charge. On the same day the United Nations flag will be hoisted.

2. From the same date the withdrawal and repatriation of the armed forces of the Netherlands will begin under the supervision of the Secretary-General's Special Representative and will be concluded as soon as possible.

3. On 31 December 1962 the Netherlands flag will be struck, and the Indonesian flag be hoisted side by side with the United Nations flag.

4. The transfer of authority to Indonesia will be effected as soon as possible after 1 May 1963.

Aide-mémoire [dated 15 August 1962] from the Acting Secretary-General handed to the Representatives of the Netherlands

1. The authority of the Government of the Netherlands over the territory will be terminated when the Special Representative of the Secretary-General takes charge. On the same day the United Nations flag will be hoisted.

2. From the same date the withdrawal and repatriation of the armed forces of the Netherlands will begin under the supervision of the Secretary-General's Special Representative and will be concluded as soon as possible.

3. On the day of the transfer of authority to the United Nations, the Netherlands flag will be hoisted side by side with the United Nations flag, and it will fly until 31 December 1962.

4. The transfer of authority to Indonesia will be effected as soon as possible after 1 May 1963.

35. More interesting, so far as the question under consideration is concerned, was the understanding concerning the issue of passports and consular protection during the administration of UNTEA. Firstly, the matter was not mentioned in the body of the Agreement itself. Secondly, as a whole it appears not only to be an ancillary understanding or agreement between the contracting parties to the main Agreement but also to be an understanding or agreement between them and the Secretary-General of the United Nations. It reads as follows:

[59] United Nations, *Treaty Series*, vol. 437, p. 292.

III

Letter [dated 15 August 1962] from the Representative of Indonesia and the Representatives of the Netherlands to the Acting Secretary-General

...

On behalf of our respective Governments, on the occasion of the signature of the Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian), we have the honour to bring to your attention the following agreement arrived at between our Governments and hereby placed on record, concerning the issue of passports and consular protection during the period of the administration by the United Nations Temporary Executive Authority (UNTEA) provided for in the aforesaid Agreement:

1. The UNTEA shall have the authority at its discretion to issue travel documents to Papuan (West Irianese) applying therefor without prejudice to their right to apply for Indonesian passports instead;

2. The Government of Indonesia and of the Netherlands shall at the request of the Secretary-General furnish consular assistance and protection abroad to Papuans (West Irianese) carrying the travel documents mentioned in the previous paragraph, it being for the person concerned to determine to which consular authority he should apply.

Should the above be acceptable to you, we have the honour further to propose that the note and your reply to the above effect shall be regarded as constituting and placing upon record the agreement reached in this matter.

...

Identical letters [dated 15 August 1962] from the Acting Secretary-General to the Representative of Indonesia and to the Representatives of the Netherlands

...

I have the honour to acknowledge the receipt of the note of today's date addressed to me by the representatives of the Republic of Indonesia and the Kingdom of the Netherlands, concerning the issue of passports and consular protection during the period of the administration by the United Nations Temporary Executive Authority (UNTEA) of the territory of West New Guinea (West Irian), and reading as follows:

[See text of preceding note.]

In reply I have the honour to inform you that I am prepared to instruct the UNTEA, when it is established as provided for in the Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian), to undertake the function referred to in the note under reference. I would like to take this occasion to request your Government to undertake consular assistance and protection abroad to Papuans (West Irianese) as provided in paragraph 2 of the note under reference.

This note and your note under reference shall be regarded as constituting and placing on record the agreement reached on this matter.

...

[Identical letters dated 15 August 1962 from the Representative of Indonesia and the Representatives of the Netherlands to the Acting Secretary-General]

I [We] have the honour to acknowledge the receipt of your note of today's date, indicating your willingness to undertake certain functions concerning issue of passports during the period of the administration by the United Nations Temporary Executive Authority (UNTEA) of the territory of West New Guinea (West Irian) and requesting my [our] Government to undertake consular assistance and protection abroad to Papuans (West Irianese) requesting such assistance and protection during the period of the UNTEA Administration. I [We] have the honour to inform you that my [our] Government will undertake such consular assistance and protection.

...

36. Neither the main Agreement nor the related understandings provided expressly for the participation by the United Nations, the Secretary-General or UNTEA in agreements "on behalf" of West New Guinea (West Irian) during the period of direct responsibility for the administration of the territory. UNTEA was conceived in the Agreement as a temporary undertaking, of less than one year duration, designed to facilitate the process of transferring administration over West New Guinea (West Irian) from one State (Netherlands) to another (Indonesia). Moreover, article XXV of the Agreement (see above) did not abrogate or terminate the application to the territory of treaties and agreements previously extended to it, but limited itself to proclaiming the Agreement's precedence "over any previous agreement on the territory" and to providing that "previous treaties and agreements regarding the territory may therefore be terminated or adjusted as necessary to conform to the terms of the present Agreement".[60]

37. During the UNTEA administration there were, however, instances of legal arrangements or transactions of a specific and short-term nature between UNTEA and other entities, mainly in connexion with matters relating to the economic stability of the territory during the UNTEA administration,[61] but such arrangements or transactions did not have the character of an international agreement or treaty made by UNTEA "on behalf" of West New Guinea (West Irian).

38. The implementation of article VII of the Agreement between Indonesia and the Netherlands did require the conclusion of a treaty, namely the Exchange of letters constituting an agreement between the United Nations and Pakistan concerning the United Nations Security Force in West New Guinea (West Irian) (New York, 6 December 1962 and 18 April 1963).[62] However, as the title indicates,

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[60] By a communication addressed to FAO on 28 December 1964, the Government of the Netherlands informed that Organization that, as a consequence of the Agreement between the Netherlands and Indonesia and the Understandings between the United Nations and the Netherlands and Indonesia, all signed at the Headquarters of the United Nations, New York, on 15 August 1962, the Government of the Netherlands considered that, having ratified the Plant Protection Agreement for the South-East Asia and Pacific Region, done at Rome, on 27 February 1956, with respect to Netherlands New Guinea, it had ceased to be a party to that Agreement as from 1 October 1962, the date of transfer of the administration of that territory to UNTEA (see United Nations, *Treaty Series*, vol. 527, p. 308).

[61] For an account of the activities of UNTEA during the administration of the territory, see the Annual Report of the Secretary-General on the Work of the Organization submitted to the General Assembly at its eighteenth session, in which it is said, *inter alia*, that

"The more important public works projects completed by UNTEA included the ocean wharf and a large hospital at Biak and buildings for the New Guinea Council and the Court of Justice; the extension and improvement of the Sentani airport at Hollandia/Kotabaru and the building of an airstrip at Wamena in the central highlands; and also the rehabilitation and extension of the water supply system at Hollandia/Kotabaru, Biak, Seroei, Fak Fak and Merauke. The Agricultural Research Station at Minokwari, financed by the European Economic Community, was also completed during the UNTEA period.

"In a territory where practically all consumer goods have to be imported from the outside, UNTEA maintained a constant watch on the supply situation, with a view to maintaining adequate stocks. To this end, shipping services were maintained by agreement first with a Netherlands shipping company and later with an Indonesian company. Foreign exchange was provided to import buffer stocks of essential commodities and an agreement was concluded to take over and distribute the existing stocks between Indonesian importers and the outgoing Dutch firms." (*Official Records of the General Assembly, Eighteenth Session, Supplement No. 1* (A/5501), pp. 35–40).

[62] United Nations, *Treaty Series*, vol. 503, p. 25. It incorporated the "General Directive concerning the United Nations Security Force in West New Guinea (West Irian)" issued by the Secretary-General.

that exchange of letters constituted an agreement concluded between Pakistan and the United Nations itself, and not between Pakistan and the United Nations "on behalf" of the territory of West New Guinea (West Irian). The Exchange of Letters was registered and published.

39. Lastly, it should be noted that the United Nations did not conclude any treaty in connexion with the implementation of the related understanding concerning use of passports and consular protection referred to above.[63] With regard to the issuance of travel documents by UNTEA, the Secretary-General proceeded as summarized below:

On 21 September 1962, the Secretary-General sent a circular letter to all Member Governments in which, referring to the above agreement, he requested them to confirm that they would recognize and accept as valid the aforesaid travel documents, subject to compliance with national visa regulations, and would issue the necessary instructions to the competent immigration and consular authorities to this effect.

In the reply to this letter, a number of Governments, including those of Burma, Japan, Thailand, Tunisia, India, Norway and the Union of Soviet Socialist Republics signified that they would accept these documents as valid documents. It should be noted that authority to deliver these travel documents was also given to United Nations Headquarters in New York, under the authority of the Administrator.[64]

B. Namibia

40. By resolution 2145 (XXI) of 27 October 1966, the General Assembly, *inter alia*, reaffirmed that the people of South West Africa had the inalienable right to self-determination, freedom and independence in accordance with the Charter of the United Nations, that South West Africa was a *territory* having international status and that it should maintain this status until it achieved independence. Furthermore, the General Assembly declared that South Africa had failed to fulfil its obligations in respect of the administration of the Mandated Territory and to ensure the moral and material well-being and security of the indigenous inhabitants of South West Africa and had, in fact, disavowed the Mandate conferred upon His Britannic Majesty on 17 December 1920 to be exercised on his behalf by the Government of the Union of South Africa. The General Assembly decided that the Mandate was therefore terminated, that South Africa had no other right to administer the Territory and that henceforth South West Africa came under the direct responsibility of the United Nations.

41. Having resolved that in these circumstances the United Nations must discharge those responsibilities with respect to South West Africa, the General Assembly, in its resolution 2248 (S-V) of 19 May 1967, decided to establish a United Nations Council for South West Africa responsible to the Assembly. Under the resolution, the Council was: (*a*) to administer South West Africa until independence, with the maximum participation of the people of the Territory; (*b*) to promulgate legislation required for the administration of the Territory until a legislative assembly could be elected on the basis of universal adult suffrage; (*c*) to take immediate measures, in consultation with the people of the Territory, to establish a constituent assembly with the object of drawing up a constitution; (*d*) to take the necessary measures for the maintenance of law and order in the Territory; and (*e*) to transfer all powers to the people of the Territory upon the declaration of independence.[65] The General Assembly decided that the Council should entrust such executive and administrative tasks as it deemed necessary to a United Nations Commissioner for South West Africa responsible to the Council. By resolution 2372 (XXII) of 12 June 1968, the General Assembly proclaimed that, in accordance with the desires of its people, South West Africa should be known henceforth as *Namibia*, and decided that the Council should be called the *United Nations Council for Namibia*, and the Commissioner the *United Nations Commissioner for Namibia*.

42. The Security Council, by resolution 264 (1969) of 20 March 1969, recognized that the General Assembly terminated the Mandate of South Africa over Namibia and assumed direct responsibility for the Territory until its independence. All States were called upon by the Security Council to refrain from all dealings with the Government of South Africa purporting to act on behalf of the Territory of Namibia,[66] and all acts taken by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate were declared by the Security Council illegal and invalid.[67] In accordance with Article 96, paragraph 1, of the Charter, the Security Council submitted, by resolution 284 (1970) of 29 July 1970, the following question to the International Court of Justice for an advisory opinion: "*What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?*".

43. In its advisory opinion of 21 June 1971, the International Court of Justice replied to the question as follows.

By 13 votes to 2,

(1) that the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to the occupation of the Territory;

By 11 votes to 4,

(2) that States Members of the United Nations are under obligation to recognise the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of, or concerning Nambia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support and assistance to, such presence and administration;

(3) that it is incumbent upon States which are not Members of the United Nations to give assistance, within the scope of subparagraph 2 above, in the action which has been taken by the United Nations with regard to Namibia.[68]

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[63] See para. 35.

[64] United Nations, *Juridical Yearbook, 1967* (op. cit.), p. 309.

[65] For further General Assembly resolutions concerning the functions and responsibilities of the Council, see in particular resolutions 2288 (XXII) of 7 December 1967, 2325 (XXII) of 16 December 1967, 2372 (XXII) of 12 June 1968, 2403 (XXIII) of 16 December 1968, 2517 (XXIV) of 1 December 1969, 2547 A (XXIV) of 11 December 1969, 2678 (XXV) of 9 December 1970, 2871 (XXVI) of 20 December 1971, 3031 (XXVII) of 18 December 1972 and 3111 (XXVIII) and 3112 (XXVIII), both of 12 December 1973.

[66] Resolution 269 (1969) of 12 August 1969.

[67] Resolution 276 (1970) of 30 January 1970.

[68] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 58.

The Security Council[69] and the General Assembly[70] agreed with and welcomed the advisory opinion as expressed in paragraph 133 of that opinion.

44. The General Assembly, in 1971, requested the United Nations Council for Namibia to continue to discharge its functions and responsibilities and, in particular, to "represent Namibia whenever it is required".[71] Subsequently the General Assembly specifically requested the United Nations Council for Namibia to represent the Territory "in international organizations, at conferences and on any other occasion as may be required",[72] and all subsidiary organs of the United Nations, intergovernmental bodies and conferences to ensure that the rights and interests of Namibia were protected and to that end, among other things, to invite the Council to participate in an appropriate capacity whenever such rights and interests were involved.[73] Further, the General Assembly requested all specialized agencies and other organizations within the United Nations system and the member States thereof to take such necessary steps as will enable the Council, as the legal authority for Namibia, to participate fully on behalf of Namibia in the work of those agencies and organizations.[74]

45. The United Nations Council for Namibia decided in 1972 to contest South Africa's claim to represent Namibia at the organizational meeting of the International Commission on Southeast Atlantic Fisheries, and to communicate this decision to the Director-General of FAO, the depositary of the Convention on the Conservation of Living Resources in the Southeast Atlantic, under which the Commission was being established. It also communicated to him its demand to participate in the meeting on behalf of Namibia, so that the Territory might be legally represented and the interests of the Namibian peoples protected. The Commission having rejected the Council's request, the Director-General of FAO withdrew the Executive Secretary made available by FAO to the Commission, and informed the United Nations Council for Namibia of the action taken by the Commission and his decision. He added that he would review current and future collaboration between FAO and the Commission.[75]

46. Pursuant to the relevant provisions of General Assembly and Security Council resolutions and in accordance with the advisory opinion of the International Court of Justice, the United Nations Council for Namibia has continued to represent or to seek representation of Namibia and to protect the interests of the Namibian people at international conferences[76] in the specialized agencies and institutions of the United Nations system[77] and in other bodies.[78] It intends to secure membership in the specialized agencies and represent Namibia at conferences and meetings where appropriate. In its report to the twenty-eighth session of the General Assembly, the Council recommended that the Assembly request all specialized agencies and other institutions within the United Nations system to implement the resolutions of the United Nations and the advisory opinion of the International Court of Justice and, in particular, to accept the Council and grant it membership as the authority entitled to represent Namibia and give favourable consideration to the waiver of an assessment for contributions to their budgets.[79] The General Assembly, by resolution 3111 (XXVIII), approved the Council's report and the recommendations contained therein.

47. An application for associate membership in WHO made on behalf of Namibia by the United Nations Council for Namibia was considered by the Twenty-seventh World Health Assembly. The application, dated 26 March 1974, was signed by the United Nations Commissioner for Namibia and addressed to the Director-General of the

[69] Resolution 301 (1971) of 20 October 1971. In this resolution, the Security Council declared that franchises, rights, titles or contracts relating to Namibia granted to individuals or companies by South Africa after the adoption of General Assembly resolution 2145 (XXI) of 27 October 1966 were not subject to protection or espousal by their States against claims of a future lawful Government of Namibia.

[70] Resolution 2871 (XXVI) of 20 December 1971. By this resolution and resolution 3031 (XXVII) all States were called upon by the General Assembly not to recognize as legally valid any rights or interests in Namibian property or resources purportedly acquired from the South African Government after 27 October 1966.

[71] Resolution 2871 (XXVI). The written statement submitted by the Secretary-General to the International Court of Justice in relation to the advisory opinion mentioned above included, *inter alia*, the following passages on the authority legally empowered to represent Namibia:

"115. States are therefore confronted with the simultaneous existence of an illegal régime within the Territory, and at the same time a lawful authority which, although temporarily outside the Territory, is the only authority since the termination of the Mandate legally empowered to represent and administer Namibia pending the attainment of its independence.

"116. An immediate consequence for States is that any legal relation, of any kind, with or involving Namibia can only be entered into or maintained through the sole authority legally responsible for the administration of Namibia, namely the United Nations Council for Namibia, acting on behalf of the General Assembly. Conversely, any relation purporting to be with or to involve Namibia, which has been entered into or maintained through the Government of South Africa or the illegal South African administration in Namibia since the termination of the Mandate, is void and without legal effect.

...

"140. It also follows that States are precluded from recognizing any purported international representation of Namibia by South Africa, and, in general, any executive, legislative or judicial act by the Government of South Africa or its administration in Namibia, since the termination of the Mandate, purporting to have been taken on behalf of or concerning Namibia."

(*I.C.J. Pleadings, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, vol. I, pp. 104 and 108–109).

[72] Resolution 3031 (XXVII) of 18 December 1972.

[73] Resolution 3111 (XXVIII) of 12 December 1973.

[74] *Ibid.*

[75] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 24* (A/8724), vol. I, paras. 126–131. See also A/AC.131/L.4.

[76] In 1973, the Council was represented at the International Conference of Experts for the Support of Victims of Colonialism and *Apartheid* in South Africa and the first session of the Third United Nations Conference on the Law of the Sea convened by the United Nations. The General Assembly invited the Council to attend, as an observer, the 1974 United Nations Conference on Prescription (Limitation) in the International Sale of Goods.

[77] Questions of membership and participation were discussed in 1973 between a delegation of the Council and officials of the ILO, FAO, UNESCO, WHO and UNHCR. In 1973, the Council was represented at the Fifth Africa–Indian Ocean Regional Air Navigation Meeting convened by ICAO and at the Fourth ILO African Regional Conference held in Nairobi.

[78] The Council has been represented at meetings of various organs of OAU since 1970. It sent a mission to attend in 1972 the Namibia International Conference held in Brussels and organized by the South West Africa People's Organization (SWAPO) and a Belgian national committee and, in 1973, various meetings organized by the World Peace Council.

[79] *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 24* (A/9024), para. 336, recommendation 19.

World Health Organization. The text of the letter of application read as follows:

Further to our discussions earlier this month, I now have the honour to submit to you on behalf of the United Nations Council for Namibia the application of Namibia as an Associate Member of the World Health Organization under the provisions of Article 8 of the WHO Constitution.

The authority under which this application is submitted is based on the following resolutions of the General Assembly:

(*a*) 2145 (XXI), paragraphs 4 and 5, by which it was decided to terminate the mandate of South Africa over Namibia, and that henceforth Namibia would come under the direct responsibility of the United Nations, and that in these circumstances the United Nations must discharge those responsibilities with respect to Namibia.

(*b*) 2248 (S-V) section II, paragraph 1, which in implementation of the previous resolution established the United Nations Council for Namibia to administer Namibia until independence, with the maximum possible participation of the people of the Territory, and which further contains the terms of reference of the Council, and also, in paragraph 3 of that section, provides for the appointment of a United Nations Commissioner for Namibia.

(*c*) 3111 (XXVIII) section II, paragraph 1, in which the specialized agencies and other organizations within the United Nations system and the Member States thereof are requested to take such necessary steps as will enable the United Nations Council for Namibia, as the legal authority for Namibia, to participate fully on behalf of Namibia in the work of those agencies and organizations.

With regard to resolution 2145 it should be noted that the International Court of Justice in their Advisory Opinion of 1971 confirmed its legality.

In addition, I wish to inform you that the Namibia liberation movement SWAPO, which is recognized as such by the United Nations and by the Organization of African Unity, fully participates in the work of the Council, and will be included, as appropriate, in any delegation representing Namibia in the World Health Organization.

I am prepared, if required, to amend and add to this application so that it fully conforms to the form prescribed by the relevant provisions of the Rules of Procedure of the World Health Assembly relating to this matter.[80]

48. Following the submission of that application the World Health Assembly, on 16 May 1974, admitted Namibia as an Associate Member of WHO in conformity with article 8 of its Constitution.[81] The corresponding draft resolution co-sponsored by 51 delegations[82] as orally amended was adopted without objections.[83] The resolution adopted reads:

The Twenty-seventh World Health Assembly,

Recalling the United Nations General Assembly resolution 3111 (XXVIII) requesting the specialized agencies to take such necessary steps, as would enable the United Nations Council for Namibia to act as the legal authority for Namibia, to participate fully, on behalf of Namibia, in the work of these agencies;

Having considered the application made on behalf of Namibia by the United Nations Council for Namibia for admission as Associate Member of WHO;

Noting that the Namibia Liberation Movement (SWAPO) recognized by the United Nations and the Organization of African Unity is the authentic representative of the Namibian people;

Having considered paragraph 1.9 of the report of the Director-General on co-ordination within the United Nations system on general matters,

Decides to admit Namibia as an Associate Member of WHO, in conformity with Article 8 of the Constitution of WHO and to invite the United Nations Council for Namibia to designate a representative to participate in the work of WHO.[84]

49. The World Health Assembly, on 21 May 1974, adopted likewise the following resolution concerning the assessment of Namibia for 1974:

The Twenty-seventh World Health Assembly,

Noting the admission of Namibia to associate membership in the Organization on 16 May 1974, and that notice has been given of acceptance of associate membership on behalf of Namibia in accordance with Rules 114 and 115 of the Rules of Procedure of the Health Assembly;

Recalling that the Thirteenth World Health Assembly, in resolution WHA13.16, confirmed that the assessment of Associate Members shall be 0·02%;

Recalling further that the Twenty-second World Health Assembly, in resolution WHA22.6, decided that from 1968 new Members shall be assessed in accordance with the practice followed by the United Nations in assessing new Members for their year of admission;

Decides that the assessment of Namibia for 1974 shall be reduced to one-third of 0·02%.[85]

50. In addition to the question of the representation of Namibia to international organizations, conferences and meetings, the termination by the General Assembly of the Mandate raised likewise a series of problems of treaty law with regard to Namibia some of which have already received a certain degree of consideration by organs of the United Nations. Highly relevant for the purpose of this study, the corresponding developments are summarized below under two main headings, namely (1) Review of multilateral and bilateral treaties concluded by South Africa affecting Namibia and (2) International agreements concluded by the United Nations Council for Namibia. The General Assembly has also called for the application in Namibia or to Namibians of certain existing treaty provisions or international standards relating to protection of prisoners and civilian population.[86]

1. Review of multilateral and bilateral treaties concluded by South Africa affecting Namibia

51. On the recommendation of its *Ad Hoc* Sub-Committee on Namibia,[87] the Security Council, by resolution 283 (1970)

[80] WHO document A27/33.

[81] For the text of article 8 of the WHO Constitution see above Part One, sect. B, 3(*c*).

[82] WHO document A27/36 and Add.1–3.

[83] See *Official Records of the World Health Organization*, 1974, No. 218, Tenth plenary meeting. Some delegations expressed reservations concerning the third preambular paragraph.

[84] Resolution WHA27.23.

[85] Resolution WHA27.39.

[86] The 1949 Geneva Conventions relative to the Treatment of Prisoners of War and to the Protection of Civilian Persons in Time of War and the 1955 Standard Minimum Rules for the Treatment of Prisoners (General Assembly resolutions 2547 A (XXIV), 2678 (XXV) and 2871 (XXVI)).

[87] *Official Records of the Security Council, Twenty-fifth Year, Supplement for July, August and September 1970* (document S/9863 and Add.1/Rev.1). In response to a request from the *Ad Hoc* Sub-Committee addressed to all States concerned for information on, *inter alia*, any multilateral or bilateral treaties or other legal instruments between themselves and South Africa applying directly or otherwise to the Territory of Namibia, the replies of 8 of the 53 States responding indicated that treaties existed between themselves and South Africa which might or might not apply to Namibia (Austria, Denmark, Finland, the Federal Republic of Germany, Norway, Sweden, the United Kingdom and the United States of America) (*ibid.*, annex I). The *Ad Hoc* Sub-Committee also requested relevant information from all specialized agencies, IAEA and UNDP. The ILO indicated that under its constituent instrument, South Africa was obliged to submit to the ILO reports concerning the implementation of four multilateral treaties, concluded between 1925 and 1948, applicable to

(Continued on next page.)

of 29 July 1970 requested all States to undertake without delay a detailed study and review of all bilateral treaties between themselves and South Africa in so far as these treaties contain provisions by which they apply to the Territory of Namibia.[88] It also requested the Secretary-General to undertake without delay a detailed study and review of all multilateral treaties to which South Africa is a party and which, either by direct reference or on the basis of relevant provisions of international law, might be considered to apply to the Territory. The requested study was submitted by the Secretary-General in a document dated 12 August 1971.[89]

52. In his written statement submitted to the International Court of Justice, the Secretary-General included the following paragraphs concerning treaties and other international agreements:

120. Similarly, international treaties or agreements, or amendments thereof, concluded with South Africa, or the illegal South African administration of Namibia, subsequent to the termination of the Mandate have no legal application to Namibia. This consequence results by operation of law from the fact that the Government of South Africa had no right or authority to act for Namibia at the material time, and consequently no act or signature by South Africa since the termination of the Mandate could engage the responsibility of Namibia or impose on the latter any new rights or obligations.

121. By the same token, the Government of South Africa has no authority after the termination of the Mandate to invoke or claim any rights or obligations on behalf of Namibia, under treaties between Namibia and other States concluded while the Mandate was still in force. However, although this may affect the capability of performance of some such treaty obligations, it would not lessen the legal validity of otherwise valid treaties as between the lawful parties thereto.

122. For treaties and agreements concluded with the Government of South Africa prior to the termination of the Mandate and having application to Namibia may not be invalidated solely by reason of the termination of the Mandate and the cessation of the authority of the Government of South Africa to act on Namibia's behalf. Such treaties and agreements may, however, be temporarily incapable of performance, or have become terminable as a result of a fundamental change in circumstances (*rebus sic stantibus*) or conflict with a peremptory norm of general international law (*ius cogens*). Moreover, it will be for the future lawful Government of Namibia to determine the extent of its continuing treaty relationships, arising from past as well as current treaties, in accordance with the relevant principles of international law.

123. If a treaty lawfully concluded while the Mandate was in force requires for its implementation a further act by the territorial government or administration at the time when the treaty is invoked, then even if such a treaty still remains in force, it could not be brought into operation by any further act of the South African Government or the illegal South African administration in Namibia after the termination of the Mandate.

124. For example, an extradition treaty purporting to extend to Namibia, however lawfully it may have been concluded, would not obligate a State to deliver up any person to, or at the request of the illegal South African régime in Namibia, or a government (such as the South African Government) having no authority to invoke any treaty obligation in respect of Namibia. It is incumbent on States not to comply with such an unlawful request.

125. It is also a duty of States not to grant extradition for any act committed in furtherance of the struggle of the people of Namibia against foreign occupation (for which struggle, the Security Council requested all States to increase their moral and material assistance), or for an offence under a South African law deemed to be illegal and invalid either by reason of inconsistency with or repugnance to the provisions of the United Nations Charter or peremptory norms of international law.

126. States which are parties to international treaties or agreements applicable to Namibia would also be precluded from accepting that any obligation owing thereunder to Namibia had been, or could be legally discharged by a payment to or settlement with the Government of South Africa, after the termination of the Mandate. For in these circumstances, the obligation would remain legally undischarged, and still owing to the lawful administration of Namibia (for the time being, the United Nations Council for Namibia, acting under the responsibility of the General Assembly).[90]

53. In its advisory opinion, the International Court of Justice stated as follows:

122. For the reasons given above, and subject to the observations contained in paragraph 125 below, member States are under obligation to abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia. With respect to existing bilateral treaties, member States must abstain from invoking or applying those treaties or provisions of treaties concluded by South Africa on behalf of or concerning Namibia which involve active intergovernmental co-operation. With respect to multilateral treaties, however, the same rule cannot be applied to certain general conventions such as those of a humanitarian character, the non-performance of which may adversely affect the people of Namibia. It will be for the competent international organs to take specific measures in this respect.

...

125. In general, the non-recognition or South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.

126. As to non-member States, although not bound by Articles 24 and 25 of the Charter, they have been called upon in paragraphs 2 and 5 of resolution 276 (1970) to give assistance in the action which has been taken by the United Nations with regard to Namibia. In the view of the Court, the termination of the Mandate and the declaration of the illegality of South Africa's presence in Namibia are opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law: in particular, no State which enters into relations with South Africa concerning Namibia may expect the United Nations or its Members to recognize the validity or effects of such relationship, or of the consequences thereof. The Mandate having been terminated by decision of the inter-

(Continued)
the Territory. After the termination of the Mandate by General Assembly resolution 2145 (XXI), the ILO ceased to address to South Africa requests for such reports. ITU indicated that its Administrative Council in resolving that South Africa no longer had the right to represent the Territory of South West Africa, noted that South Africa's instrument of accession to the constituent instrument of the Union had included accession on behalf of the Territory (*ibid.*, annex II).

[88] In response to *notes verbales* of the Secretary-General concerning the implementation of resolution 283 (1970), 40 States submitted replies, of which 2 (Austria and Greece) indicated bilateral treaties containing provisions by which they might apply to Namibia (*ibid.*, *Twenty-sixth Year, Special Supplement No. 5* (S/10330), annex).

[89] *Ibid.*, *Twenty-sixth Year, Supplement for July, August and September 1971*, document S/10288.

[90] *I.C.J. Pleadings, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, vol. I, pp. 105–106. Other statements which refer to this matter include written statements submitted to the Court by four Governments (Netherlands, *ibid.*, p. 352, para. 6; Finland, *ibid.*, p. 375, para. 16; United States, *ibid.*, pp. 881–882, 884–887, part II, chapter III, sections I.D and II.b; and Nigeria, *ibid.*, p. 896, para. 24(iv)) and oral statements made before the Court by the representatives of five Governments and one organization (South Africa, *ibid.*, vol. II, pp. 11–15; OAU and Nigeria, *ibid.*, pp. 103–104, 131; India, *ibid.*, p. 118; Pakistan, *ibid.*, p. 144; and Republic of Viet-Nam, *ibid.*, p. 285).

national organization in which the supervisory authority over its administration was vested, and South Africa's continued presence in Namibia having been declared illegal, it is for non-member States to act in accordance with those decisions.[91]

54. By resolution 301 (1971) of 20 October 1971, the Security Council, having considered the report of its *Ad Hoc* Sub-Committee on Namibia[92] called upon all States, in the discharge of their responsibilities towards the people of Namibia and subject to the exceptions set forth in paragraphs 122 and 125 of the advisory opinion of the International Court of Justice quoted above: (*a*) to abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia; (*b*) to abstain from invoking or applying those treaties or provisions of treaties concluded by South Africa on behalf of or concerning Namibia which involve active intergovernmental co-operation; and (*c*) to review their bilateral treaties with South Africa in order to ensure that they are not inconsistent with the decisions of the Security Council.[93] The Security Council also requested its *Ad Hoc* Committee on Namibia to review all treaties and agreements which are contrary to the provisions of resolution 301 (1971) in order to ascertain whether States have entered into agreements which recognize South Africa's authority over Namibia, and to report periodically thereon.[94]

55. The report of the United Nations Council for Namibia to the twenty-sixth session (1971) of the General Assembly noted that South Africa continued to represent Namibia in such overt cases as bilateral treaties concluded since October 1966 in which the Republic was defined as including the Territory or in which a specific provision included the Territory within the scope of applicability of the treaty. Noting also that in its ratification of the 1969 multilateral Convention on the Conservation of Living Resources in the Southeast Atlantic[95] South Africa had included the territorial waters of Namibia in those of the Republic, the report stated the following:

> It is probable that South Africa similarly represents Namibia *de facto* in respect of the subject matter of many other multilateral conventions and will continue to do so unless the Council for Namibia is substituted for the Republic in appropriate existing Conventions in so far as Namibia is concerned and is allowed to negotiate, sign and ratify future multilateral conventions directly or indirectly affecting the Territory.[96]

56. In the same report, the United Nations Council for Namibia included among the proposals for future action the seeking by the Council of (a) the right to participate in the negotiation and to sign and ratify all international conventions dealing with subjects which affect Namibian interests and (b) the substitution of the Council for South Africa as a party to all multilateral treaties applying to Namibia which are of such a nature that, according to the International Court of Justice, their non-performance might adversely affect the Namibian people. In addition, the Council for Namibia recommended to the General Assembly that it, *inter alia*, (a) recommend that the specialized agencies and organizations of the United Nations take all the necessary steps, in accordance with their respective constitutions, to enable the Council to participate on behalf of the Territory in the negotiation, signature and ratification of all conventions which are universal in application or which affect Namibia; and (*b*) request the Secretary-General to provide a list of all bilateral treaties registered with the United Nations to which South Africa is a party and which have been extended to Namibia, and call upon all Member States (i) not to enter into any further treaties with South Africa which include Namibia; (ii) not to extend any existing treaties to Namibia; and (iii) not to invoke or apply to Namibia in any way treaty provisions already extended to Namibia, except in circumstances in which failure to do so would adversely affect the Namibian people.[97] At its twenty-sixth session, the General Assembly, while following some of the Council recommendations in adopting resolution 2871 (XXVI), did not specifically adopt the Council's recommendations concerning treaties referred to above.

57. In its report to the twenty-seventh session of the General Assembly (1972), the United Nations Council for Namibia reiterated the recommendations concerning treaties which it had submitted in 1971.[98] By resolution 3031 (XXVII) the General Assembly requested the Council to continue to examine the question of bilateral and multilateral treaties which explicitly or implicitly include Namibia, and to seek to replace South Africa as the party representing Namibia in all relevant bilateral and multilateral treaties. The Council was also requested to undertake a study on the compliance of Member States with the relevant United Nations resolutions, taking into account the advisory opinion of the International Court of Justice relating to Namibia.

58. To initiate the study of such matters, the Council on the basis of a draft prepared by its Standing Committee II, submitted in 1973 a questionnaire to all Member States requesting full and detailed information on, *inter alia*,

> (17) Treaty relations between your Government and South Africa involving Namibia, in particular:
>
> (*a*) Bilateral treaties between your Government and South Africa in so far as they contain provisions by which they apply to the Territory of Namibia;
>
> (*b*) Treaty relations of States in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia;
>
> (*c*) Treaties concluded by South Africa on behalf of or concerning Namibia which involve active intergovernmental co-operation.

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[91] *Legal Consequences for States ...* (*op. cit.*), *Advisory Opinion, I.C.J. Reports, 1971* (*op. cit.*), pp. 55–56.

[92] *Official Records of the Security Council, Twenty-sixth Year, Special Supplement No. 5* (S/10330).

[93] The report of the Secretary-General on the implementation of resolution 301 (1971) included the replies of twenty States, none of which indicated treaties to which they and South Africa were parties which might be applicable to Namibia, *ibid.*, *Twenty-seventh Year Supplement for April, May and June 1972*, document S/10708; *ibid.*, *Supplement for July, August and September 1972*, document S/10708/Add.1; and *ibid.*, *Supplement for October, November and December, 1972*, document S/10708/Add.2.

[94] At the date of publication of this study, the matter remains under consideration by the *Ad Hoc* Sub-Committee, which has not so far submitted a report thereon to the Security Council.

[95] See para. 45 above.

[96] *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 24* (A/8424), para. 94.

[97] *Ibid.*, paras. 196 (*b*) and (*d*), and 197, recommendations 2(*b*) and 4.

[98] *Ibid.*, *Twenty-seventh Session, Supplement No. 24* (A/8724), vol. I, para. 254, recommendations 6(*b*) and 11.

Has your Government denounced the treaties referred to or at least refrained from extending their application to Namibia?[99]

59. The recommendations submitted by the Council for Namibia to the General Assembly at its twenty-eighth session (1973) included the following:

(10) Approve the proposals of the Council to:

(*a*) Continue its study of the compliance of Member States with decisions and resolutions of the United Nations relating to Namibia;

...

(*c*) Act on the list of bilateral and multilateral treaties involving South Africa to ensure that they conform to the advisory opinion of the International Court of Justice of 1971;

(*d*) Consult with the European Economic Community (EEC) with regard to any contacts or understandings between EEC and South Africa that would be in violation of the advisory opinion of the International Court of Justice of 1971;

(*e*) Conduct a detailed study of issues relating to the frontiers of Namibia with particular reference to the status of Walvis Bay, the Caprivi Strip and the frontier with Angola;

...

(14) Request all countries with bilateral agreements with South Africa, especially double taxation agreements and those containing "most-favoured-nation" clauses, to consult with the Council for Namibia and the Secretary-General concerning the possible violation of their international legal obligations.

...

(18) Reiterate its request to all States to prohibit nationals and companies under their jurisdiction from participating in the Cunene River Basin scheme and to refuse diplomatic protection for any purported contracts, because they would be based on a bilateral agreement between the South African and Portuguese régime which is illegal and invalid.

...

(20) Request all international organizations in the United Nations family and International Court of Justice to co-operate to the maximum extent possible, including the provision of background and technical information relating to international treaties, conventions and other forms of international co-operation relating to the interest of the Namibian people.[100]

By resolution 3111 (XXVIII), the General Assembly approved the report of the United Nations Council for Namibia, including the recommendations contained therein and, in particular, requested all States which have agreements with South Africa relating to Namibia to enter into consultations with the Council and the Secretary-General with a view to concluding new agreements, as appropriate, on matters covered by the previous ones.

2. International agreements concluded by the United Nations Council for Namibia

60. In its first report to the General Assembly, the United Nations Council for Namibia noted that one of the administrative matters before it was the question of issuing passports to Namibians.[101] The Acting Commissioner for the Territory submitted to the Council a note on the question whether the powers entrusted to the Council by General Assembly resolution 2248 (S-V) included the issuance of travel documents to the inhabitants or citizens of the Territory. The note concluded that "it would appear that there is sufficient precedent for the Council to consider making arrangements for the issue" of such travel documents.[102] In its second report, the Council decided in principle to proceed with arrangements for the issuance, at an early date, of travel documents in the Council's name.[103] By resolution 2372 (XXII), the General Assembly decided that the Council for Namibia shall continue with a sense of urgency its consultations on the question of issuing to Namibians travel documents enabling them to live abroad.

61. At the request of the Council, the Secretary-General, in 1968, addressed a *note verbale* to States Members of the United Nations and members of the specialized agencies requesting them to undertake to recognize, and accept as valid, the travel and identity documents issued by the United Nations Council for Namibia to Namibians, as subject to the usual visa requirements of each State concerned. In its report to the twenty-eighth session of the General Assembly, the Council noted that 84 States had, as of 31 August 1973, agreed to accept the validity of the Council's travel and identity documents.[104] Two of the States whose replies have been reproduced in documents of the Council have not accepted the validity of the documents.[105] The General Assembly, by resolution 2678 (XXV) and 2871 (XXVI)

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[99] *Ibid., Twenty-eighth Session, Supplement No. 24* (A/9024), annex II. See also *ibid.*, paras. 11 and 241–246.

[100] *Ibid.*, para. 336.

[101] *Ibid., Twenty-second Session, Annexes*, agenda item 64, document A/6897, para. 16. At that time the Council was called "United Nations Council for South West Africa" (see para. 41 above).

[102] Document A/AC.131/4, reproduced in United Nations, *Juridical Yearbook, 1967* (*op. cit.*), pp. 309–311.

[103] *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 64, document A/7088, para. 35. In another development, the Council, in 1972, issued a Council for Namibia visa to an individual (*ibid., Twenty-seventh Session, Supplement No. 24* (A/8724), vol. I, para. 149). In its report to the twenty-eighth session of the General Assembly, the Council recommended that the General Assembly recommend that all States require that their nationals obtain a visa from the Council for travel to Namibia and prohibit tourism and emigration to Namibia while it is under illegal occupation (*ibid., Twenty-eighth Session, Supplement No. 24* (A/9024), para. 336(17)). By resolution 3111 (XXVIII) the General Assembly approved the Council's report and the recommendations contained therein.

[104] *Ibid., Twenty-eighth Session, Supplement No. 24* (A/9024), para. 273 and annex III. For the list of these States, see annex I to the present document.

[105] See document A/AC.131/10 and Add.1–10. The two States who have not accepted the validity of the Council's travel documents are France and Malawi. The reply of *France* stated:

"The practice followed with regard to the issue of travel documents for refugees is based in particular on the international Convention relating to the Status of Refugees signed at Geneva on 28 July 1951, which, since the Protocol dealt with in General Assembly resolution 2198 (XXI), which came into force on 4 October 1967, has been made universal in scope and to which fifty-five States Members of the United Nations are parties.

"It should be possible to meet the refugees' requests referred to in the Secretary-General's note by applying this Convention, to which is annexed a specimen travel document to be issued by the Contracting States and to which the Organization of African Unity recently recommended accession.

"In the circumstances, the Office of the United Nations High Commissioner for Refugees, which, under the terms of the preamble to the Convention, is charged with the task of supervising international conventions providing for the protection of refugees and with which, under article 2 of the Protocol, the Contracting States undertake to co-operate, would seem, in view of its experience and the means available to it, to be the body best qualified to find a practical and quick solution to this problem which is likely to win immediate support from the largest possible number of States. The work of the Office of the High Commissioner, moreover, cannot be called in question from the legal standpoint." (A/AC.131/10, p. 7).

The reply of *Malawi* stated:

"The Malawi Government will not recognize any travel documents issued by the Council for Namibia." (A/AC.131/10/Add.1, p. 3).

called upon States which have not yet done so to recognize and accept the travel and identity documents.

62. In 1970, the Council initiated discussions with those countries where the majority of Namibians abroad reside at present, concerning the modalities for issuing Council travel documents in their respective countries.[106] As a result, the United Nations Council for Namibia has negotiated and concluded, as of 31 December 1973, agreements with the Governments of seven Member States (Ethiopia, Kenya, Nigeria, Uganda, United Republic of Tanzania, Zaire, Zambia) concerning the issuance by the Council of travel and identity documents to Namibians. The Governments concerned granted in their respective agreement the right of return to certain categories of Namibians who receive the travel and identity documents of the Council. The General Assembly, in its resolution 3031 (XXVII), requested the Council to continue to expand the existing scheme for issuing identity certificates and travel documents to Namibians by concluding appropriate agreements with Governments of Member States.

63. Published in documents of the Council, the Agreements have been registered with the Secretariat of the United Nations.[107] Some of them were effected by an exchange of letters, others by signature for (and on behalf of) the Government concerned and for (and on behalf of) the United Nations Council for Namibia.

[106] *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 24* (A/8024), para. 50.

[107] For the text of the Agreements, see annex II below.

Annex I[a]

Replies from Governments concerning travel and identity documents for Namibians

1. Up to 31 August 1973, a total of 84[b] affirmative replies had been received from States in response to the notes by the Secretary-General, dated 12 December 1968 and 20 December 1970, in which he requested Member States to recognize and accept as valid the travel and identity documents issued by the United Nations Council for Namibia to Namibians residing abroad.

2. Of this number, the following 47 States have agreed to accept the documents issued by the Council as valid for travel and identity purposes, subject to the normal visa requirements of their Governments:

Austria
Brazil
Bulgaria
Burma
Cameroon
Chad
Chile
Dahomey
Dominican Republic
El Salvador
Ethiopia
German Democratic Republic
Guyana
Hungary
India
Indonesia
Iraq
Ivory Coast
Kenya
Khmer Republic
Kuwait
Laos
Libyan Arab Republic
Malaysia
Maldives
Mauritius
Mexico
Mongolia
New Zealand
Niger
Nigeria
Pakistan
Philippines
Poland
Romania
Saudi Arabia
Senegal
Syrian Arab Republic
Togo
Tunisia
Uganda
Ukrainian Soviet Socialist Republic
Union of Soviet Socialist Republics
Upper Volta
Venezuela
Yugoslavia
Zambia

3. The following 36 Governments have agreed to accept the validity of the travel and identity documents issued by the Council, subject to the normal visa requirements of their Governments, provided that they accord the bearer the right of return to another country:

Afghanistan
Belgium
Canada
Colombia
Cuba
Cyprus
Czechoslovakia
Democratic Yemen
Denmark
Egypt
Finland
Germany, Federal Republic of
Iceland
Ireland
Israel
Italy
Jamaica
Japan
Lebanon
Luxembourg
Madagascar
Nauru
Netherlands
Norway
Rwanda
Sierra Leone
Singapore
Somalia
Sweden
Switzerland
Thailand
Trinidad and Tobago
Turkey
United Kingdom of Great Britain and Northern Ireland
United States of America
Zaire

4. In addition, the Governments of Ethiopia, Kenya, Nigeria, Uganda, the United Republic of Tanzania, Zaire and Zambia have concluded formal agreements with the Council granting the right of return to those countries of specific categories of Namibians.

[a] Based on *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 24* (A/9024), annex III.

[b] This total includes the implied reply contained in the agreement concluded between the Council for Namibia and the United Republic of Tanzania.

Annex II

Text of the Agreements between the United Nations (United Nations Council for Namibia) and Governments concerning the issuance by the Council of travel and identity documents to Namibians

A. AGREEMENT BETWEEN THE UNITED NATIONS COUNCIL FOR NAMIBIA AND THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA CONCERNING THE ISSUANCE BY THE COUNCIL OF TRAVEL AND IDENTITY DOCUMENTS TO NAMIBIANS[a]

Points of agreement:

1. The Government of the Republic of Zambia recognizes and accepts as valid the travel and identity documents issued to Namibians by the United Nations Council for Namibia and intends to so advise the Secretary-General of the United Nations, pursuant to his *note verbale* of 12 December 1968.

2. In the exercise of its sovereign rights, the Government of the Republic of Zambia agrees to grant the right of return to the following categories of Namibians who receive the travel and identity documents of the Council:

(*a*) Namibians residing in Zambia;
(*b*) Namibians enjoying first asylum in Zambia;
(*c*) Such other Namibians as the Government may determine.

3. The right of return will be inscribed and certified by the Government of the Republic of Zambia in the travel and identity documents issued by the United Nations Council for Namibia for the period of up to two years following the date of issue of the documents and this period may be extended.

[a] Effected by an exchange of letters dated 10 July 1970 between the Minister of State for Home Affairs of Zambia and the Acting United Nations Commissioner for Namibia.

The text reproduced above was originally issued as annex I to document A/AC.131/20/Add.1.

4. Applications for travel and identity documents shall be submitted to the Government of the Republic of Zambia which shall examine such applications. A representative of the United Nations Council for Namibia shall be consulted, in accordance with the provisions of paragraph 5 below, and a representative of the Organization of African Unity may be consulted as appropriate. Representatives of the people of Namibia shall be requested to provide relevant information as required. In the event of the Government of the Republic of Zambia informing the United Nations Council for Namibia that it agrees to grant the right of return, the documents shall be issued by the Council. It is understood that, as a rule, the right of return shall be granted to individuals falling within the categories mentioned in paragraph 2(*a*) to (*c*) above, unless compelling reasons of national security or public order otherwise require.

5. In its examination of applications for travel and identity documents, the Government of Zambia shall consult the United Nations Council for Namibia in every case, except when:

(*a*) The Government decides not to grant the right of return on grounds of national security or public order. Any determination made by the Government on such grounds shall be final;

(*b*) Circumstances are such that the application requires immediate consideration, not permitting time for consultation, and the Government is satisfied, on the basis of the information available to it, with the *bona fides* of the applicant and is prepared to grant the right of return.

6. The provisions of paragraphs 4 and 5 shall not preclude the United Nations Council for Namibia from issuing travel documents, in cases where the right of return is not granted by the Government of the Republic of Zambia, provided that the Council secures for the applicant the right of return to a country other than Zambia or finds a country which would accept him without a return clause.

7. The present arrangements which are made in the interest of Namibians are subject to review on the request of the Government of the Republic of Zambia or of the United Nations Council for Namibia after a period of two years from the date of the present exchange of letters, or as may be decided by the parties, and may be amended by agreement between the parties.

Mutual undertakings:

8. The Government of the Republic of Zambia, recognizing:

(*a*) The international status of Namibia;

(*b*) The importance and necessity for Namibians to verify their identity and to be able to travel while abroad; and

(*c*) The special responsibilities of the Council for Namibia in matters within its competence;

undertakes to extend its full co-operation with regard to the arrangements herein described.

9. The Council for Namibia, recognizing that the Government of the Republic of Zambia should not be required, because of the country's geographical location, to bear to a disproportionate degree the problems arising from the entry of Namibians into Zambia, undertakes to make every effort to ensure that other Member States of the United Nations share in the granting of asylum and right of residence to Namibians.

10. Furthermore, the Council for Namibia, recognizing that more important than the question of travel documents is the problem of the future welfare of Namibians who sought asylum in other countries, undertakes to give this problem serious attention.

B. Agreement between the United Nations Council for Namibia and the Government of the Republic of Uganda concerning the issuance by the Council of travel and identity documents to Namibians[b]

Points of agreement:

1. The Government of the Republic of Uganda recognizes and accepts as valid the travel and identity documents issued to Namibians by the United Nations Council for Namibia and intends to so advise the Secretary-General of the United Nations.

2. In the exercise of its sovereign rights, the Government of the Republic of Uganda agrees to grant the right of return to the following categories of Namibians who receive the travel and identity documents of the Council:

(*a*) Namibians residing in Uganda;

(*b*) Namibians enjoying first asylum in Uganda;

(*c*) Such other Namibians as the Government may determine.

3. The right of return will be inscribed and certified by the Government of the Republic of Uganda in the travel and identity documents issued by the United Nations Council for Namibia for the period of up to two years following the date of issue of the documents and this period may be extended.

4. Applications for travel and identity documents issued by or on behalf of the Council for Namibia shall be submitted to the Government of the Republic of Uganda which shall examine such applications. A representative of the United Nations Council for Namibia shall be consulted, in accordance with the provisions of paragraph 5 below, and a representative of the Organization of African Unity may be consulted as appropriate. Representatives of the people of Namibia shall be requested to provide relevant information as required. In the event of the Government of the Republic of Uganda informing the United Nations Council for Namibia that it agrees to grant the right of return, the documents shall be issued by the Council. It is understood that, as a rule, the right of return shall be granted to individuals falling within the categories mentioned in paragraph 2 (*a*) to (*c*) above, unless compelling reasons of national security or public order otherwise require.

5. In its examination of applications for travel and identity documents referred to in paragraph 4 above, the Government of the Republic of Uganda shall consult the United Nations Council for Namibia in every case, except when:

(*a*) The Government decides not to grant the right of return on grounds of national security or public order. Any determination made by the Government on such grounds shall be final;

(*b*) Circumstances are such that the application requires immediate consideration, not permitting time for consultation, and the Government is satisfied, on the basis of the information available to it, with the *bona fides* of the applicant and is prepared to grant the right of return.

6. The provisions of paragraphs 4 and 5 shall not preclude the United Nations Council for Namibia from issuing travel documents in cases where the right of return is not granted by the Government of the Republic of Uganda, provided that the Council secures for the applicant the right of return to a country other than Uganda or finds a country which would accept him without a return clause.

7. The present arrangements which are made in the interest of Namibians are subject to review on the request of the Government of the Republic of Uganda or of the United Nations Council for Namibia after a period of two years from the date of the present exchange of letters, or as may be decided by the parties, and may be amended by agreement between the parties.

Mutual undertakings:

8. The Government of the Republic of Uganda, recognizing:

(*a*) The international status of Namibia;

(*b*) The importance and necessity for Namibians to verify their identity and to be able to travel while abroad; and

(*c*) The special responsibilities of the Council for Namibia in matters within its competence;

undertakes to extend its full co-operation with regard to the arrangements herein described.

9. The Council for Namibia, recognizing that the Government of the Republic of Uganda should not be required, because of the country's geographical location which has already led to an influx of refugees from neighbouring States, to bear a disproportionate degree of the problems arising from the entry of refugees, undertakes to make every effort to ensure that other Member States of the United Nations share in the granting of asylum and right of residence to Namibians.

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[b] Effected by an exchange of letters dated 17 July 1970 between the Deputy Minister for Foreign Affairs of Uganda and the Acting United Nations Commissioner for Namibia (see A/AC.131/20, para. 31).

The text reproduced above was originally issued as annex II to document A/AC.131/20/Add.1.

10. Furthermore, the Council for Namibia, recognizing that more important than the question of travel documents is the problem of the future welfare of Namibians who sought asylum in other countries, undertakes to give this problem serious attention.

C. Agreement between the United Nations Council for Namibia and the Imperial Government of Ethiopia concerning the issuance by the Council of travel and identity documents to Namibians[c]

Letter dated 24 July 1970 from the Acting United Nations Commissioner for Namibia addressed to the Minister for Foreign Affairs of the Imperial Government of Ethiopia

At the request of the United Nations Council for Namibia, I have the honour to refer to the following points of agreement and mutual undertakings which have resulted from meetings held in Addis Ababa on 22 and 24 July 1970, between a delegation of the Council and representatives of the Imperial Government of Ethiopia.

Points of agreement:

1. The Imperial Government of Ethiopia recognizes and accepts as valid the travel and identity documents issued to Namibians by the United Nations Council for Namibia and has so advised the Secretary-General of the United Nations, pursuant to his *note verbale* of 12 December 1968.

2. In the exercise of its sovereign rights, the Imperial Government of Ethiopia agrees to grant the right of return to the following categories of Namibians who receive the travel and identity documents of the Council:

(*a*) Namibians residing in Ethiopia:

(*b*) Namibians enjoying first asylum in Ethiopia;

(*c*) Such other Namibians as the Imperial Government may determine.

3. The right of return will be inscribed and certified by the Imperial Government of Ethiopia in the travel and identity documents issued by the United Nations Council for Namibia for a period of up to two years following the date of issue of the document and this period may be extended.

4. Applications for travel and identity documents shall be submitted to the Imperial Government of Ethiopia which shall examine such applications. A representative of the United Nations Council for Namibia shall be consulted, in accordance with the provisions of paragraph 5 below, and a representative of the Organization of African Unity may be consulted as appropriate. Representatives of the people of Namibia shall be requested to provide relevant information as required. In the event of the Imperial Government of Ethiopia informing the United Nations Council for Namibia that it agrees to grant the right of return, the documents shall be issued by the Council. It is understood that, as a rule, the right of return shall be granted to individuals falling within the categories mentioned in paragraph 2(*a*) to (*c*) above, unless compelling reasons of national security or public order otherwise require.

5. In its examination of applications for travel and identity documents, the Imperial Government of Ethiopia shall consult the United Nations Council for Namibia in every case, except when:

(*a*) The Imperial Government decides not to grant the right of return on grounds of national security or public order. Any determination made by the Imperial Government on such grounds shall be final.

(*b*) Circumstances are such that the application requires immediate consideration, not permitting time for consultation, and the Imperial Government is satisfied, on the basis of the information available to it, with the *bona fides* of the applicant and is prepared to grant the right of return.

6. The provisions of paragraphs 4 and 5 shall not preclude the United Nations Council for Namibia from issuing travel documents, in cases where the right of return is not granted by the Imperial Government of Ethiopia, provided that the Council secures for the applicant the right of return to a country other than Ethiopia or finds a country which would accept him without a return clause.

7. The present arrangements which are made in the interest of Namibians are subject to review on the request of the Imperial Government of Ethiopia or of the United Nations Council for Namibia after a period of two years from the date of the present exchange of letters, or as may be decided by the parties, and may be amended by agreement between the parties.

Mutual underakings:

8. The Imperial Government of Ethiopia, recognizing:

(*a*) The international status of Namibia;

(*b*) The importance and necessity for Namibians to verify their identity and to be able to travel while abroad; and

(*c*) The special responsibilities of the Council for Namibia in matters within its competence;

undertakes to extend its full co-operation with regard to the arrangements herein described.

9. The Council for Namibia, recognizing that the Imperial Government of Ethiopia should not be required, because of the country's geographical location, to bear to a disproportionate degree the problem arising from the entry of Namibians into Ethiopia, undertakes to make every effort to ensure that other Member States of the United Nations share in the granting of asylum and right of residence to Namibians.

10. Furthermore, the Council for Namibia, recognizing that more important than the question of travel documents is the problem of the future welfare of Namibians who sought asylum in other countries, undertakes to give this problem serious attention.

I would be most grateful for your confirmation that the Imperial Government of Ethiopia is in full agreement with the points listed above. In such case, I have the honour to propose that this note and your reply shall constitute an agreement between the United Nations Council for Namibia and the Imperial Government of Ethiopia on this matter.

Cable dated 29 March 1971 from the Minister of State, Ministry of Foreign Affairs of the Imperial Government of Ethiopia addressed to the Acting United Nations Commissioner for Namibia

I refer to your letter of 24 July 1970. I have the honour to confirm the agreement of the Imperial Ethiopian Government to the points mentioned in this letter.

D. Agreement between the United Nations Council for Namibia and the Government of the Republic of Kenya concerning the issuance by the Council of travel and identity documents to Namibians[d]

Letter dated 20 May 1971 from the Minister for Foreign Affairs of Kenya addressed to the Acting Commissioner for Namibia

I have the honour to acknowledge receipt of your letter dated 21 July 1970 in connexion with the proposed agreement on travel and identity documents for Namibians. The contents of the letter were as follows:

"At the request of the United Nations Council for Namibia, I have the honour to refer to the following points of agreement and mutual undertakings which have resulted from meetings held in Nairobi on 21 July 1970, between a delegation of the Council and representatives of the Government of the Republic of Kenya.

"*Points of agreement*

"1. The Government of the Republic of Kenya recognizes and accepts as valid the travel and identity documents issued to Namibians by the United Nations Council for Namibia and intends to so advise the Secretary-General of the United Nations, pursuant to his *note verbale* of 12 December 1968.

"2. In the exercise of its sovereign rights, the Government of the Republic of Kenya agrees to grant the right of return to the following

[c] Text originally circulated as document A/AC.131/24.

[d] Text originally circulated as document A/AC.131/25.

categories of Namibians who receive the travel and identity documents of the Council:

"(*a*) Namibians legally residing in Kenya;

"(*b*) Namibians enjoying first asylum in Kenya;

"(*c*) Such other Namibians as the Government may determine.

"3. The right of return will be inscribed and certified by the Government of the Republic of Kenya in the travel and identity documents issued by the United Nations Council for Namibia normally for a period of six months and for longer periods in special cases. These periods may be extended by the Government of the Republic of Kenya.

"4. Applications for travel and identity documents shall be submitted to the Government of the Republic of Kenya which shall examine such applications. A representative of the United Nations Council for Namibia shall be consulted in accordance with the provisions of paragraph 5 below, and a representative of the Organization of African Unity may be consulted as appropriate. Representatives of the people of Namibia shall be requested to provide relevant information as required. In the event of the Government of the Republic of Kenya informing the United Nations Council for Namibia that it agrees to grant the right of return, the documents shall be issued by the Council. It is understood that, as a rule, the right of return shall be granted to individuals falling within the categories mentioned in paragraph 2(*a*) to (*c*) above, unless compelling reasons of national security or public order otherwise require.

"5. In its examination of applications for travel and identity documents, the Government of Kenya shall consult the United Nations Council for Namibia in every case, except when:

"(*a*) The Government decides not to grant the right of return on grounds of national security or public order. Any determination made by the Government on such grounds shall be final;

"(*b*) Circumstances are such that the application requires immediate consideration not permitting time for consultation, and the Government is satisfied, on the basis of the information available to it, with the *bona fides* of the applicant and is prepared to grant the right of return.

"6. The provisions of paragraphs 4 and 5 shall not preclude the United Nations Council for Namibia from issuing travel documents, in cases where the right of return is not granted by the Government of the Republic of Kenya, provided that the Council secures for the applicant the right of return to a country other than Kenya or finds a country which would accept him without a return clause.

"7. The present arrangements which are made in the interest of Namibians are subject to review on the request of the Government of the Republic of Kenya or of the United Nations Council for Namibia after a period of two years from the date of the present exchange of letters, or as may be decided by the parties, and may be amended by agreement between the parties.

"*Mutual undertakings:*

"8. The Government of the Republic of Kenya, recognizing:

"(*a*) The international status of Namibia,

"(*b*) The importance and necessity for Namibians to verify their identity and to be able to travel while abroad, and

"(*c*) The special responsibilities of the Council for Namibia in matters within its competence,

undertakes to extend its full co-operation with regard to the arrangements therein described.

"9. The Council for Namibia, recognizing that the Government of the Republic of Kenya should not be required, because of the country's geographical location, to bear to a disproportionate degree the problems arising from the entry of Namibians into Kenya, undertakes to make every effort to ensure that other Member States of the United Nations share in the granting of asylum and right of residence to Namibians.

"10. Furthermore, the Council for Namibia, recognizing that more important than the question of travel documents is the problem of the future welfare of Namibians who sought asylum in other countries, undertakes to give this problem serious attention.

"I would be most grateful for your confirmation that the Government of the Republic of Kenya is in full agreement with the points listed above. In such case, I have the honour to propose that this note and your reply shall constitute an Agreement between the United Nations Council for Namibia and the Government of the Republic of Kenya on this matter."

On behalf of the Republic of Kenya I have the honour to confirm that the Government of the Republic of Kenya is in full agreement with the points listed above and this note in reply to your earlier note will constitute an agreement between the United Nations Council for Namibia and the Republic of Kenya on this matter.

E. Agreement between the Federal Republic of Nigeria and the United Nations Council for Namibia on the right of return to Nigeria of certain Namibians[e]

The Government of the Federal Republic of Nigeria (hereinafter referred to as "the Government of Nigeria") and the United Nations Council for Namibia (hereinafter referred to as "the Council"),

Recognizing the international status of Namibia and the importance and necessity for Namibians to verify their identity and to be able to travel about while abroad,

Agree as follows:

Article 1

The Government of Nigeria recognizes and accepts as valid the travel and identity documents issued to Namibians by the Council.

Article 2

Subject to other provisions of this Agreement, the Government of Nigeria agrees to grant the right of return to the following categories of Namibians who are in possession of the travel and identity documents issued by the Council:

(*a*) Namibians residing in Nigeria prior to the conclusion of this Agreement;

(*b*) Namibians enjoying asylum in Nigeria; and

(*c*) Such other Namibians as the Government of Nigeria may determine.

Article 3

1. For the purpose of this Agreement a right of return to Nigeria shall mean a right to be admitted into Nigeria granted to a Namibian.

2. The right of return shall be inscribed and certified by the Government of Nigeria in the travel and identity documents issued by the Council and the right shall be valid for a period of two years from the date of issue of the right of return and this period may be extended by the Government of Nigeria.

Article 4

1. Applications for a right of return to Nigeria by Namibians shall be made on prescribed forms agreed to by the Government of Nigeria and the Council and shall be submitted through the Council. The Council shall transmit them to the Government of Nigeria after due consultations with the Organization of African Unity where appropriate.

2. The Government of Nigeria on receiving an application for a grant of a right of return to Nigeria may decide to:

(*a*) Approve the application with or without prescribing conditions for the approval; or

(*b*) Ask for more information about the applicant and on receiving such information may decide to reject the application without giving any reasons for doing so; or

(*c*) Reject the application without giving any reasons for doing so.

3. The decision of the Government of Nigeria on every application received shall be conveyed to the Council and where an application is

[e] Agreement concluded at United Nations Headquarters on 20 April 1972. Although the previous four agreements were in the form of an exchange of letters, negotiations with the Nigerian Government were conducted, at the latter's request, on the basis of a draft agreement (*Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 24* (A/8424), para. 32).

The text reproduced above was originally circulated as document A/AC.131/26.

approved the Council shall forward the travel and identity documents of the successful applicant to the Government of Nigeria who shall inscribe and certify the right to return to Nigeria on the travel and identity documents and return them to the applicant through the Council.

Article 5

The Council undertakes to make every effort to ensure that other Member States of the United Nations share in the granting of the right of return to Namibians and that all possible assistance is rendered to such Namibians through the United Nations system.

Article 6

Namibians admitted into Nigeria under this Agreement shall be subjected to the laws and regulations of Nigeria.

Article 7

1. This Agreement shall enter into force two months after the authorized representatives of the contracting parties have signed this Agreement and may be terminated by either party giving twelve months, notice in writing to the other party.

DONE at United Nations Headquarters this 20 April 1972 in two original copies both in English language, both copies being authentic.

For the Government of the Federal Republic of Nigeria:
(*Signed*) E. O. OGBU

Acting Commissioner for Namibia For the United Nations Council for Namibia:
(*Signed*) A. A. HAMID

F. AGREEMENT BETWEEN THE UNITED REPUBLIC OF TANZANIA AND THE UNITED NATIONS COUNCIL FOR NAMIBIA CONCERNING THE ISSUANCE BY THE COUNCIL OF TRAVEL AND IDENTITY DOCUMENTS TO NAMBIANS.[f]

Points of agreement

1. The Government of the United Republic of Tanzania recognizes and accepts as valid the travel and identity documents issued to Namibians by the United Nations Council for Namibia and intends to so advise the Secretary-General of the United Nations.

2. In the exercise of its sovereign rights, the Government of the United Republic of Tanzania agrees to grant the right of return to the following categories of Namibians who receive the travel and identity documents of the Council:

(*a*) Namibians residing in the United Republic of Tanzania;

(*b*) Namibians enjoying first asylum in the United Republic of Tanzania;

(*c*) Such other Namibians as the Government may determine.

3. The right of return will be inscribed and certified by the Government of the United Republic of Tanzania in the travel and identity documents issued by the United Nations Council for Namibia for the period of up to two years following the date of issue of the documents, and this period may be extended.

4. Applications for travel and identity documents shall be submitted to the Government of the United Republic of Tanzania which shall examine such applications. A representative of the United Nations Council for Namibia shall be consulted, in accordance with the provisions of paragraph 5 below, and a representative of the Organization of African Unity may be consulted as appropriate. Representatives of the people of Namibia shall be requested to provide relevant information as required. In the event of the Government of the United Republic of Tanzania informing the United Nations Council for Namibia that it agrees to grant the right of return, the documents shall be issued by the Council. It is understood that, as a rule, the right of return shall be granted to individuals falling within the categories mentioned in paragraph 2(*a*) to (*c*) above, unless compelling reasons of national security or public order otherwise require.

5. In its examination of applications for travel and identity documents, the Government of the United Republic of Tanzania shall consult the United Nations Council for Namibia in every case, except when:

(*a*) The Government decides not to grant the right of return on grounds of national security or public order. Any determination made by the Government on such grounds shall be final.

(*b*) Cirumstances are such that the application requires immediate consideration, not permitting time for consultation, and the Government is satisfied, on the basis of the information available to it, with the *bona fides* of the applicant and is prepared to grant the right of return.

6. The provisions of paragraphs 4 and 5 above shall not preclude the United Nations Council for Namibia from issuing travel documents, in cases where the right of return is not granted by the Government of the United Republic of Tanzania, provided that the Council secures for the applicant the right of return to a country other than the United Republic of Tanzania or finds a country which would accept him without a return clause.

7. The present arrangements, which are made in the interest of Namibians, are subject to review on the request of the Government of the United Republic of Tanzania or of the United Nations Council for Namibia after a period of two years from the date of the present coming into force of the arrangement, or as may be decided by the parties, and may be amended by agreement between the parties.

Mutual undertakings

8. The Government of the United Republic of Tanzania, recognizing:

(*a*) The international status of Namibia;

(*b*) The importance and necessity for Namibians to verify their identity and to be able to travel while abroad; and

(*c*) The special responsibilities of the Council for Namibia in matters within its competence;

undertakes to extend its full co-operation with regard to the arrangements herein described.

9. The Council for Namibia, recognizing that the Government of the United Republic of Tanzania should not be required, because of the country's geographical location, to bear to a disproportionate degree the problems arising from the entry of Namibians into the United Republic of Tanzania, undertakes to make every effort to ensure that other Member States of the United Nations share in the granting of asylum and right of residence to Namibians.

10. Furthermore, the Council for Namibia, recognizing that more important than the question of travel documents is the problem of the future welfare of Namibians who sought asylum in other countries, undertakes to give this problem serious attention.

SIGNED in Dar es Salaam on the 5th day of December 1972.

For and on behalf of the United Republic of Tanzania:
(*Signed*) J. S. MALECELA

For and on behalf of the United Nations Council for Namibia:
(*Signed*) H. OMAYAD

Letter dated 11 December 1972 from the Permanent Representative of the United Republic of Tanzania to the United Nations addressed to the Acting United Nations Commissioner for Namibia

I have the honour to refer to the Agreement on the issuance of travel and identity documents to Namibians signed between my Government and the Council for Namibia on 5 December 1972.

On instructions from my Government, I wish to propose that the effective date for the above-named Agreement should be 5 December 1972. If this is agreeable, I wish to propose further that this letter and your reply should constitute an agreement.

(*Signed*) Salim Ahmed SALIM
Ambassador Extraordinary and Plenipotentiary Permanent Representative to the United Nations

Letter dated 11 December 1972 from the Acting United Nations Commissioner for Namibia addressed to the Permanent Representative of the United Republic of Tanzania to the United Nations

I have the honour to acknowledge receipt of your letter of 11 December 1972, in which you proposed that the effective date for

[f] Agreement signed at Dar es Salaam on 5 December 1972. The text reproduced above was originally circulated as document A/AC.131/29 and Corr.1.

the Agreement on the issuance of travel and identity documents for Namibians should be 5 December 1972, and in which you further proposed that your letter and my reply should constitute an agreement.

I am most pleased to inform you that this procedure is fully acceptable to me and that we agree that the Agreement has come into force on 5 December 1972, on the basis of our exchange of letters of which this letter constitutes the reply to your letter of 11 December 1972.

(*Signed*) Agha Abdul HAMID
Acting United Nations Commissioner for Namibia

G. AGREEMENT BETWEEN THE REPUBLIC OF ZAIRE AND THE UNITED NATIONS COUNCIL FOR NAMIBIA CONCERNING THE ISSUANCE BY THE COUNCIL OF TRAVEL AND IDENTITY DOCUMENTS TO NAMIBIANS[g]

Points of agreement

1. The National Executive Council of the Republic of Zaire recognizes and accepts as valid the travel and identity documents issued to Namibians by the United Nations Council for Namibia and intends so to advise the Secretary-General of the United Nations.

2. In the exercise of its sovereign rights, the National Executive Council of the Republic of Zaire agrees to grant the right of return to the following categories of Namibians who receive the travel and identity documents of the Council:

(*a*) Namibians residing in the Republic of Zaire;

(*b*) Namibians enjoying first asylum in the Republic of Zaire;

(*c*) Such other Namibians as the National Executive Council may determine.

3. The right of return will be inscribed and certified by the National Executive Council of the Republic of Zaire in the travel and identity documents issued by the United Nations Council for Namibia for the period of up to two years following the date of issue of the documents, and this period may be extended.

4. Applications for travel and identity documents shall be submitted to the National Executive Council of the Republic of Zaire which shall examine such applications. A representative of the United Nations Council for Namibia shall be consulted, in accordance with the provisions of paragraph 5 below, and a representative of the Organization of African Unity may be consulted as appropriate. Representatives of the people of Namibia shall be requested to provide relevant information as required. In the event of the National Executive Council of the Republic of Zaire informing the United Nations Council for Namibia that it agrees to grant the right of return, the documents shall be issued by the Council. It is understood that, as a rule, the right of return shall be granted to individuals falling within the categories mentioned in paragraph 2(*a*) to (*c*) above, unless compelling reasons of national security or public order otherwise require.

5. In its examination of applications for travel and identity documents, the National Executive Council of the Republic of Zaire shall consult the United Nations Council for Namibia in every case, except when:

(*a*) The National Executive Council decides not to grant the right of return on grounds of national security or public order. Any determination made by the National Executive Council on such grounds shall be final.

(*b*) Circumstances are such that the application requires immediate consideration, not permitting time for consultation, and the National Executive Council is satisfied on the basis of the information available to it, with the *bona fides* of the applicant and is prepared to grant the right of return.

6. The provisions of paragraphs 4 and 5 above shall not preclude the United Nations Council for Namibia from issuing travel documents, in cases where the right of return is not granted by the National Executive Council of the Republic of Zaire, provided that the Council secures for the applicant the right of return to a country other than the Republic of Zaire or finds a country which would accept him without a return clause.

7. The present arrangements, which are made in the interest of Namibians, are subject to review on the request of the National Executive Council of the Republic of Zaire or of the United Nations Council for Namibia after a period of two years from the date of the coming into force of the present arrangement, or as may be decided by the parties, and may be amended by agreement between the parties.

Mutual undertakings:

8. The National Executive Council of the Republic of Zaire, recognizing:

(*a*) The international status of Namibia;

(*b*) The importance and necessity for Namibians to verify their identity and to be able to travel while abroad; and

(*c*) The special responsibilities of the Council for Namibia in matters within its competence;

undertakes to extend its full co-operation with regard to the arrangements herein described.

9. The Council for Namibia, recognizing that the National Executive Council of the Republic of Zaire should not be required, because of the country's geographical location, to bear to a disproportionate degree the problems arising from the entry of Namibians into the Republic of Zaire, undertakes to make every effort to ensure that other Member States of the United Nations share in the granting of asylum and right of residence to Namibians.

SIGNED at Kinshasa on the 16th day of June 1973.

For and on behalf of the Republic of Zaire:

(*Signed*) NGUZA KARL-I-BOND
Political Commissioner and Commissioner of State for Foreign Affairs and International Co-operation

For and on behalf of the United Nations Council for Namibia:

(*Signed*) P. LUSAKA
President of the United Nations Council for Namibia

(*Signed*) A. HAMID
United Nations Commissioner for Namibia

[g] Signed at Kinshasa on 16 June 1973. The text reproduced above was originally circulated as document A/AC.131/32.

LONG-TERM PROGRAMME OF WORK, INCLUDING: CONSIDERATION OF RECOMMENDATION CONCERNING COMMENCEMENT OF THE WORK ON THE LAW OF NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

(Paragraph 4 of General Assembly resolution 3071 (XXVIII))

[Agenda item 8 (*a*)]

DOCUMENT A/5409*

Legal problems relating to the utilization and use of international rivers

Report by the Secretary-General

[*Original: English/French*]
[*15 April 1963*]

CONTENTS

		Page
Abbreviations		49
	Paragraphs	
Introduction	1–19	49
PART ONE		
Information provided by member states regarding their legislation		
Chapter I. United States of America		
A. GENERAL PROVISIONS		
1. United States Code, Title 16, Sections 791 a—825 r: Federal Power Act	20	51
2. Executive Order 10485, providing for the performance of certain functions heretofore performed by the President with respect to electric power and natural gas facilities located on the borders of the United States, dated 3 September 1953	21	51
B. INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA		
United States Code, Title 22, Section 267 b	22–23	51
C. INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO		
1. United States Code, Title 22, Section 277	24–25	51
2. An Act to authorize an agreement between the United States and Mexico for the joint operation and maintenance by the International Boundary and Water Commission, United States and Mexico, of the Nogales Sanitation project, and for other purposes, approved 27 July 1953 (67 Stat. 195)	26	52
3. Department of State Appropriation Act, 1954 (67 Stat. 367)	27	52
D. COLORADO RIVER		
1. An Act to authorize the Secretary of the Navy to enlarge existing water-supply facilities for the San Diego, California area, in order to ensure the existence of an adequate water supply for naval installations and defence production plants in such area, approved 11 October 1951 (65 Stat. 404)	28	52
2. An Act to authorize the Secretary of the Interior to construct, operate and maintain the Collbran reclamation project, Colorado, approved 3 July 1952 (66 Stat. 325)	29	52
3. An Act to consolidate the Parker Dam Power project and the Davis Dam project, approved 28 May 1954 (68 Stat. 143)	30	52
4. An Act authorizing the construction of works to re-establish for the Palo Verde irrigation district (California) a means of diversion of its irrigation water supply from the Colorado River, and for other purposes, approved 31 August 1954 (68 Stat. 1045)	31	52

* At its twenty-third session, the International Law Commission decided that the present document should be printed in the *Yearbook* so that it could be used together with the supplementary report requested by the General Assembly (A/CN.4/274) (See *Yearbook ... 1971*, vol. II (Part One), p. 350, document A/8410/Rev.1, para. 122).

	Paragraphs	*Page*
5. An Act to authorize the Secretary of the Interior to construct, operate and maintain the Colorado River storage project and participating projects, and for other purposes, approved 11 April 1956 (70 Stat. 105)	32	52
E. NIAGARA RIVER		
An Act to authorize the construction of certain works of improvement in the Niagara River for power, and for other purposes, approved 21 August 1957 (71 Stat. 401)	33	53
F. RIO GRANDE		
1. An Act authorizing the construction, operation and maintenance of the Rio Grande canalization project and authorizing appropriation for that purpose, approved 28 August 1935 (49 Stat. 961)	34	53
2. An Act authorizing the construction, operation and maintenance of the Rio Grande canalization project and authorizing appropriation for that purpose, approved 4 June 1936 (49 Stat. 1463)	35	53
3. An Act authorizing the reconstruction or replacement of certain bridges necessitated by the Rio Grande canalization project and authorizing appropriation for that purpose, approved 22 April 1940 (54 Stat. 151)	36	53
4. First deficiency appropriation Act, 1945 (59 Stat. 77)	37	53
5. An Act to authorize the carrying out of the provisions of article 7 of the Treaty of 3 February 1944, between the United States and Mexico, regarding the joint development of hydroelectric power at Falcon Dam, on the Rio Grande, and for other purposes, approved 5 October 1949 (63 Stat. 701)	38	53
6. An Act to facilitate compliance with the Treaty between the United States of America and the United Mexican States signed 3 February 1944, approved 13 September 1950 (64 Stat. 846)	39	53
7. An Act to authorize the transmission and disposition by the Secretary of the Interior of electric energy generated at Falcon Dam on the Rio Grande, approved 18 June 1954 (68 Stat. 255)	40	53
8. An Act to authorize the conclusion of an Agreement for the joint construction by the United States and Mexico of a major international storage dam on the Rio Grande in accordance with the provisions of the Treaty of 3 February 1944 with Mexico, and for other purposes, approved 7 July 1960 (74 Stat. 360)	41	54
G. SAINT LAWRENCE RIVER		
1. United States Code, Title 33, Sections 981 and 983: Saint Lawrence Seaway	42	54
2. Order of Approval (I.J.C. Docket No. 68) issued on 29 October 1952 by the International Joint Commission to the Governments of the United States and Canada, as amended by Order of 2 July 1956	43	54
3. Supplementary Order of 2 July 1956 to Order of Approval dated 29 October 1952	44	54
Chapter II. Mexico		
GENERAL CONSTITUTIONAL PROVISION		
Political Constitution of the United States of Mexico, signed at Queretaro on 31 January 1917	45	54
Chapter III. Norway		
A. GENERAL PROVISIONS		
1. Watercourses Act of 15 March 1940 (No. 3)	46	54
2. Act concerning various measures for the marking and supervision of the frontier, of 14 July 1950 (No. 2)	47	54
B. REGULATIONS GOVERNING WATERCOURSES BETWEEN NORWAY AND SWEDEN		
Act of 12 June 1931 relating to the Convention of 11 May 1929 between Norway and Sweden on certain questions relating to the law on watercourses	48	55
C. REGULATIONS GOVERNING WATERCOURSES BETWEEN NORWAY AND THE USSR		
Royal Decree of 7 November 1950 concerning the use of rivers on the frontier with the Soviet Union	49	55

	Paragraphs	Page
Chapter IV. Netherlands		
A. RHINE, MEUSE, EMS (NETHERLANDS PORTION) AND INTERJACENT WATERCOURSES		
1. Act containing regulations concerning draining and embankment operations (14 July 1904)	50	55
2. Act containing regulations concerning irrigation (30 December 1904) as amended by the Act of 22 May 1958	51	55
3. Rivers Act (9 November 1908) as amended by the Acts of 29 June 1925 and 18 July 1930	52	55
4. Regulations concerning dredging (Royal Decree of 3 November 1934), amended by the Royal Decrees of 23 December 1937 and 17 January 1951	53	55
5. Regulations concerning dikes (Royal Decree of 28 July 1937), amended by the Royal Decree of 16 January 1951	54	55
6. Draft legislation in an advanced stage of readiness:		
(*a*) Clearing of Watercourses Act	55	55
(*b*) Pollution of Watercourses Act	56	56
7. General police regulations for State rivers and canals (Royal Decree of 24 November 1919), amended most recently by Royal Decree of 10 November 1958	57–58	56
8. Police regulations for the Merwede and Noord rivers (Royal Decree of 4 October 1913), amended most recently by Royal Decree of 11 February 1955	59	56
B. SCHELDT (WESTERN SCHELDT)	60	56
C. OTHER RIVERS	61	56
Chapter V. Sweden		
A. REGULATIONS GOVERNING WATERCOURSES BETWEEN SWEDEN AND NORWAY		
Act No. 405 of 20 December 1929 containing regulations relating to the application in Sweden of the Swedish–Norwegian Convention of 11 May 1929 relating to the law on watercourses	62	56
B. MUONIO AND TORNE RIVERS		
Act No. 183 of 28 April 1949, concerning timber-floating in the Torne and Muonio frontier rivers	63	56
PART TWO		
Summary of existing and bilateral and multilateral treaties		
Chapter I. General conventions		
INTRODUCTION	64–67	57
GENERAL CONVENTIONS CONCERNED EXCLUSIVELY WITH THE UTILIZATION AND USE OF INTERNATIONAL RIVERS		
Convention relating to the development of hydraulic power affecting more than one State and Protocol of Signature, signed at Geneva on 9 December 1923	68–78	57
GENERAL CONVENTIONS INCLUDING PROVISIONS RELATING TO THE UTILIZATION AND USE OF INTERNATIONAL RIVERS		
Convention and Statute on the régime of navigable waterways of international concern, signed at Barcelona on 20 April 1921	79–82	60
Chapter II. Africa		
A. MULTILATERAL TREATIES	83–84	61
B. BILATERAL TREATIES	85–151	61
1. Bilateral treaties concerned exclusively with the utilization and use of international rivers in Africa	85–124	61
(*a*) Treaties relating generally to contiguous and successive rivers in the territories of two States		
Ruanda-Urundi and Tanganyika: Agreement between Belgium and the United Kingdom regarding water rights on the boundary between Tanganyika and Ruanda-Urundi, signed at London on 22 November 1934	85–88	61

	Paragraphs	Page
(*b*) Treaties relating to one or more specific rivers		
River Shiré and Lake Nyasa (Mozambique and Rhodesia and Nyasaland): Exchange of notes constituting an Agreement between the Government of the United Kingdom and the Portuguese Government providing for Portuguese participation in the Shiré Valley project, Lisbon, 21 January 1953	89–91	62
River Gash (Ethiopia (Eritrea) and Sudan): Exchange of notes constituting an Agreement between the British and Italian Governments respecting the regulation of the utilization of the waters of the River Gash, Rome, 12 and 15 June 1925	92–95	63
Kunene River (*Rua Cana Falls*) (Angola and the Territory of South West Africa): Agreement between the Government of the Union of South Africa and the Government of Portugal regulating the use of the waters of the Kunene River for the purposes of generating hydraulic power and of inundation and irrigation in the Mandated Territory of South West Africa, signed at Cape Town on 1 July 1926	96–99	63
River Nile (Sudan and the United Arab Republic (Egypt)):		
(1) Exchange of notes between the Government of the United Kingdom and the Egyptian Government in regard to the use of the waters of the River Nile for irrigation purposes, Cairo, 7 May 1929	100–107	64
(2) Agreement between the United Arab Republic and the Republic of Sudan for the full utilization of the Nile waters, signed at Cairo on 8 November 1959	108–113	65
River Nile (*Owen Falls*) (Uganda):		
(1) Exchange of notes between the Government of the United Kingdom and the Government of Egypt regarding the construction of the Owen Falls Dam, Cairo, 30 and 31 May 1949	114–118	66
(2) Exchange of notes between the Government of the United Kingdom and the Government of Egypt regarding the construction of the Owen Falls Dam in Uganda, Cairo, 16 July 1952 and 5 January 1953	119	67
River Nile (*Equatorial Lakes*) (Uganda and Egypt): Exchange of notes constituting an Agreement between the Government of the United Kingdom (on behalf of the Government of Uganda) and the Government of Egypt regarding co-operation in meteorological and hydrological surveys in certain areas of the Nile Basin, Cairo, 19 January, 28 February and 20 March 1950	120–123	67
Tanoe River (Ivory Coast and Ghana): Exchange of notes between the British and French Governments respecting licences to dredge in the Tanoe River, on completion of the Anglo-French Agreement of 10 August 1889, London, 16 and 25 June 1907	124	67
2. Bilateral treaties containing provisions related to the utilization and use of international rivers in Africa	125–151	68
(*a*) Provisions of treaties relating generally to rivers contiguous to the territories of two States		
Dahomey and Nigeria: Exchange of notes constituting an Agreement between the United Kingdom and France relative to the frontier between the British and French possessions from the Gulf of Guinea to the Niger (Southern Nigeria and Dahomey), Paris, 19 October 1906	125	68
Ghana and Togo. Exchange of notes constituting an Agreement between France and the United Kingdom regarding the protocol and final report of the Commissioners appointed to define the frontier between the British and French Mandated Territories in Togoland, signed at Lomé on 21 October 1929—London, 30 January and 19 August 1930	126	68
Chad and Central African Republic and Sudan: Exchange of notes between Great Britain and France agreeing to the ratification of the Protocol defining the boundary between French Equatorial Africa and the Anglo-Egyptian Sudan, together with the Protocol, London, 21 January 1924	127	68
(*b*) Provisions of treaties relating to one or more specific rivers		
Atbara River (*tributary of the Nile*) (Ethiopia (Eritrea) and Sudan): Protocol between Italy and the United Kingdom for the demarcation of their respective spheres of influence in Eastern Africa, signed at Rome on 15 April 1891	128	68
Blue Nile and Sobat Rivers (*tributaries of the Nile*) *and Lake Tsana* (Ethiopia and Sudan): Treaty between Ethiopia and the United Kingdom relative to the frontiers between the Anglo-Egyptian Sudan, Ethiopia and Eritrea, signed at Addis Ababa on 15 May 1902	129	68

	Paragraphs	Page
Great Skarcies River (Guinea and Sierra Leone): Exchange of notes between the United Kingdom and France with reference to the Agreement of 21 January 1895, Paris, 22 January and 4 February 1895	130–131	69
Hadou Wells (Somalia and French Somaliland): Agreement between the Governments of Great Britain and France with regard to the Somali Coast, London, 2 and 9 February 1888	132	69
River Komadugu (Niger and Nigeria): Convention between Great Britain and France respecting Newfoundland, and West and Central Africa, signed at London on 8 April 1904	133	69
Kwando River (Angola and Rhodesia and Nyasaland): Agreement between the United Kingdom (on its own behalf and on behalf of the Federation of Rhodesia and Nyasaland) and Portugal with regard to certain natives living on the Kwando River, signed at Lisbon on 18 November 1954	134–135	69
Malka Murri (frontier waters at) (Ethiopia and Kenya): Exchange of notes constituting an Agreement between the United Kingdom and Ethiopia concerning the Kenya–Ethiopia boundary, Addis Ababa, 29 September 1947	136	69
Rivers Meli and Moa (Guinea and Sierra Leone): Exchange of notes between Great Britain and France respecting the boundary between Sierra Leone and French Guinea, London, 4 September 1913	137–138	69
Rivers Muni and Outamboni (Gabon and Rio Muni): Convention between France and Spain for the demarcation of their possessions on the Sahara Coast and the Gulf of Guinea Coast, signed at Paris on 27 June 1900	139–140	70
River M'Pozo (Angola and Congo (Leopoldville)): Convention between Belgium and Portugal regarding questions of economic interest in the colonies of the Belgian Congo and Angola, signed at São Paulo de Loanda on 20 July 1927	141–143	70
River Nile (United Arab Republic (Egypt) and Sudan): Treaty of alliance between the United Kingdom and Egypt, signed at London on 26 August 1936—Exchange of notes of 12 August 1936 annexed to the Treaty	144	70
Lake Nyasa (Mozambique and Rhodesia and Nyasaland): Agreement between the United Kingdom (on its own behalf and on behalf of the Federation of Rhodesia and Nyasaland) and Portugal regarding the Nyasaland–Mozambique frontier, signed at Lisbon on 18 November 1954	145–146	70
Ramla Well (Libya and Egypt): Agreement between Egypt and Italy fixing the frontier between Cyrenaica and Egypt, signed at Cairo on 6 December 1925	147	70
River Rovuma (Mozambique and Tanganyika): Exchange of notes between the United Kingdom and Portugal regarding the boundary between Tanganyika and Mozambique, Lisbon, 11 May 1936	148	71
Semliki River and Lake Albert (Congo (Leopoldville) and Uganda and Sudan): Agreement between Great Britain and the Independent State of the Congo, modifying the Agreement signed at Brussels on 12 May 1894, signed at London on 9 May 1906	149–150	71
Tanoe River (Ivory Coast and Ghana): Arrangement between Great Britain and France, fixing the boundary between their possessions on the Gold Coast, signed at Paris on 12 July 1893	151	71

Chapter III. America

A. MULTILATERAL TREATIES	152–153	71
B. BILATERAL TREATIES	154–301	72
1. Bilateral treaties concerned exclusively with the utilization and use of international rivers in America	154–267	72
(*a*) Treaties relating generally to contiguous rivers and to certain successive rivers in the territories of two States		
Canada and the United States of America: Treaty between Great Britain and the United States relating to Boundary Waters, signed at Washington, 11 January 1909	154–167	72
(*b*) Treaties relating to one or more specific rivers		
Acaray and Monday Rivers (Brazil and Paraguay): Agreement concerning co-operation signed at Rio de Janeiro on 20 January 1956	168–173	74

	Paragraphs	Page
Lake of the Woods (Canada and the United States): Agreement and Protocol to regulate the level of the Lake of the Woods, signed at Washington on 24 February 1925	174–183	75
Colorado River and Rio Grande (United States of America and Mexico): Boundary Convention signed at Washington on 1 March 1889	184–185	76
Columbia River (Basin) (Canada and the United States):		
(1) Exchange of notes relating to a study of the use of the waters of the Columbia River Basin, Ottawa, 25 February and 3 March 1944	186–187	76
(2) Treaty relating to development of the water resources of the Columbia River basin, signed at Washington on 17 January 1961	188–200	76
Rio Grande (United States and Mexico):		
(1) Convention concerning the distribution of the waters of the Rio Grande, signed at Washington on 21 May 1906	201–205	78
(2) Convention for the rectification of the Rio Grande in the El Paso and Juárez Valley, signed at Mexico on 1 February 1933	206–210	79
The Rio Grande and the Colorado and Tijuana Rivers (United States and Mexico): Treaty relating to the utilization of the waters of the Colorado and Tijuana Rivers and the Rio Grande, signed at Washington on 3 February 1944, and supplementary Protocol signed at Washington on 14 November 1944	211–216	79
The Great Lakes (Canada and the United States): Convention on fisheries, signed at Washington on 10 September 1954	217–220	83
The Great Lakes St. Lawrence River (Basin) (Canada and the United States): Exchange of notes regarding the development of certain portions of the Great Lakes–St. Lawrence Basin project, Washington, 14 and 31 October and 7 November 1940	221–223	83
Lake Memphremagog (Canada and the United States): Exchange of notes regarding the level of Lake Memphremagog, Washington, 20 September and Ottawa, 6 November 1935	224–226	83
Niagara River (Canada and the United States):		
(1) Treaty relating to the uses of the waters of the Niagara River, signed at Washington on 27 February 1950	227–232	84
(2) Exchange of notes relating to the construction of remedial works at Niagara Falls, Ottawa, 13 September 1954	233	84
Paraná (Apipé Falls) (Argentina and Paraguay): Agreement concerning a study of utilization of the water power of the Apipé Falls, signed at Buenos Aires on 23 January 1958	234–238	84
Rainy Lake (Canada and the United States): Convention providing for emergency regulation of the level of Rainy Lake, signed at Ottawa on 15 September 1938	239–240	85
Lake St. Francis (Canada and the United States): Exchange of notes relating to the temporary raising of the level of Lake St. Francis during low water periods. Washington, 10 November 1941	241–243	85
Lake Titicaca (Bolivia and Peru):		
(1) Preliminary Convention for the exploitation of fisheries in Lake Titicaca, signed at Lima on 17 July 1935	244–247	85
(2) Preliminary Convention concerning a study of the joint utilization of the waters Lake Titicaca, signed at Lima on 30 July 1955	248–249	86
(3) Agreement concerning a preliminary economic study of the joint utilization of the waters of Lake Titicaca, signed at La Paz on 19 February 1957	250–256	86
Uruguay River (Salto Grande) (Argentina and Uruguay): Agreement relating to the utilization of the rapids of the Uruguay River, signed at Montevideo on 30 December 1946	257–267	87
2. Bilateral treaties containing provisions relating to the utilization and use of international rivers in America	268–301	88
(*a*) Provisions of treaties relating generally to contiguous and successive rivers in the territories of two States		
Brazil and Uruguay: Convention regarding the determination of the legal status of the frontier, signed at Montevideo on 20 December 1933	268–271	88
Guatemala and Honduras: Treaty of free trade and economic integration, signed at Guatemala on 22 August 1956	272	88

	Paragraphs	Page
Guatemala and El Salvador: Treaty of free trade and economic integration, signed at San Salvador on 14 December 1951	273	88
Haiti and the Dominican Republic: Treaty of peace, friendship and arbitration, signed at San Domingo on 20 February 1929	274–275	88
(*b*) Provisions of treaties relating generally to contiguous rivers in the territories of two States		
Brazil and British Guiana: Exchange of notes between the Brazilian Government and His Majesty's Government in the United Kingdom concerning the delimitation of the riverain areas, London, 27 October and 1 November 1932	276–277	88
Colombia and Venezuela: Statue regulating the frontier régime, signed at Caracas on 5 August 1942	278	89
Guatemala and El Salvador: Treaty for the delimitation of the boundary between the two States, signed at Guatemala City on 9 April 1938	279–280	89
(*c*) Provisions of treaties relating to one or more specific rivers		
Mahu and Tacutú Rivers (Brazil and British Guiana): Exchange of notes between the United Kingdom and Brazil approving the General Report of the Special Commissioners appointed to demarcate the boundary-line between British Guiana and Brazil (with General Report), Rio de Janeiro, 15 March 1940	281	89
Maroni River (French Guiana and Surinam): Convention between France and the Netherlands to determine the boundary between the colonies of French Guiana and Surinam, signed at Paris on 30 September 1915	282–284	89
Mauri and Uchusuma Channels (Chile and Peru): Treaty for the settlement of the dispute regarding Tacna and Arica, signed at Lima on 3 June 1929	285–286	90
Pilcomayo River (Argentina and Paraguay):		
(1) Supplementary Boundary Treaty, signed at Buenos Aires on 5 July 1939	287	90
(2) Supplementary Boundary Treaty on the River Pilcomayo, and Protocol annexed to the Treaty, signed at Buenos Aires on 1 June 1945	288–290	90
River Plate (Argentina and Uruguay): Protocol dealing with the question of the jurisdiction of the River Plate, signed at Montevideo on 5 January 1910	291	90
St. Clair River and Lake St. Clair (Canada and the United States): Exchange of notes relating to the St. Lawrence Seaway, Ottawa, 27 February 1959	292	91
St. Lawrence River (Canada and the United States)	293	91
(1) Exchange of notes relating to the St. Lawrence Seaway Project, Washington, 30 June 1952	294	91
(2) Exchange of notes relating to the establishment of the St. Lawrence River Joint Board of Engineers, Washington, 12 November 1953	295	91
Lake Titicaca (Bolivia and Peru): Exchange of notes establishing a Joint Commission to study, *inter alia*, the use of the waters of Lake Titicaca, La Paz, 20 April 1955	296	92
Uruguay River (Argentina and Uruguay):		
(1) Agreement concerning certain islands of the Uruguay River, signed at Buenos Aires on 13 January 1938	297–298	92
(2) Treaty on the boundary constituted by the Uruguay River, signed at Montevideo on 7 April 1961	299–300	92
River Zarumilla (Ecuador and Peru): Declaration and exchange of notes concerning the frontier between the two countries, Lima and Quito, 22 and 24 May 1944	301	92
Chapter IV. Asia		
A. MULTILATERAL TREATIES	302–304	92
B. BILATERAL TREATIES	305–416	93
1. Bilateral treaties concerned exclusively with the utilization and use of international rivers in Asia	305–385	93
(*a*) Treaties relating generally to rivers contiguous to the territories of two States		
Turkey and the USSR: Convention and Protocol regarding the use of frontier waters, signed at Kars on 8 January 1927	305–317	93

	Paragraphs	Page
(*b*) Treaties relating to one or more specific rivers		
Amur and Argun Rivers (China (People's Republic of) and the USSR): Agreement on joint research operations, signed at Peking on 18 August 1956	318–320	95
Araxe River (Turkey and the USSR): Protocol annexed to the Convention regarding the use of frontier waters, signed at Kars on 8 January 1927	321–324	95
Atreck, Babdjik Canal, Chandir, Durungar, Firuza, Karzan Chai, Kelta-Chinar, Soumbar, Tedjen and Archinian, Chaachaa, Kelat Chai, Lain-Sou and Meana Rivers and their tributaries (Iran and the USSR): Convention regarding the mutual use of frontier rivers and waters, signed 20 February 1926	325–340	96
Euphrates and Tigris Rivers and their tributaries (Iraq and Turkey): Protocol relative to the regulation of the waters of the Tigris and Euphrates and of their tributaries, signed at Ankara on 29 March 1946	341–346	97
Gandak River (India and Nepal): Agreement on the Gandak River Irrigation and Power project, signed at Katmandu on 4 December 1959	347–354	98
Helmand River (Afghanistan and Iran): Terms of Reference of the Helmand River Delta Commission, agreed on 7 September 1950	355	98
Indus and its tributaries (Beas, Chenab, Jhelum, Ravi and Sutlej) (India and Western Pakistan): Treaty regarding the use of the waters of the Indus, signed at Karachi on 19 September 1960	356–361	99
Kosi River (India and Nepal): Agreement on the Kosi project, signed at Katmandu on 25 April 1954	362–374	102
Yarmuk River (Jordan and Syria): Agreement concerning the utilization of the Yarmuk waters, signed at Damascus on 4 June 1953	375–385	103
2. Bilateral treaties containing provisions concerning the utilization and use of international rivers in Asia	386–416	104
(*a*) Provisions of treaties relating generally to rivers contiguous to the territories of two States		
Afghanistan and the USSR: Treaty concerning the régime of the frontier between the two countries, signed in Moscow on 18 January 1958	386–398	104
India and Pakistan (East): Agreement on East Pakistan border disputes, signed at New Delhi on 23 October 1959	399–401	105
Iran and the USSR: Treaty of friendship, signed in Moscow on 26 February 1921	402–403	105
Syria and Turkey: Protocol between France and Turkey, concluded pursuant to the Agreement of friendship and good neighbourly relations of 30 May 1926, Ankara, 29 June 1929	404	105
Turkey and the USSR: Convention concerning frontier incidents and disputes, signed at Moscow on 15 July 1937	405	105
(*b*) Provisions of treaties relating to one or more specific rivers		
Arnawai Khwar (Afghanistan and Pakistan): Exchange of notes between Afghanistan and the United Kingdom and India in regard to the boundary between Afghanistan and India in the neighbourhood of Arnawai and Dokalim, Kabul, 3 February 1934	406–407	106
Shatt-el-Arab (Iraq and Iran): Boundary Treaty and Protocol, signed at Teheran on 4 July 1937	408	106
Euphrates and Kuveik (Syria and Turkey):		
(1) Agreement between France and Turkey with a view to promoting peace, signed at Angora on 20 October 1921	409	106
(2) Convention of friendship and good-neighbourly relations between France and Turkey, signed at Angora on 30 May 1926	410	106
Gangir and Gunjan Cham Rivers (Iraq and Iran): Proceedings of the meetings of the Turco-Persian Delimitation Commission of 1914	411	106
Kabul and Landi Khana Rivers (Afghanistan and Pakistan): Treaty between Afghanistan and the United Kingdom for the establishment of neighbourly relations, signed at Kabul on 22 November 1921	412	106
Kushka and Murghab Rivers (Afghanistan and the USSR): Frontier Agreement (with protocol and exchange of notes), signed at Moscow on 13 June 1946	413–414	107

	Paragraphs	Page
Kozlu, Salep and Yukari Yarim Kaya Rivers and Lake Barolan (Iran and Turkey): Agreement relating to the frontier, with exchange of notes, signed at Teheran on 23 January 1932	415	107
River Tigris (Syria and Turkey): Final Demarcation Protocol, Aleppo, 3 May 1930	416	107
Chapter V. Europe		
A. MULTILATERAL TREATIES	417–497	107
1. Multilateral treaties concerned exclusively with the utilization and use of international rivers in Europe	424–463	109
(*a*) Treaties relating generally to contiguous and successive rivers in the territories of the States parties to such treaties		
Belgium, France and Luxembourg: Protocol between Belgium, France and Luxembourg to establish a tripartite standing committee on polluted waters, signed at Brussels on 8 April 1950	424–425	109
(*b*) Treaties relating to one or more specific rivers		
Lake Constance (Austria, Germany and Switzerland):		
(1) Convention between Baden, Bavaria, Austria, Switzerland and Württemberg concerning regularization of the flow of the waters of Lake Constance, concluded on 31 August 1857	426–429	109
(2) Convention between Austria-Hungary, Baden, Bavaria, Liechtenstein, Switzerland and Württemberg concerning fishing in Lake Constance, with Protocol, concluded at Bregenz on 5 July 1893	430–434	110
(3) Convention between the *Land* of Baden-Württemberg, the Free State of Bavaria, the Republic of Austria and the Swiss Confederation on the protection of Lake Constance against pollution, concluded at Steckborn on 27 October 1960	435–438	110
Danube (Bulgaria, Romania, the USSR and Yugoslavia): Convention concerning fishing in the waters of the Danube, signed at Bucharest on 29 January 1958	439–446	111
Lake Inari and the River Paatsjoki (Finland, Norway and the USSR): Agreement concerning the regulation of Lake Inari, signed at Moscow on 29 April 1959	447–452	111
Rhine and its tributaries (Germany, the Netherlands and Switzerland): Convention for the regulation of salmon fishing in the Rhine basin, with Protocol, signed at Berlin on 30 June 1885	453–475	112
Rhine and its tributaries, including Lake Constance (Germany, France and Switzerland): Convention, with Protocol, between Switzerland, the Grand Duchy of Baden, and Alsace-Lorraine, signed at Lucerne on 18 May 1887	458–463	113
2. Multilateral treaties containing provisions relating to the utilization and use of international rivers in Europe	464–497	114
(*a*) Provisions of treaties relating generally to contiguous and successive rivers in the territories of the States parties to such treaties		
Federal Republic of Germany, Belgium, France, Italy, Luxembourg and the Netherlands: Treaty establishing the European Atomic Energy Community (EURATOM), done at Rome on 25 March 1957	464	114
(*b*) Provisions of treaties relating generally to contiguous and successive rivers in the territories of certain of the States which are parties to such treaties		
Germany and Belgium: Provisions relating to the common frontier, drawn up by a Boundary Commission under the terms of the Treaty of Versailles of 28 June 1919, done at Aix-la-Chapelle on 6 November 1922	465–467	114
Bulgaria, Greece and Turkey: Treaty of Peace between the British Empire, France, Italy, Japan, Greece, Romania and Yugoslavia of the one part, and Turkey of the other part, signed at Lausanne on 24 July 1923	468	115
(*c*) Provisions of treaties relating to one or more specific rivers		
Lake Constance (Germany, Austria and Switzerland): Convention between Switzerland, Austria, Bavaria, Württemberg and the Grand Duchy of Baden to establish international regulations for navigation and port service on Lake Constance, signed at Bregenz on 22 September 1867	469	115

	Paragraphs	Page
The Danube (Austria, Bulgaria, Hungary, Romania, Czechoslovakia, the USSR and Yugoslavia): Convention regarding the régime of navigation on the Danube, signed at Belgrade on 18 August 1948	470–473	115
Moselle (France, Germany (Federal Republic of) and Luxembourg): Convention concerning the canalization of the Moselle, signed at Luxembourg on 27 October 1956	474–480	115
Lake Raibl (Austria and Italy): Treaty of Peace between the Allied and Associated Powers, of the one part, and Austria, of the other part, signed at Saint-Germain-en-Laye on 10 September 1919	481	116
The Rhine (France, Germany and the Netherlands): Revised Convention relating to the navigation of the Rhine between Baden, Bavaria, France, Hesse, the Netherlands and Prussia, signed at Mannheim on 17 October 1868	482–483	116
The Rhine (France and Germany): Treaty of Peace between the Allied and Associated Powers, of the one part, and Germany, of the other part, signed at Versailles on 28 June 1919	484–487	117
The Rhine (*lateral canal of Kembs*) (France, Germany and Switzerland): Agreement concerning the scheme for the Kembs lateral canal, signed at Strasbourg on 20 May 1922	488–489	117
Roya River and Lake of Mont Cenis (Italy and France) *and springs in the Commune of Gorizia and vicinity* (Italy and Yugoslavia): Treaty of peace between the Allied and Associated Powers and Italy, signed at Paris on 10 February 1947	490–492	118
Terneuzen (*canal*) (Belgium and the Netherlands): Treaty between Belgium, the Netherlands and Luxembourg, supplementing the treaty of 19 April 1839, concluded at The Hague on 5 November 1842	493–497	119
B. BILATERAL TREATIES	498–1021	120
1. Bilateral treaties concerned exclusively with the utilization and use of international rivers in Europe	498–879	120
(*a*) Treaties relating generally to contiguous and successive rivers in the territories of two States		
Albania and Yugoslavia: Agreement concerning water economy questions, together with the Statute of the Yugoslav–Albanian Water Economy Commission and with the Protocol concerning fishing in frontier lakes and rivers, signed at Belgrade on 5 December 1956	498–502	120
Germany (*Federal Republic of*) *and Austria*: Agreement between Austria and the Free State of Bavaria concerning the Österreichisch-Bayerische Kraftwerke AG (Austrian Bavarian Hydroelectric Company), concluded on 16 October 1950	503–510	120
Bulgaria and Yugoslavia: Agreement concerning water-economy questions, signed at Sofia on 4 April 1958	511–518	121
Finland and the USSR:		
(1) Convention concerning the maintenance of river channels and the regulation of fishing in watercourses forming part of the frontier, signed at Helsingfors on 28 October 1922	519–522	122
(2) Convention regarding the floating of timber, signed at Helsingfors on 28 October 1922 and amended by the Convention signed in Moscow on 15 October 1933	523–528	122
Greece and Yugoslavia:		
(1) Exchange of letters concerning the application of the provisions of the procès-verbal annexed to the Agreement for economic collaboration and trade of 28 February 1953, Belgrade, 25 May 1954	529	123
(2) Agreement concerning hydro-economic questions and Annex concerning the Regulations of the Yugoslav–Greek Permanent Hydro-economic Commission and Exchange of Letters, signed at Athens on 18 June 1959	530–535	123
Hungary and Czechoslovakia: Agreement on the settlement of technical and economic questions concerning frontier watercourses signed at Prague on 16 April 1954	536–542	124
Hungary and Yugoslavia: Agreement concerning water economy questions together with the Statute of the Yugoslav–Hungarian Water Economy Commission, signed at Belgrade on 8 August 1955	543	125
Norway and Sweden: Convention on certain questions relating to the law on watercourses, signed at Stockholm on 11 May 1929	544–547	125

	Paragraphs	Page
Romania and Yugoslavia: Agreement concerning questions of water control, together with the Statute of the Yugoslav–Romanian Water Control Commission, signed at Bucharest on 7 April 1955	548–555	126
(*b*) Treaties relating generally to contiguous rivers in the territories of two States		
Germany and Denmark: Agreement for the settlement of questions relating to watercourses and dikes on the German–Danish frontier, attached as annex to the Treaty signed at Copenhagen on 10 April 1922	556–563	127
Germany and Luxembourg: Convention concerning the regulation of fisheries in boundary waters, signed at Luxembourg on 5 November 1892	564–565	129
Austria and Hungary: Treaty concerning the regulation of water economy questions in the frontier region, signed at Vienna on 9 April 1956	566–581	130
Belgium and France: Convention concerning the non-navigable and non-floatable frontier watercourses between the two countries, signed at Paris on 22 June 1882	582	131
Spain and Portugal: Exchange of Notes on the exploitation of border rivers, Madrid, 29 August and 2 September 1912	583–588	131
Hungary and Yugoslavia: Agreement concerning fishing in frontier waters, signed at Belgrade on 25 May 1957	589–596	132
Hungary and the USSR: Treaty concerning the régime of the frontier and Final Protocol, signed at Moscow on 24 February 1950	597–606	132
(*c*) Treaties relating to one or more specific rivers		
Arve and its tributaries, Doubs, Rhône, the Lake of Geneva and its tributaries and other watercourses crossing the territory of the two States (France and Switzerland): Convention for the regulation of fishing in frontier waters, signed at Paris on 9 March 1904	607–616	133
Bidassoa (Spain and France): Convention relating to fishing in the Bidassoa, signed at Bayonne on 18 February 1886	617–626	134
Blaserbach, Dollmannbach, Dürrach and Kesselbach and Rissbach and their tributaries (Germany (Federal Republic of) and Austria): Agreement between Austria and the State of Bavaria concerning the diversion of water in the Rissbach, Dürrach and Walchen districts, reached on 29 June 1948 and concluded on 16 October 1950	627	135
Bocholter Aa (Germany and the Netherlands): Treaty concerning the improvement of the frontier section of the Bocholter Aa, concluded at The Hague on 18 April 1900	628–632	136
Breggia, Doveria, Gione, Maira, Melezza, Poschiavino, Spöl, Tresa and Lakes Lugano and Maggiore (Italy and Switzerland): Agreement concerning fishing in frontier waters, concluded at Lugano on 13 June 1906	633–642	136
Danube (Germany (Federal Republic of) and Austria): Agreement concerning the Donaukraftwerk–Jochenstein Aktiengesellschaft (Danube Power Plant and Jochenstein Joint Stock Company), concluded on 13 February 1952	643–646	137
Dinkel, Vechte, Laar'sche Bruch, canals of the Emlichsheim and the Nordhorn-Almelo and the canals on the right bank of the Ems (Germany and the Netherlands): Convention concerning the Dinkel and Vechte rivers, signed at Berlin on 17 October 1905	647–652	138
Lake Dojran (Greece and Yugoslavia):		
(1) Minutes of meetings concerning the water level of Lake Dojran, signed at Salonica on 31 March 1956	653–657	138
(2) Minutes of meetings concerning hydro-economic studies of the drainage area of Lake Dojran, Stari Dojran, 1 September 1957	658–667	139
Dollard (Germany and the Netherlands): Agreement to regulate the building of dikes on the Dollard, concluded at Leer on 23 September 1874	668–671	139
Doubs (France and Switzerland): Convention respecting the Chatelot Falls concession, signed at Paris on 19 November 1930	672–678	140
Douro (Spain and Portugal): Convention to regulate the hydro-electric development of the international section of the River Douro, signed at Lisbon on 11 August 1927	679–692	141
Drava (Austria and Yugoslavia): Convention concerning water economy questions relating to the Drava, signed at Geneva on 25 May 1954	693–699	142
Espierres canal and Roubaix canal (Belgium and France): Arrangement to facilitate the feeding of the Espierres canal, signed at Paris on 14 May 1884	700	143

	Paragraphs	Page
Flanders (waters of) (Belgium and the Netherlands): Convention for regulating the drainage of the waters of Flanders, signed at Gand on 20 May 1843	701–706	143
Gandvik, Fuglevatn, Kallo and Näätämö and Förstevannene, Garsjöen and Kjerringvatn Lakes (Finland and Norway): Agreement on the transfer from the courses of the Näätämö River to the course of the Gandvik River of water from the Garsjöen, Kjerringvatn and Förstevannene Lakes, signed at Oslo on 25 April 1951	707–710	143
Gorizia (supply of water to the commune of) (Italy and Yugoslavia): Agreement concerning the supply of water to the commune of Gorizia and Exchange of Notes, signed at Nova Gorica on 18 July 1957	711–719	144
Lake Inari (Finland and the USSR): Additional Protocol concerning compensation for loss and damage and for the works to be carried out by Finland in connexion with the implementation of the agreement of 29 April 1959 between the USSR, Finland and Norway, signed at Moscow on 29 April 1959	720	144
Lake of Lugano and Tresa (Italy and Switzerland): Convention concerning the regulation of Lake Lugano, signed at Lugano on 17 September 1955	721–729	145
Maritza-Ebros (Greece and Turkey): Agreement concerning the control of hydraulic works on both banks of the River Maritza-Ebros, signed at Ankara on 20 June 1934.	730–735	145
Meuse (Belgium and the Netherlands): Treaty to regulate the régime of the diversion of water from the Meuse, followed by an explanatory note, signed at The Hague on 12 May 1863	736–740	146
Miño (Spain and Portugal): Regulations for fishing, Madrid, 15 May 1897	741–747	147
Lake Mont-Cenis (France and Italy): Provisional Agreement and Exchange of Notes regarding the Gran Scala power station, signed at Rome on 12 January 1955	748–751	147
Muonio and Tornea (Finland and Sweden):		
(1) Convention concerning the joint exploitation of salmon fisheries, and Regulations concerning fishing, signed at Helsingfors on 10 May 1927.	752–759	148
(2) Agreement concerning timber-floating, signed at Stockholm on 17 February 1949	760–763	149
The Mura and certain of its tributaries (Austria and Yugoslavia): Agreement concerning water economy questions in respect of the frontier sector of the Mura and the frontier waters of the Mura, together with the Statute of the Permanent Yugoslav–Austrian Commission for the Mura, signed at Vienna on 16 December 1954	764–769	149
The Niers and the Guelder Niers canal (Germany and the Netherlands): Convention concerning the improvement and maintenance of the lower Niers and the Guelder Niers canal, signed at The Hague on 16 May 1895	770–771	150
Our (Germany (Federal Republic of) and Luxembourg): State Treaty between Luxembourg and the *Land* Rhineland Palatinate in the Federal Republic of Germany concerning the construction of hydro-electric power installations on the Our, with Annexes, signed at Trier on 10 July 1958	772–781	150
Paatsojoki (Norway and the USSR): Agreement on the utilization of water-power on the Pasvik (Paatso) river, signed at Oslo on 18 December 1957	782–789	151
Pommeroeul (canal) at Antoing and the Calonne, Macon, and Verne de Bury streams (Belgium and France): Arrangement concerning the regulation of the outflow of the highwater level of the Pommeroeul canal at Antoing, signed at Paris on 31 May 1882.	790	152
Pruth (Romania and the USSR): Convention concerning measures to prevent floods and to regulate the water régime of the river Pruth, signed at Kishinev on 25 December 1952	791	152
Reno di Lei and other rivers situated in the Averserrhein basin (Italy and Switzerland): Agreement on the Reno di Lei hydraulic power concession, with Additional Protocol, signed at Rome on 18 June 1949	792–795	152
Rhine (lower reaches of the Old Rhine) (Germany and the Netherlands): Treaty concerning the raising of the level of the former mouth of the Old Rhine near Lobith, signed at Berlin on 29 August 1918	796–798	153
Rhine (Germany and Switzerland):		
(1) Convention between Switzerland and the Grand Duchy of Baden regarding navigation on the Rhine from Neuhausen to below Basle, signed at Basle on 10 March 1879	799–801	153
(2) Convention regarding the regulation of the Rhine between Strasbourg–Kehl and Istein, signed at Berne on 28 March 1929	802–805	154

	Paragraphs	Page
Rhine (Germany (Federal Republic of) and France): Convention on the regulation of the upper course of the Rhine between Basle and Strasbourg, and attached Protocol, signed at Luxembourg on 27 October 1956	806–809	155
Rhine (Austria and Switzerland): Treaty between Switzerland and Austria–Hungary for the regulation of the Rhine, signed at Vienna on 30 December 1892	810–817	156
Rhine (France and Switzerland): Convention regulating the relations between the two countries with regard to certain clauses of the legal régime of the future Kembs derivation from the Rhine, signed at Berne on 27 August 1926	818–826	157
Rhine, Esche, Frickgraben and Spiersgraben (Austria and Liechtenstein): Treaty regarding the regulation of the Rhine and tributary waters, signed at Vaduz on 23 June 1931	827–833	158
Rhine and Lower Bodensee (Germany and Switzerland): Convention between the Grand Duchy of Baden and Switzerland concerning fishing, with Regulations, concluded at Konstanz on 3 July 1897	834–841	159
Rhône (France and Switzerland): Convention for the development of the water power of the Rhône, signed at Berne on 4 October 1913	842–845	160
Roggia Molinara (Italy and Switzerland): Convention concerning the correction of Roggia Molinara, concluded at Chiasso on 5 April 1951	846–848	161
Spöl (Italy and Switzerland): Convention concerning the use of the water power of the Spöl, and additional Protocol, signed at Berne on 27 May 1957	849–854	161
Sûre (Germany (Federal Republic of) and Luxembourg): State Treaty between Luxembourg and the *Land* Rhineland-Palatinate in the Federal Republic of Germany concerning the construction of a hydro-electric power plant on the Sauer (Sûre), signed at Trier on 25 April 1950	855–858	163
Tana, Anarjokka and Skiettsjamjokka (Finland and Norway): Agreement regarding new fishing regulations for the fishing area of the Tana River, signed at Oslo on 15 November 1960	859–862	164
Timok (Bulgaria and Yugoslavia): Protocol concerning the beginning of work for the regulation of the frontier sector of the Timok River, signed at Sofia on 4 April 1958	863–865	164
Tisza (Hungary and the USSR): Convention concerning measures to prevent floods and to regulate the water régime in the area of the frontier River Tisza, signed at Ushgorod on 9 June 1950	866–870	165
Ijssel (Germany and the Netherlands): Convention to improve the frontier section of the Oude Ijssel, concluded at The Hague on 10 March 1894	871–879	165
2. Bilateral treaties containing provisions concerning the utilization and use of international rivers in Europe	880–1021	166
(*a*) Provisions of treaties relating generally to contiguous and successive rivers in the territories of both States		
Germany and Austria: Navigation Agreement between Austria and Bavaria, concluded on 2 December 1851	880–881	166
Germany and Belgium: Agreement concerning the common frontier, signed at Aix-la-Chapelle on 7 November 1929	882–884	166
Germany and France: Treaty regarding the delimitation of the frontier, signed at Paris on 14 August 1925	885–887	166
Germany and the Netherlands: Treaty of Limits, signed at Cleves on 7 October 1816	888–890	167
Austria and Czechoslovakia: Treaty regarding the settlement of legal questions connected with the frontier, signed at Prague on 12 December 1928	891–892	167
Belgium and the Netherlands: Treaty of peace, signed in London on 19 April 1839	893–894	169
Spain and France: Additional Act to the Boundary Treaties of 2 December 1856, 14 April 1862 and 26 May 1866, signed at Bayonne on 26 May 1866	895–902	170
(*b*) Provisions of treaties relating generally to contiguous rivers in the territories of two States		
Austria and Germany: Treaty between Austria and Bavaria concerning the régime of the frontier line and other territorial relations between Bohemia and Bavaria, concluded on 24 June 1862	903	171

	Paragraphs	Page
Germany and Luxembourg: Boundary Treaty between the King of Prussia and the King of the Netherlands, signed at Aix-la-Chapelle on 26 June 1816	904–906	172
German Democratic Republic and Poland: Agreement concerning frontier waters, signed at Berlin on 6 February 1952	907–914	172
Germany (Federal Republic of) and the Netherlands: Treaty concerning the course of common frontier and other frontier questions, signed at The Hague on 8 April 1960	915–927	173
Austria and Italy: Agreement concerning economic relations between the frontier zones, signed at Rome on 28 April 1923	928–931	175
Belgium and Luxembourg: Convention fixing the frontier between the two countries, signed at Maastricht on 7 August 1843	932–933	175
France and Spain: Treaty to determine the frontier between the two countries, signed at Bayonne on 2 December 1856	934	175
Spain and Portugal:		
(1) Frontier treaty, signed on 29 September 1864	935–936	175
(2) Regulations annexed to the Frontier Treaty of 29 September 1864, signed at Lisbon on 4 November 1866	937–942	176
(3) Convention delimiting the frontier between both countries, signed at Lisbon on 29 June 1926	943	176
Finland and USSR: Agreement concerning the frontier régime, signed at Helsinki on 23 June 1960	944	176
Hungary and Czechoslovakia: Treaty concerning the frontier régime, signed at Prague on 13 October 1956	945	177
Norway and the USSR: Agreement concerning the frontier régime and procedure for the settlement of frontier disputes and incidents, signed at Oslo on 29 December 1949	946–952	178
Poland and the USSR: Agreement concerning the frontier régime, signed at Moscow on 8 July 1948	953	178
Romania and the USSR: Treaty concerning the frontier régime, signed at Moscow on 25 November 1949	954	178
Romania and Yugoslavia: Protocol governing the crossing of the frontier by officials of the water control services, signed at Belgrade on 31 December 1948	955–956	178
(*c*) Provisions of treaties relating to one or more specific rivers		
Aa, Kleine-Vechte, Radewyk and certain frontier aqueducts and conduits (Germany and the Netherlands): Treaty concerning the frontiers between the Netherlands and Hanover, concluded at Meppen on 2 July 1824	957	179
Anarjokka (Finland and Norway): Agreement concerning the construction and maintenance of a bridge across the Anarjokka, signed at Helsinki on 28 June 1957	958	179
Angoustrine and Llivia (canal) and Puigcerdá (canal) (Spain and France): Boundary Treaty finally establishing the common frontier, signed at Bayonne on 26 May 1866	959–960	179
Basaviga, Douro, Eljas, Minho, Tagus, Tuerto and Sever (Spain and Portugal): General Act demarcating the frontier from the mouth of the river Minho to the confluence of the Caya and Guadiana, signed at Lisbon on 1 December 1906	961–962	179
Danube (Germany and Austria): Agreement between Austria and Bavaria concerning territorial and frontier arrangements, concluded at Vienna on 2 December 1851	963–964	180
Doubs (France and Switzerland):		
(1) Convention concluded between the King of France and the Prince-Bishop of Bâle concerning the limits of their respective States, signed at Versailles on 20 June 1780	965–966	180
(2) Procès-verbal of demarcation between France and Neufchâtel, drawn up at Neufchâtel on 4 November 1824	967–969	180
Dunkirk to Furnes and Furnes to Bergues (canals) (Belgium and France): Convention relating to the improvement of the Furnes–Bergues or Basse–Colme and Furnes–Dunkirk canals, signed at Brussels on 26 June 1890	970	181
Guadiana and Minho (Spain and Portugal): Treaty concerning commercial relations and navigation, signed at Madrid on 27 March 1893	971	181
Inn (Germany and Austria): Agreement between Austria and Bavaria concerning the regulation and management of the Inn River, of 19 and 31 August 1858	972	181

	Paragraphs	Page
Lys and Semoy (Belgium and France): Boundary Treaty between France and the Netherlands, concluded at Courtrai on 28 March 1820	973–974	181
Meuse (Belgium and the Netherlands):		
(1) Boundary Convention, signed at Maastricht on 8 August 1843	975–977	181
(2) Treaty fixing a mining boundary between the coal mines situated along the Meuse on both sides of the frontier, signed at Brussels on 23 October 1950	978	182
Raour, Riou Tort, Riou Tartarès, Vanera and canals of Puigcerdá, Angoustrine and Llivia (Spain and France): Final Act of the delimitation of the Pyrenees frontier, signed at Bayonne on 11 July 1868	979–984	182
Rhine (Germany and Switzerland): Treaty between the Swiss Confederation and the Grand Duchy of Baden concerning, *inter alia*, the navigation duties of the two States on the Rhine from Constance to Basel inclusive, concluded at Berne on 27 July 1852.	985–986	183
Rhine and the Untersee (Germany and Switzerland):		
(1) Convention between the Swiss Confederation and the Grand Duchy of Baden concerning the delimitation of frontiers concluded at Stuttgart and Zürich on 20 and 31 October 1854	987–988	184
(2) Convention between Switzerland and the Grand Duchy of Baden instituting international regulations for navigation and port facilities on the Lower Lake and the Rhine, concluded at St. Gallen on 28 September 1867	989–990	184
Saalach and Salzach (Austria and Germany): Agreement between Bavaria and Austria concerning the course of the water frontier along the Saale and Salzach Rivers, concluded on 24 December 1820	991–995	184
Saar (France and Germany (Federal Republic of)): Treaty concerning the settlement of the Saar question, signed at Luxembourg on 27 October 1956	996–1001	185
Thaya (Austria and Czechoslovakia): Convention concerning the delimitation of the frontier and related questions, signed at Prague on 10 March 1921	1002–1008	185
Terneuzen (canal of) (Belgium and the Netherlands): Treaty concerning the improvement of the Terneuzen and Ghent Canal and the settlement of various related matters, signed at Brussels on 20 June 1960	1009–1012	186
Uzh (Czechoslovakia and the Soviet Union): Agreement concerning the frontier régime and the procedure for the settlement of frontier incidents, signed at Moscow on 30 November 1956	1013–1019	186
Weser (Belgium and Germany (Federal Republic of)): Treaty regarding the rectification of the frontier and the settlement of various problems, signed at Brussels on 24 September 1956	1020	186
Vidaa and its tributaries and the Rudeböl Lake (Denmark and Germany): Agreement regarding fisheries and reed cutting in the Rudeböl Lake and the Vidaa River, and regarding the cutting of hay and rushes in the Gotteskoog, signed at Copenhagen on 10 April 1922	1021	187

PART III

Summary of decisions by international tribunals, including arbitral awards

Chapter I. Judicial decisions

Judgement of 28 June 1937 by the Permanent Court of International Justice on the diversion of water from the Meuse (parties: Belgium, the Netherlands)	1022–1033	187

Chapter II. Arbitral awards

1. Arbitral awards of 19 August 1872 and 10 April 1905 in the Helmand river delta case (parties: Afghanistan, Persia)	1034–1037	188
(*a*) Award of 19 August 1872 rendered by General Goldsmid as arbitrator	1035	189
(*b*) Award of 10 April 1905 rendered by Colonel MacMahon as arbitrator	1036–1037	189
2. Award of 22 March 1888 by Grover Cleveland, President of the United States of America, as arbitrator, in the San Juan river case (parties: Costa Rica, Nicaragua)	1038–1041	190

	Paragraphs	Page
3. Award of 22 August (3 September) 1893 delivered in the Kushk river case by an Anglo–Russian Commission with a view to elucidating and completing Clause III of Protocol No. 4 of 10 (22) July 1887 (parties: Great Britain, Russia)	1042–1046	191
4. Award in the Faber case by a German–Venezuelan Mixed Claims Commission constituted under the protocol of 13 January 1903 (parties: Germany, Venezuela)	1047–1048	192
5. Awards of 16 April 1938 and 11 March 1941 by an Arbitral Tribunal in the Trial Smelter case (parties: Canada, the United States of America)	1049–1054	192
(*a*) Award of 16 April 1938	1052	193
(*b*) Decision of 11 March 1941	1053–1054	193
6. Award of 16 November 1957 by an arbitral Tribunal in the Lake Lanoux case (parties: Spain, France)	1055–1068	194

PART IV

General survey of studies made or being made by non-governmental organizations concerned with international law

Chapter I. International non-governmental organizations	1069–1098	199
1. Institute of International Law	1069–1076	199
2. International Law Association	1077–1091	202
NOTE. National branches of the International Law Association	1091	207
3. Inter-American Bar Association	1092–1096	208
4. Other international non-governmental organizations	1097–1098	209
(*a*) World Power Conference	1097	209
(*b*) International Commission on Irrigation and Drainage	1098	210
Chapter II. National non-governmental organizations	1099–1107	210
1. Österreichische Wasserwirtschaftsverband (Austria)	1102	210
2. American Bar Association (United States of America)	1103–1107	210
NOTE. Law schools and institutes	1108–1113	211
(*a*) New York University School of Law, New York (United States of America)	1110–1111	211
(*b*) Institute of Government and Law of the Academy of Sciences of the Union of Soviet Socialist Republics, Moscow (Soviet Union)	1112	211
(*c*) Institute of International Law and International Relations of the Faculty of Law of the University of Zagreb (Yugoslavia)	1113	211

ANNEXES

Annex

I. Declarations and resolutions adopted by inter-governmental organizations with reference to the codification of international law governing the utilization and use of international rivers . . . 212

A. Declaration of Montevideo concerning the industrial and agricultural use of international rivers, approved by the Seventh Inter-American Conference at its fifth plenary session, 24 December 1933 . . . 212

B. Resolution concerning the establishment of joint technical commissions to study the hydrographic system of the River Plate, adopted by the Regional Conference of the Countries of the River Plate on 6 February 1941 . . . 212

C. Resolution 675 (XXV) (entitled "Economic development of under-developed countries: water resources", adopted by the Economic and Social Council at its 1021st plenary meeting on 2 May 1958 . . . 213

Page

II. Reports and extracts from reports concerning the codification of international law governing the utilization and use of international rivers, prepared by inter-governmental organizations or by conferences of government experts 213

A. Report of the Permanent Committee on Public International Law on the general principles which may facilitate regional agreements between adjacent States on the industrial and agricultural use of the waters of international rivers, submitted to the Seventh Inter-American Conference, Rio de Janeiro, 23 July 1932 . 213

B. Report entitled "Integrated river basin development" submitted by a panel of experts constituted by the Secretary-General of the United Nations pursuant to Economic and Social Council resolution 599 (XXI) of 3 May 1956—New York, 23 November 1957 215

C. Report containing recommendations and conclusions adopted at the first Inter-African Conference on Hydrology meeting under the sponsorship of the Commission for Technical Co-operation in Africa South of the Sahara (CTCA) at Nairobi from 16 to 25 January 1961 217

D. Report of the Conference on Water Pollution Problems in Europe adopted by the Conference at its final meeting, held at Geneva on 3 March 1961 218

III. Bibliography and documentation 220

IV. Subject Index. 225

V. Index of the names of the international rivers mentioned in the text. 261

ABBREVIATIONS

CTCA	Commission for Technical Co-operation in Africa South of the Sahara
ECAFE	Economic Commission for Asia and the Far East
ECE	Economic Commission for Europe
ECLA	Economic Commission for Latin America
EURATOM	European Atomic Energy Community
FAO	Food and Agriculture Organization of the United Nations
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
OAS	Organization of American States
P.C.I.J.	Permanent Court of International Justice
UNESCO	United Nations Educational, Scientific and Cultural Organization
WHO	World Health Organization

Introduction

1. At its 842nd plenary meeting, on 21 November 1959, the General Assembly adopted resolution 1401 (XIV), which reads as follows:

The General Assembly,

Considering that it is desirable to initiate preliminary studies on the legal problems relating to the utilization and use of international rivers with a view to determining whether the subject is appropriate for codification,

Requests the Secretary-General to prepare and circulate to Member States a report containing:

(*a*) Information provided by Member States regarding their laws and legislation in force in the matter and, when necessary, a summary of such information;

(*b*) A summary of existing bilateral and multilateral treaties;

(*c*) A summary of decisions of international tribunals, including arbitral awards;

(*d*) A survey of studies made or being made by non-governmental organizations concerned with international law.

2. The report envisaged in the operative part of this resolution has been prepared by the United Nations Secretariat.

3. The debates which took place in the Sixth Committee of the General Assembly prior to the adoption of the resolution[1] have been taken into account in the preparation of this report.

[1] *Official Records of the General Assembly, Fourteenth Session, Sixth Committee*, 606th to 614th meetings.

4. The documents reproduced in the report relate solely to the "legal problems" raised by the "utilization and use of international rivers". Documents concerning the technical aspects of such utilization and the legal problems involved in the delimitation of fluvial boundaries have been excluded.

5. Nor does the report deal with disputes or situations which have arisen between States regarding the utilization or use of international rivers,[2] except where they gave rise to the conclusion of treaties or international agreements or were the subject of international judicial decisions.

6. It also excludes all documentation relating to navigation.[3]

7. In carrying out its research the Secretariat has borne in mind that the studies were to be "preliminary studies... with a view to determining whether the subject is appropriate for codification".

8. The expression "utilization and use" as employed in the report should be understood as denoting every possible utilization or use of an international river, excluding navigation, but including fishing, the floating of timber, flood control and the prevention of water pollution.

9. The expression "international river" refers not only to international rivers properly so called but also to any watercourse (river, stream, spring, etc.) running through the territory or along the border of two or more States, as well as frontier waters and lakes.[4] Reference has been made in certain cases to waters governed by a *régime de voisinage* because of their proximity to a frontier and, also, to drainage or feed channels running through the territory of two States.

10. The report does not take into account rivers which run through the territories or along the border of two or more members of a federal-type State.[5]

11. It is divided into four parts, corresponding to the sub-paragraphs of the operative part of General Assembly resolution 1401 (XIV), quoted in paragraph 1 above.

12. *Part One* contains information provided by Member States regarding their laws and legislation in force in the matter, in response to the Secretary-General's request transmitted to them by circular notes dated 18 February and 2 November 1960.

13. *Part Two* is devoted to international treaties on the subject. It reproduces the relevant provisions of the international agreements, whatever their title (treaties, conventions, exchanges of notes, declarations, protocols, arrangements, etc.). It should be pointed out that, in the preparation of this part, the attempt has been made, as far as possible, to select from among the treaties on which information came to light all those which are in force or were in force at a particular time, entry into force being confirmed either by the final clauses of the treaties themselves or by editorial notes appearing in the collections from which the treaties were taken.[6] It will also be noted that there are a number of treaties which had recently been signed but had not yet entered into force at the time when the preparation of this report was completed. In view of their special interest, these treaties have been included with foot-notes indicating their status. With regard to the order in which the treaties are listed, there is first a chapter dealing with general conventions. The other treaties have been grouped in four chapters according to the continent concerned (Africa, America, Asia, Europe), a distinction being made in each chapter between multilateral treaties and bilateral treaties.

14. *Part Three* is devoted to international judicial decisions. It contains the relevant passages of such decisions, irrespective of their title (orders, judgements, awards, etc.) and of the name given to the international organ which delivered them (court, tribunal, commission, arbitrator, etc.). Decisions or parts of decisions whose purpose is simply to interpret a treaty have been omitted.

15. *Part Four* contains a general survey of studies made or being made by non-governmental organizations, national or international, concerned with international law. The names of the national non-governmental organizations mentioned were furnished by the Governments of Member States in response to the request made to them by the Secretary-General on 2 November 1960. At the end of this part, information is given on the studies completed or undertaken by the faculties of law and institutes named in the Governments' replies to the above-mentioned request from the Secretary-General.

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[2] Such as, for example, the disputes concerning the Rivers Jordan and Lauca.

For the complaint by Syria against Israel concerning work on the west bank of the River Jordan in the zone demilitarized under the General Armistice Agreement of 20 July 1949, see *Official Records of the Security Council, Eighth and Ninth Years*, 629th, 631st, 633rd, 636th, 639th, 645th, 646th and 648th–656th meetings, of 27 and 30 October, 10 and 18 November, 3, 11, 16, 17, 18, 21, 22 and 29 December 1953 and 21 and 22 January 1954 respectively, and *Official Records of the Security Council, Eighth Year, Resolutions and decisions, 1953* (S/INF/8/Rev.1), resolution 100 (1953), p. 3. Incidents involving the right to use the water of and the right to fish in Lake Hula and Lake Tiberias also gave rise to debates in the Security Council, under the heading of the Palestine question, in 1951, 1955 and 1962.

The dispute between Bolivia and Chile regarding the use of the water of the River Lauca was brought before the Council of OAS (see Notes from Bolivia to the President of the Council of OAS (OEA/Ser.G/V (C-d-976, 994, 1006 and Corr.1, 1016 and 1018) and G/VI (C/INF-47 and 47/Add.1)); Notes from Chile to the President of the Council of OAS (OEA/Ser.G/V (C-d-1000 and 1011) and G/VI (C/INF-20)); Resolution adopted by the Council of OAS on 24 May 1932 (OEA/Ser.G/V (C-d-992)); and Records of the Council of OAS (OEA/Ser.G/II (C-a-441, 442, 444 and 445) of 20 and 26 April and 3, 8 and 11 May 1962 respectively).

[3] See *Official Records of the General Assembly, Fourteenth Session, Sixth Committee*, 610th meeting, para. 13; 611th meeting, para. 11; and 614th meeting, para. 15. It is to be noted that, whereas the original draft resolutions (*ibid.*, Fourteenth Session, *Annexes*, agenda item 55, documents A/C.6/L.445 and Rev.1) speak of "navigation", that term does not appear in the revised drafts submitted later (*ibid.*, documents A/C.6/L.445/Rev.2 and 3).

[4] *Ibid., Sixth Committee*, 612th meeting, para. 41; 613th meeting, paras. 4 and 13; and 614th meeting, paras. 10 and 11.

[5] See, in this connexion, the discussion in the Sixth Committee (*ibid., Sixth Committee*, 607th meeting, para. 16, and 608th meeting, para. 12). It will be noted that the original draft resolution (*ibid., Annexes*, agenda item 55, document A/C.6/L.445) refers to "international or inter-State waterways" (*"eaux internationales ou interétatiques"*), (*"aguas internacionales o interestatales"*), whereas the revised drafts submitted subsequently (*ibid.*, documents A/C.6/L.445/Rev.1, 2 and 3) refer simply to "international rivers".

[6] However, the inclusion of these treaties in the present report does not imply any judgement as to their status on the part of the United Nations Secretariat.

16. The report has two annexes containing texts which bear on the codification of international law relating to the utilization and use of international rivers. *Annex I* reproduces some resolutions and declarations adopted by intergovernmental organizations. *Annex II* concerns some reports or extracts from reports prepared by intergovernmental organizations or by conferences of government experts.

17. In addition, a *bibliography (annex III)* has been added, containing a list of treaties, digests, manuals, monographs and articles from periodicals, together with a selection of United Nations documents on the subject.

18. For the purpose of easy reference, the report contains a *subject index (annex IV)* and an *index of the names of the international rivers mentioned in the text (annex V)*.

19. Finally, it should be noted that when alphabetical order is used, it is the French alphabetical order (except in annexes IV and V).

Part One

Information provided by Member States regarding their legislation

Chapter I

UNITED STATES OF AMERICA[7]

A. GENERAL PROVISIONS

1. United States Code, Title 16, Sections 791a–825r (1958 edition): Federal Power Act

20. A Federal Power Commission is established (section 792). This Commission is empowered to issue licences for the purpose of constructing, operating and maintaining dams, water conduits, reservoirs, power houses and transmission lines for the development, transmission and utilization of power (section 797*e*). No person shall transmit any electric energy from the United States to a foreign country without having secured an order of the Commission authorizing it to do so (section 824 *a*).

2. Executive Order 10485, providing for the performance of certain functions heretofore performed by the President with respect to electric power and natural gas facilities located on the borders of the United States, dated 3 September 1953 (Code of Federal Regulations, title 3, p. 970)

21. The Executive Order lays down rules and procedures for the performance by the Federal Power Commission of its functions relating to the receipt of applications and the issue of licences for the transmission of electric energy between the United States and a foreign country.

B. INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

United States Code, Title 22, Section 267 b (1958 edition)

22. The President of the United States is requested to invite the Government of Great Britain to join in the formation of an international commission whose duty it shall be to investigate and report upon the conditions, uses, regulation and diversion of the waters adjacent to the boundary lines between the United States and Canada, including all of the waters of the lakes and rivers whose natural outlet is by the River Saint Lawrence to the Atlantic Ocean (section 267 *b*).

23. The salaries of the members on the part of the United States, of the International Joint Commission, etablished under the treaty between Canada and the United States of 11 January 1909[8] shall be fixed by the President of the United States. The Commission or any member thereof shall have power to administer oaths and to take evidence on oath and to compel the attendance of witnesses or the production of books and papers (section 268).

C. INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

1. United States Code, Title 22, Section 277 (1958 edition)

24. This legislation authorizes a study of boundary waters of the lower Rio Grande and the lower Colorado and Tijuana Rivers (Section 277); investigations of the International Boundary and Water Commission relating to flood control, water resources, utilization of water and prevention of pollution; construction of works and projects; agreements with political sub-divisions (acquisition of lands); and expenditure of the funds received from Mexico for the purpose of co-operating in carrying out investigations, works and projects (277 *a* to 277 *d*).

25. It also provides for authorizations to give effect to the provisions of the Treaty of 3 February 1944[9] between the United States and Mexico; acquisition of lands for relocation purposes; contracts construction; appropriations; acquisition of properties; availability of prior appropriations for projects agreed to under the treaty; use of moneys received; disposal of lands; issuance of licences for use of lands; compensation for injured property; division of costs; and contribution to projects (277 *d*-1 to 277 *d*-9, 277 *e* and 277 *f*).

[7] The texts of laws and regulations reproduced under the heading "United States of America" have been forwarded or indicated by the Permanent Representative of the United States to the United Nations. See *Legislative Texts and Treaty Provisions concerning the Utilization of International Rivers for other Purposes than Navigation* (United Nations publication, Sales No. 63.V.4), first part.

[8] See paras. 154–167 below.

[9] See paras. 211–216 below.

2. An Act to authorize an agreement between the United States and Mexico for the joint operation and maintenance by the International Boundary and Water Commission, United States and Mexico, of the Nogales Sanitation project, and for other purposes approved 27 July 1953 (67 Stat. 195)

26. The Act authorizes entry into an agreement with Mexico for the operation and maintenance by the International Boundary and Water Commission of the Nogales Sanitation project (Arizona–Sonora) constructed by the said Commission, providing certain assurances relating to the costs of such operation and maintenance.

3. Department of State Appropriation Act, 1954 (67 Stat. 367)

27. This Act provides for appropriations for detailed plan preparation and construction of projects authorized by the Conventions concluded between the United States and Mexico of 1 February 1933[10] and of 3 February 1944,[11] and by some United States Acts.

D. COLORADO RIVER

1. An Act to authorize the Secretary of the Navy to enlarge existing water-supply facilities for the San Diego, California, area, in order to ensure the existence of an adequate water supply for naval installations and defence production plants in such area, approved 11 October 1951 (65 Stat. 404)

28. The Act authorizes the enlargement of the existing aqueduct extending the San Jacinto tunnel of the Metropolitan Water District of Southern California to the San Vicente Reservoir in San Diego County, California, and the construction of a new aqueduct paralleling the existing aqueduct. The use of all water diverted through the said works from the Colorado River shall be subject to and controlled by the Colorado River Compact of 24 November 1922, the Boulder Canyon Project Act of 2 December 1928, the California Self-limitation Statute and the Mexican Water Treaty of 3 February 1944,[12] and shall not increase the total quantity of water to the use of which the State of California is entitled and limited by the said compact, statutes and treaty.

2. An Act to authorize the Secretary of the Interior to construct, operate and maintain the Collbran reclamation project, Colorado, approved 3 July 1952 (66 Stat. 325)

29. The Act authorizes execution of the Collbran reclamation project (Colorado) for the purpose of supplying water for irrigation, domestic, industrial, and stockwater uses and of producing and disposing of hydro-electric power, as well as for the preservation and propagation of fish and wildlife. All works constructed shall be subject to and controlled by the Colorado River Compact of 24 November 1922, the Boulder Canyon Project Act of 2 December 1928, the Upper Colorado River Basin Compact of 11 October 1948, and the Mexican Water Treaty of 3 February 1944.[13]

3. An Act to consolidate the Parker Dam power project and the Davis Dam project, approved 28 May 1954 (68 Stat. 143)

30. For the purpose of effecting economies and increasing efficiency in construction, operation and maintenance, the Act authorizes the consolidation and administration as a single project to be known as the Parker–Davis project (Arizona–California–Nevada), of the projects known as the Parker Dam power project (Arizona–California) and the Davis Dam project (Arizona–Nevada). Nothing shall be constructed to alter or affect the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act or the Treaty between the United States and Mexico of 3 February 1944.[14]

4. An Act authorizing the construction of works to re-establish for the Palo Verde irrigation district (California) a means of diversion of its irrigation water supply from the Colorado River, and for other purposes, approved 31 August 1954 (68 Stat. 1045)

31. The Act authorizes the construction of a dam across the Colorado River for the purpose of re-establishing for the Palo Verde Irrigation District, a public agency of the State of California, a means of diverting its irrigation water supply from the Colorado River. The use of all water diverted shall be subject to and controlled by the Colorado River Compact, the Boulder Canyon Project Act, the California Limitation Act, the contract between the United States and Palo Verde Irrigation District and the Treaty concluded between the United States and Mexico of 3 February 1944.[15]

5. An Act to authorize the Secretary of the Interior to construct, operate and maintain the Colorado River storage project and participating projects, and for other purposes, approved 11 April 1956 (70 Stat. 105)

32. In the operation and maintenance of all facilities in the basin of the Colorado River, the Secretary of the Interior is directed to comply with the applicable provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act and the Treaty between the United States and Mexico of 3 February 1944.[16] Any State of the Colorado River Basin may maintain an action in the Supreme Court of the United States to enforce those provisions.

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[10] See paras. 206–210 below.

[11] See paras. 211–216 below.

[12] *Ibid.*

[13] *Ibid.*

[14] *Ibid.*

[15] *Ibid.*

[16] *Ibid.*

E. NIAGARA RIVER

An Act to authorize the construction of certain works of improvement in the Niagara River for power, and for other purposes, approved 21 August 1957 (71 Stat. 401)

33. The Federal Power Commission is authorized and directed to issue a licence to the Power Authority of the State of New York for the construction and operation of a power project with capacity to utilize all of the United States share of the water of the Niagara River permitted to be used by international agreement.[17]

F. RIO GRANDE

1. An Act authorizing the construction, operation and maintenance of the Rio Grande canalization project and authorizing appropriation for that purpose, approved 28 August 1935 (49 Stat. 961)

34. The Act authorizes the construction, operation and maintenance of a diversion dam in the Rio Grande wholly in the United States, in order to regulate and control the water supply for use in the United States and Mexico as provided by the Convention concluded between the two countries concerning the equitable division of the waters of the Rio Grande of 21 May 1906.[18]

2. An Act authorizing the construction, operation and maintenance of the Rio Grande canalization project and authorizing appropriation for that purpose, approved 4 June 1936 (49 Stat. 1463)

35. The Act authorizes the construction, operation and maintenance of works for the canalization of the Rio Grande from the Caballo Reservoir site in New Mexico to the international dam near El Paso (Texas), in order to facilitate compliance with the Convention concluded between the United States and Mexico of 21 May 1906.[19]

3. An Act authorizing the reconstruction or replacement of certain bridges necessitated by the Rio Grande canalization project and authorizing appropriation for that purpose, approved 22 April 1940 (54 Stat. 151)

36. The Act authorizes the reconstruction or replacement of certain bridges over the Rio Grande within the Rio Grande canalization project in El Paso County (Texas) and in Dona Ana County (New Mexico).

4. First deficiency appropriation Act, 1945 (59 Stat. 77)

37. The Act provides the basis for expending the approved appropriations for the Rio Grande bank protection project in Cameron and Hidalgo Counties (Texas). The project shall be performed in conformity with the provisions of existing treaties with Mexico and in general accordance with the engineering plan contained in a Report of the International Boundary and Water Commission.

5. An Act to authorize the carrying out of the provisions of article 7 of the Treaty of 3 February 1944,[20] between the United States and Mexico, regarding the joint development of hydro-electric power at Falcon Dam, on the Rio Grande, and for other purposes, approved 5 October 1949 (63 Stat. 701)

38. This Act embodies the approval by Congress of the negotiation of an agreement, in accordance with the provisions of article 7 of the Treaty between the United States and Mexico of 3 February 1944,[21] for the joint construction, operation and maintenance of facilities for generating hydro-electric energy at the Falcon Dam on the Rio Grande, constructed by the two sections of the International Boundary and Water Commission under the provisions of article 5 of the said treaty.

6. An Act to facilitate compliance with the Treaty between the United States of America and the United Mexican States signed 3 February 1944,[22] approved 13 September 1950 (64 Stat. 846)

39. This Act provides for authorizations for carrying out projects in accordance with the Treaty between the United States and Mexico of 3 February 1944;[22] the purchasing of lands or interests in land; the relocation of properties; contracts; exchanges of properties; construction of works; appropriations; and the purchasing of properties owned by the Imperial Irrigation District of California. In addition, it authorizes entry into an agreement with Mexico for the operation and maintenance by the International Boundary and Water Commission of the Douglas–Agua Prieta and Calexico-Mexicali Sanitation projects.

7. An Act to authorize the transmission and disposition by the Secretary of the Interior of electric energy generated at Falcon Dam on the Rio Grande, approved 18 June 1954 (68 Stat. 255)

40. Under this Act, the electric power and energy generated at Falcon Dam, an international storage reservoir project constructed on the Rio Grande pursuant to the Treaty between the United States and Mexico of 3 February 1944,[23] shall be delivered to the Secretary of the Interior, who shall transmit and dispose of such power and energy in such a manner as to encourage the most widespread use thereof at the lowest possible rates to consumers, the rate schedules to become effective upon approval by the Federal Power Commission.

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[17] See paras. 166 and 227–233 below.

[18] See paras. 201–205 below.

[19] *Ibid.*

[20] See paras. 211–216 below.

[21] *Ibid.*

[22] *Ibid.*

[23] *Ibid.*

8. An Act to authorize the conclusion of an Agreement for the joint construction by the United States and Mexico of a major international storage dam on the Rio Grande in accordance with the provisions of the Treaty of 3 February 1944,[24] with Mexico, and for other purposes, approved 7 July 1960 (74 Stat. 360)

41. The Act authorizes the conclusion with Mexico, through the United States Commissioner to the International Boundary and Water Commission, of an agreement for the joint construction, operation and maintenance of a major international storage dam on the Rio Grande, in accordance with the provisions of the Treaty of 3 February 1944,[24] and of an agreement consistent with article 7 of the said Treaty for the construction, operation and maintenance of facilities for generating hydro-electric energy at the said dam.

G. SAINT LAWRENCE RIVER

1. United States Code, Title 33, Sections 981 and 983 (1958 edition): Saint Lawrence Seaway

42. The Saint Lawrence Seaway Development Corporation is established (section 981). The Corporation is authorized and directed to construct, in United States territory, deep-water navigation works in the Saint Lawrence River (section 983 *a*). It shall make necessary arrangements to assure the co-ordination of its activities with those regarding authorized power projects (section 983 *b*).

[24] *Ibid.*

2. Order of Approval (I.J.C. Docket No. 68) issued on 29 October 1952 by the International Joint Commission to the Governments of the United States and Canada, as amended by Order of 2 July 1956 (United States, Department of State, Bulletin (Washington, D.C.), vol. XXVII, July 7–December 29, 1952, p. 1019)

43. Canada and the United States had submitted applications to the International Joint Commission for its approval of the construction, jointly, of certain works for the development of power in the international rapids section of the St. Lawrence River, these being boundary waters within the meaning of the Preliminary Article of the Boundary Waters Treaty of 11 January 1909.[25] The Commission approves the construction, maintenance and operation of works, subject to some conditions in order to protect all interests on either side of the international boundary which may be injured by reason of those works.

3. Supplementary Order of 2 July 1956 to Order of Approval dated 29 October 1952 (*ibid.*, vol. XXXV, July–December, 1956, p. 227)

44. In its Order of Approval of 2 July 1956, the Commission anticipated the need to develop the method of regulation of the flow of the St. Lawrence River in the light of further information. The Supplementary Order provides that the levels of Lake Ontario will be regulated to protect interests of navigation and property both upstream and downstream, and within these limits to give substantial benefits for power production.

[25] See paras. 154–167 below.

Chapter II

MEXICO[26]

GENERAL CONSTITUTIONAL PROVISION

Political Constitution of the United States of Mexico, signed at Queretaro on 31 January 1917

45. Ownership of the waters of rivers, streams and interior lakes belongs to the nation. The ownership of the nation is inalienable and imprescriptible and concessions regarding the utilization of national waters may be granted only by the Federal Government (art. 27).

[26] The text of the Constitution reproduced under the heading "Mexico" has been provided by the Permanent Representative of Mexico to the United Nations. See *Legislative Texts . . . (op. cit.)*, first part.

Chapter III

NORWAY[27]

A. GENERAL PROVISIONS

1. Watercourses Act of 15 March 1940 (No. 3)

46. Control over watercourses which form the frontier or which flow into or from a neighbouring country shall be subject to the restrictions imposed by the rules of international law or by agreements with the neighbouring country (art. 157).

[27] The texts of laws and regulations reproduced under the heading "Norway" have been provided by the Permanent Representative of Norway to the United Nations. See *Legislative Texts . . . (op. cit.)*, first part.

2. Act concerning various measures for the marking and supervision of the frontier, of 14 July 1950 (No. 2)

47. Public authorities may take action to prevent pollution of frontier waters or damage to the territory of a neighbouring country and to prohibit specified types of actions or activities. Any person who suffers loss or damage

because of any of those actions or prohibitions of public authorities may claim compensation (art. 1).

B. REGULATIONS GOVERNING WATERCOURSES BETWEEN NORWAY AND SWEDEN

Act of 12 June 1931 relating to the Convention of 11 May 1929[28] between Norway and Sweden on certain questions relating to the law on watercourses

48. The Act relates to installations or works or other operations on watercourses in Norway or Sweden which may cause an appreciable change in watercourses in the other country in respect of their depth, position, direction, level or volume of water, or hinder the movement of fish to the detriment of fishing in the latter country. It also refers to floating operations on watercourses which form the frontier between the two countries or otherwise lie within the territory of both countries, or watercourses which flow into such a watercourse.

[28] See paras. 544–547 below.

C. REGULATIONS GOVERNING WATERCOURSES BETWEEN NORWAY AND THE USSR

Royal Decree of 7 November 1950 concerning the use of rivers on the frontier with the Soviet Union

49. All timber which is floated in the Pasvik river and the lakes formed by it shall be marked and may only be floated at such times as are fixed annually by the Frontier Commissioner. Timber-floating in the Grense–Jakobselv river shall be prohibited (art. 7). In the frontier rivers and lakes, Norwegian nationals may fish up to the frontier line. It shall be unlawful to use explosive or narcotic substances capable of killing or injuring fish (art. 8).

Chapter IV

NETHERLANDS[29]

A. RHINE, MEUSE, EMS (NETHERLANDS PORTION) AND INTERJACENT WATERCOURSES

1. Act containing regulations concerning draining and embankment operations (14 July 1904) (Nederlandse Staatscourant (Official Gazette), No. 147)

50. Embankment operations may be undertaken only when a concession has been granted.

2. Act containing regulations concerning irrigation (30 December 1904) (*ibid.*, No. 282), as amended by the Act of 22 May 1958 (*ibid.*, No. 296)

51. This Act relates to the diversion and use of water for irrigation purposes. More specific provisions in this respect are contained in provincial regulations. In order to undertake irrigation works, a permit issued by the Executive Committee of the Provincial States is required. This Act does not apply to the Ems.

3. Rivers Act (9 November 1908) (*ibid.*, No. 339) as amended by the Acts of 29 June 1925 and 19 July 1930 (*ibid.*, No. 304)

52. This Act concerns the maintenance in proper condition of the principal rivers of the Kingdom. In various cases, an authorization from the Ministry of Transport and of the *Waterstaat*, which is granted to the extent that the public interest as it relates to rivers and their courses is not affected, is required in order to use the rivers. At the present time, this legislation is not in force with respect to the Netherlands portion of the Ems, but it will become so as soon as the draft amendment to the Rivers Act has been enacted.

4. Regulations concerning dredging (Royal Decree of 3 November 1934 (*ibid.*, No. 562); amended by the Royal Decrees of 23 December 1937 (*ibid.*, No. 579) and 17 January 1951 (*ibid.*, No. 18))

53. These relate to the rational use of the watercourses to which the regulations apply. Dredging, the removal of stones, shells, shellfish and mussels, and the construction of works are subject to previous authorization by the Ministry of Transport and of the *Waterstaat*.

5. Regulations concerning dikes (Royal Decree of 28 July 1937 (*ibid.*, No. 576); amended by the Royal Decree of 16 January 1951 (*ibid.*, No. 13))

54. These regulations prohibit dredging, excavation and mud removal along dikes without previous authorization by the Ministry of Transport and of the *Waterstaat*, Although the purpose of these measures is to protect the dikes, they also restrict the use to which the watercourses may be put. These regulations do not apply to the dikes along the Ems. Moreover, they only apply to State dikes; other dikes are in most cases covered by similar provisions in the provincial regulations and in those of the waterways and forestry services.

6. Draft legislation in an advanced stage of readiness

(*a*) CLEARING OF WATERCOURSES ACT

55. Previous permission is required in order to carry out clearing work in the main bed. For the purpose of safe-

[29] Note concerning the laws and regulations in force in the Netherlands regarding the utilization and use of international rivers, annexed to the *note verbale* of 1 June 1961 from the Permanent Representative of the Netherlands to the United Nations. For the text of these laws and regulations, see *Legislative Texts . . . (op. cit.)*, first part.

guarding all the interests concerned, such permission may be withheld or subjected to certain conditions.

(*b*) POLLUTION OF WATERCOURSES ACT

56. The evacuation of waste matter is made subject to prior authorization.

7. General police regulations for State rivers and canals (Royal Decree of 24 November 1919 (*ibid.*, No. 765); amended most recently by Royal Decree of 10 November 1958 (*ibid.*, No. 540))

57. These regulations apply *inter alia* to the Meuse and to the main waterways between the Rhine proper and the sea. They prohibit the diversion of water from the State canals (rivers, therefore, are not affected, but the provision is an important one in view of the possible existence of international commitments regarding certain canals) or from appurtenant water-conduits, to which these regulations apply, without previous authorization from the Ministry of Transport and of the *Waterstaat*, as well as the construction of any work in, on or over a canal (art. 87).

58. They prohibit the dropping of solid materials into a State canal without previous authorization (art. 88).

8. Police regulations for the Merwede and Noord rivers (Royal Decree of 4 October 1913; amended most recently by Royal Decree of 11 February 1955 (*ibid.*, No. 74))

59. The discharging or spilling into these watercourses of inflammable liquids, or of water containing or polluted by such liquids is prohibited (para. 31 *a*).

B. SCHELDT (WESTERN SCHELDT)

60. 1 to 6 (inclusive). No police regulations.

C. OTHER RIVERS

61. Rivers which flow across the frontiers or which constitute the frontier along all or part of their length are subject to the provisions of regulations issued by the local authorities (of the province, Drainage Board *(wateringue)* or commune). In most cases these regulations prohibit the discharging of waste matter without prior authorization from the responsible authority, as well as the construction of works without a permit. This implies the supervision of all possible uses of water.

Chapter V

SWEDEN[30]

A. REGULATIONS GOVERNING WATERCOURSES BETWEEN SWEDEN AND NORWAY

Act No. 405 of 20 December 1929 containing regulations relating to the application in Sweden of the Swedish–Norwegian Convention of 11 May 1929[31] relating to the law on watercourses

62. According to the Swedish–Norwegian Convention of 11 May 1929, one country may not authorize an undertaking unless the other country has given its approval, if the undertaking is likely to involve any considerable inconvenience in the latter country in the use of a watercourse. This Swedish Act relates to authorizations for undertakings in respect of which an application is made in Sweden or Norway.

B. MUONIO AND TORNE RIVERS

Act No. 183 of 28 April 1949, concerning timber-floating in the Torne and Muonio frontier rivers

63. The Act points out that the articles and regulations annexed to the Agreement of 17 February 1949[32] between Sweden and Finland concerning timber-floating in the Torne and Muonio frontier rivers shall come into force in Sweden as from the date determined by the King and shall remain in force for the duration of the Agreement. The Act of 10 June 1912 concerning the floating of forest products in the Torne and Muonio frontier rivers, and the Notice of 23 November 1917 concerning its application, are repealed.

[30] The texts of the Acts reproduced under the heading "Sweden" have been provided by the Ministry of Foreign Affairs of Sweden. See *Legislative Texts . . . (op. cit.)*, first part.

[31] See paras. 544–547 below and para. 48 above.

[32] See paras. 760–763 below.

Part Two

Summary of existing bilateral and multilateral treaties

Chapter I

GENERAL CONVENTIONS

INTRODUCTION

64. The only existing general conventions concerning the utilization and use of international rivers were concluded at the First (1921) and the Second (1923) General Conferences on Freedom of Communications and Transit convened by the League of Nations.

65. The Council of the League of Nations adopted at Rome on 19 May 1920 a resolution inviting the Members of the League of Nations to send representatives to a conference on freedom of communication and transit to elaborate general conventions and to organize a consultative and technical permanent communication committee.[33] This Council resolution was later confirmed by a resolution of the Assembly of the League of Nations adopted on 9 December 1920 at its first session.[34]

66. The First General Conference on Freedom of Communications and Transit met at Barcelona from 10 March to 20 April 1921.[35] The Conference adopted the rules for the organization of general conferences on communications and transit, and of the advisory and technical committee, and the Convention and Statute on the régime of navigable waterways of international concern of 20 April 1921.[36] The Advisory and Technical Committee for Communications and Transit accomplished important work from 1921 to 1939. Shortly after it had been established, the Committee set up a Sub-Committee for Hydro-Electric Questions, which prepared a draft convention relating to the development of hydraulic power on watercourses forming part of a basin situated in the territory of several States. This draft was later submitted by the Advisory and Technical Committee to the Second General Conference on Communications and Transit, which was held at Geneva from 15 November to 9 December 1923.[37] After the Committee on Electric Questions of the Conference had discussed the draft, the Conference approved the Convention relating to the development of hydraulic power affecting more than one State and the Protocol of Signature of 9 December 1923.[38]

67. This Convention is a general convention devoted exclusively to the utilization and use of international rivers for the generation of hydro-electric power, whereas the 1921 Convention and Statute on the régime of navigable waterways of international concern is concerned with navigation. Nevertheless, the 1921 Convention also includes some provisions which relate or may relate to the utilization and use of international rivers for purposes other than navigation.

GENERAL CONVENTIONS CONCERNED EXCLUSIVELY WITH THE UTILIZATION AND USE OF INTERNATIONAL RIVERS

Convention[39] relating to the development of hydraulic power affecting more than one State and Protocol of Signature, signed at Geneva, 9 December 1923[40]

68. The Committee on Electric Questions of the Second General Conference on Communications and Transit, in

[33] See League of Nations Council, *Procés-verbal of the fifth session of the Council*, held at Rome from 14 to 19 May 1920 (27/4469/2764020/29/11), annex 45a, pp. 164 and 165.

[34] See League of Nations, *Official Journal, Special Supplement, January 1921*, resolutions adopted by the Assembly during its first session (November 15th to December 18th, 1920), pp. 14 and 15.

[35] For the history and procedure of the preparatory work, see League of Nations, *First General Conference on Freedom of Communications and Transit—Preparatory Documents* (20/31/58).

[36] The Conference also approved the Rules of procedure for general conferences on communications and transit, the Convention and Statute on Freedom of Transit, the Additional Protocol to the Convention on the régime of navigable waterways of international concern, the Declaration recognizing the right to a flag of States having no sea-coast, the Recommendations relative to the international régime of railways, and the Recommendations relative to ports subject to an international régime (see League of Nations, *General Conference on Freedom of Communications and Transit, Official instruments approved by the Conference* (C.15.M.10.1021.VIII)).

[37] See United Nations, ECE, Committee on Electric Power, "Legal aspects of the hydro-electric development of rivers and lakes of common interest" (E/ECE/136; E/ECE/EP/98/Rev.1), January 1952, para. 143. For the text of the draft submitted by the Advisory and Technical Committee to the Conference, see League of Nations, *Second General Conference on Communications and Transit, Records and Texts*, 1924 (C.30.M.16.1924.VIII), annex 1, p. 80.

[38] The Conference also adopted the Convention and Statute on the international régime of railways, the Convention and Statute on the international régime of maritime ports and the Protocol of Signature, and the Convention relating to the transmission in transit of electric power (*ibid.* (C.27.M.13.1924.VIII) (C.28.M.14.1924.VIII) (C.29.M.15.1924.VIII) and (C.30.M.16.1924.VIII)).

[39] The Convention was adopted by the Second Conference on Communications and Transit by 24 votes to 3, with 6 abstentions (*ibid.* (C.30.M.16.1924.VIII), annex I, p. 76).

The Convention came into force on 30 June 1925, the ninetieth day after the receipt by the Secretary-General of the League of Nations of the third ratification, in conformity with article 18.

Thirty-nine States were represented at the Conference: Albania, Austria, Belgium, Brazil, British Empire, Bulgaria, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Free City of Danzig, Denmark, El Salvador, Esthonia, Finland, France, Germany, Greece, Hungary, Irish Free State, Italy, Japan, Latvia, Lithuania, Netherlands, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Thailand, Turkey, Uruguay, Venezuela and Yugoslavia.

One State was represented by an observer: United States of America.

Seventeen States signed the Convention: Austria, Belgium, British Empire, New Zealand, Bulgaria, Chile, Denmark, Free City of Danzig, France, Greece, Hungary, Italy, Lithuania, Poland, Thailand, Uruguay and Yugoslavia.

(Continued on next page.)

discussing the draft convention relating to the development of hydraulic power on watercourses forming part of a basin situated in the territory of several States submitted by the Advisory and Technical Committee for Communications and Transit of the League of Nations,[41] felt obliged in some instances to restrict its scope or further to define its meaning. At times the Committee on Electric Questions introduced new ideas.[42] In fact, few of the articles in the initial draft were retained by the Conference in their original form in the final text of the Convention.

69. The guiding principle of the Convention is that of "facilitating the exploitation and increasing the yield of hydraulic power". To this end, it lays down principles by means of which the interested States may negotiate and come to an agreement with a view to developing international rivers for the generation of hydro-electric power.

70. The initial draft was based on the idea of compulsory agreements among the States concerned to facilitate the exploitation and increase the yield of hydraulic power. The draft called for obligatory agreement within a single drainage area by all riparian States of a river the conditions of which were liable to be modified by developments and all States possessing any right or interest whatever over these parts of the river. This development was to be carried out exclusively on the basis of technical considerations, "no regard being had to political frontiers". This idea of compulsory agreement aroused much opposition and was rejected because it was considered that it might be incompatible with State sovereignty. It seemed dangerous also to make this provision applicable to all States possessing any right or interest whatever over the international river concerned. Lastly, it seemed in practice difficult to require a State to reach agreement with other States to ensure the hydro-electric development of an international river, since their interests might be very different.[43]

71. The final text of the Convention, comprising twenty-two articles[44] and a supplementary protocol, sought to give effect to the idea of collaboration among States, based on the requirements of international solidarity. However, although the Convention has been ratified by some African, American, Asian and European States, there are scarcely two of them which may be called riparian States,[45] so that the Convention has not been given practical application.[46] Nevertheless, the Convention did have some effect on the drafting of the Declaration of Montevideo of 1933[47] and has occasionally affected treaty law since then.

72. *The principle that a State may freely dispose of its territory and its hydraulic resources.* The Convention in no way affects the right belonging to each State to carry out on its own territory any operations for the development of hydraulic power which it may consider desirable (article 1). However, once the principle of sovereignty or territorial competence has been stated, the Convention introduces limitations and is concerned with facilitating the conclusion of agreements which will permit the exploitation of hydraulic power, while giving consideration to the interests of other States.

73. *Limitations on the principle of free disposition:*

(a) *Exercise within the limits of international law.* The first limitation is found in the specific words of article 1, which provides that the activity of States undertaking the development of hydraulic power may be exercised only "within the limits of international law".

(b) *Joint investigation of hydraulic developments.* Should reasonable development of hydraulic power involve international investigation, the contracting States concerned shall agree to such an investigation, which shall be carried out conjointly at the request of any one of them, with a view to arriving at the solution most favourable to their

(Footnote 39 continued)

Eleven States ratified the Convention or finally acceded thereto: Thailand on 9 January 1925; New Zealand (including the Mandated Territory of Western Samoa) on 1 April 1925; British Empire on 1 April 1925 (for Southern Rhodesia and Newfoundland on 28 April 1925; for the following Colonies, Protectorates and Mandated Territories: British Guiana, British Honduras, Brunei, Federated Malay States, Gambia, Gold Coast, Hong Kong, Kenya, Unfederated Malay States, Nigeria, Northern Rhodesia, Nyasaland, Palestine, Sierra Leone, Straits Settlements and Tanganyika Territory on 22 September 1925; and for Uganda Protectorate on 12 January 1927); Denmark on 27 April 1926; Austria on 20 January 1927; Greece on 14 March 1929; Hungary on 20 March 1933; Free City of Danzig on 17 May 1934; Panama on 7 July 1934; Iraq on 28th January 1936; Egypt on 29 January 1940 (see League of Nations, *Treaty Series*, vols. XXXVI, p. 77; XLV, p. 170; L, p. 167; LXXXIII, p. 395; CXXXIV, p. 405; CXLVIII, p. 322, CLII, p. 295; CLXIV, p. 367; and CC, p. 501).

[40] See League of Nations, *Treaty Series*, vol. XXXVI, p. 77. See also *Legislative Texts . . . (op. cit.)*, second part, treaty No. 2.

[41] See para. 66 above.

[42] See the report by the Committee on Electric Questions on the Convention relating to the developing of hydraulic power affecting more than one State, submitted by Mr. Génissieu (France) (League of Nations, *Second General Conference on Communications and Transit, Records and Texts*, 1924 (C.30.M.16.1924.VIII), annex 7, pp. 90–93).

[43] "There seems to us, however, to be less ground for this objection than for the two preceding ones, for often these interests will be complementary. When a riparian State possesses a well-developed industry but little hydro-electric potential, while the other is in the opposite situation, it would seem that the enlightened interest of both States should lead them to combine their resources like the blind man and the cripple in the fable, and that in the absence of voluntary agreement the first State should be able to compel the second to join in its projects. Nevertheless, the topographic, hydrographic, economic and even the political circumstances may differ too widely from case to case for it to be possible to impose the obligation to conclude agreements on States without reservation." (See G. Sauser-Hall, "*L'utilisation industrielle des fleuves internationaux*", in *Recueil des cours de l'Academie de droit international de la Haye, 1953-II* (Leyden, Sijthoff, 1955), vol. 83, p. 534).

[44] Articles 9 to 22 comprise final clauses.

[45] The only exceptions are Austria and Hungary.

[46] "It may be regarded, however, as an expression of the general ideas which are now current and which States should consider in the international regulation of the industrial use of water. In view of its rather abstract and general character, for its provisions do not aim at solving the practical difficulties which have arisen between particular States, it is a theoretical statement based on certain principles of the Institute of International Law, which attempted to perfect them by introducing into the regulations of the Resolution of Madrid of 1911 (see below, para. 1070) a positive element intended to make them more flexible and to eliminate the right of veto of each riparian State. As we have seen, it was not entirely successful. This failure was severely critized by several authors, one of whom, Smith [H. A. Smith, *The Economic Uses of International Rivers* (London, P. S. King, 1931)] felt that the drafting of the Geneva Convention of 1923 was 'unfortunate'. The general principle 'by which States should co-operate is well stated, but it is at once annulled by the terms giving each State the right to oppose its veto to any development plan for reasons of vital interest of which the State itself seems to be the sole judge. That is to say, the Convention fails us at the very point where we most need an authoritative guide'." (see G. Sauser-Hall, *op. cit.*, pp. 536 and 537).

[47] See below, *annex I*, No. 1, for the text of the Declaration. Mr. Isidore Ruiz Moreno, the Argentine representative, had submitted a draft convention adapting the Geneva Convention to the Americas.

interests as a whole, and to drawing up, if possible, a scheme of development, with due regard for any works already existing, under construction, or projected. Any contracting State desirous of modifying a programme of development so drawn up shall, if necessary, apply for a fresh investigation. No State, however, shall be obliged to carry out a programme of development unless it has formally accepted the obligation to do so (art. 2). Article 2 recommends the joint study and comparison of the various projects, with a view to obtaining the maximum yield and at the same time automatically facilitating through this investigation the negotiations essential for effective application of the scheme.

(a) *The obligation to enter into preliminary negotiations.* If a State desires to carry out operations for the development of hydraulic power, partly on its own territory and partly on the territory of another contracting State or involving alterations on the territory of another contracting state (art. 3) or exposing another contracting State to serious prejudice (art. 4), the States concerned shall enter into negotiations with a view to the conclusion of agreements which will allow such operations to be executed. These articles proclaim the obligation to negotiate. There is no longer any obligation, as in the initial draft, to conclude an agreement, but such negotiations must obviously be conducted with the intention of reaching a conclusion, that is to say, in good faith. Moreover, at the time of signature of the Convention, a Protocol was added which specified that the provisions of the Convention did not in any way modify the responsibility or obligations imposed on States, as regards injury done by the construction of works for development of hydraulic power, by the rules of international law.[48]

74. *Provisions to establish the best possible development of rivers*

(a) *Selection of technical methods without reference to political considerations.* The technical methods adopted in the agreements shall, within the limits of the national legislation of the various countries, be based exclusively upon considerations which might legitimately be taken into account in analogous cases of development of hydraulic power affecting only one State, without reference to any political frontier (art. 5). Technical selection, such as selection of the site for works or installations, is thus to be made as if there were no frontiers, only the physical factors which will ensure the maximum yield being taken into account. Article 5 demonstrates a desire to free the industrial development of rivers from any supervision of a political character.[49]

(b) *Construction and operation of works in conformity with the laws applicable in the territory where they are situated.* The establishment and operation of works for the exploitation of hydraulic power shall be subject, in the territory of each State, to the laws and regulations applicable to the establishment and operation of similar works in that State (art. 7). The technical selection made by the technicians should be subject to the decisions of the national authorities as regards proposed constructions in their respective territories.[50]

(c) *Points to be provided for in the agreements contemplated by the Convention.* The agreements may provide, among other things, for: (*a*) General conditions for the establishment, upkeep and operation of the works; (*b*) Equitable contributions by the States concerned towards the expenses, risks, damage and charges of every kind incurred as a result of the construction and operation of the works, as well as for meeting the cost of upkeep; (*c*) The settlement of questions of financial co-operation; (*d*) The methods for exercising technical control and securing public safety; (*e*) The protection of sites; (*f*) The regulation of the flow of water; (*g*) The protection of the interests of third parties; (*h*) The method of settling disputes regarding the interpretation or application of the agreements (art. 6). This list is not exhaustive.

75. *Order of priority of the various uses of river waters. Preference accorded to navigation.* So far as navigable waterways, which under the terms of the general Convention on the régime of navigable waterways of international concern, signed at Barcelona on 20 April 1921,[51] are contemplated as subject to the provisions of that Convention are concerned, all rights and obligations which may be derived from agreements concluded in conformity with the Geneva Convention of 9 December 1923 shall be construed subject to all rights and obligations resulting from the general Convention and the special instruments which have been or may be concluded, governing such navigable waterways (art. 8). The right of navigation therefore has priority over the right to the exploitation of hydraulic power.[52]

[48] "This obligation to negotiate naturally does not entail the obligation to conclude an agreement; but it must be performed in good faith, that is to say, with the intention of consenting to such arrangements as are likely, to the extent possible in view of the opposing interests of the two States, to facilitate the conclusion of fair and balanced agreements beneficial to both parties, and ensuring to any party which is exposed to serious injury the necessary guarantees and, should the occasion arise, the reparations to which it would be entitled under general public international law, formally maintained in effect by the protocol of signature of 9 December 1923" (see G. Sauser-Hall, *op. cit.*, p. 535).

[49] "This recognition of the requirements of technology in an international convention is quite remarkable. In the interests of the proper development of hydraulic power, the engineers must draw up their plans without concern for the political frontiers which divide or cross international rivers. This article makes a reservation, however, as to the national legislation of the several States, which means that, for the effective construction and operation of technical installations without reference to frontiers, the works must be executed in accordance with the laws of each state" (*ibid.*).

[50] Expert engineers are called in who, working as though they were dealing with a single homogeneous territory, draw up the plans of what, in their view, is the best technical solution. The boundary stones are then replaced and the construction and operation of the works is carried out in each country in accordance with its own laws. (See United Nations, ECE, Committee on Electric Power, *Legal aspects of the hydro-electric development of rivers . . . (op. cit.)*, para. 153, *in fine*.)

[51] See para. 79 below.

[52] "Although it has also been applied to some extent outside Europe, this marked preference of the principle of free navigation over any other use of international watercourses was established mainly in the light of European needs. When viewed on a world scale, the justification for this preference seems much more doubtful and has to depend on the economic and geographic circumstances peculiar to each waterway. In the case of the Nile, for example, which is undeniably an international river, since it rises in Ethiopia, traverses the Sudan and crosses Egypt to empty into the Mediterranean, the priority to be granted the right of navigation no longer appears to have any

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76. *Facilities greater than those provided for in the Convention.* The Convention does not entail the withdrawal of facilities which are greater than those provided for in its provisions and which have been granted for the development of hydraulic power under conditions consistent with its principles. It also entails no prohibition of a similar grant of greater facilities in the future (art. 10).

77. *Former conventions or treaties.* The Convention does not in any way affect the rights and obligations of States arising out of former conventions or treaties on the subject-matter of the Convention, or out of the provisions on the same subject-matter in general treaties (art. 11).

78. *Settlement of disputes.* If a dispute should arise between contracting States as to the application or interpretation of the Convention, and if such a dispute cannot be settled either directly between the parties or by some other amicable method of procedure, the parties to the dispute may submit it for an advisory opinion to the body established by the League of Nations as the advisory and technical organization of the Members of the League in matters of communications and transit, unless they have decided or shall decide by mutual agreement to have recourse to some other advisory, arbitral or judicial procedure. These provisions shall not be applicable to any State which represents that the development of hydraulic power would be seriously detrimental to its national economy or security (art. 12).

GENERAL CONVENTIONS INCLUDING PROVISIONS RELATING TO THE UTILIZATION AND USE OF INTERNATIONAL RIVERS

Convention[53] and Statute on the régime of navigable waterways of international concern, signed at Barcelona on 20 April 1921[54]

79. This general Convention, together with its Statute, is concerned with the exercise of navigation on international rivers. It therefore resumes the task of codifying the body of rules relating to freedom of navigation and equality of treatment on international rivers, begun by the Congress of Vienna of 1815 and the Congress of Paris of 1856.[55] The provisions of the Statute of Barcelona apply only to international rivers declared to be "navigable waterways of international concern".[56] The general arrangement of the Statute indicates that on those navigable waterways of international concern navigation is given a preference over other possible uses. Navigation therefore has priority over other uses. Some provisions of the Statute are or may be of interest with respect to the utilization or use of international rivers for purposes other than navigation. Some provisions seek to safeguard the preference given to navigation, while others imply some restriction of it.

80. *Prohibition against prejudicing navigability. Elimination of obstacles to navigation.* Each riparian State is bound, on the one hand, to refrain from all measures likely to prejudice the navigability of the waterway, or to reduce the facilities for navigation, and, on the other hand, to take as rapidly as possible all necessary steps for removing any obstacles and dangers which may occur to navigation (art. 10, para. 1).

81. *Obligation to carry out works for the improvement of navigability which are asked for by another riparian State. Exceptions based on other interests (water-conditions; irrigation; the production of hydro-electric power). Conditions governing the execution of the works (vital interests of the State).* In the absence of legitimate grounds for opposition by one of the riparian States, including the State territorially interested, based either on the actual conditions of navigability in its territory, or on other interests such as, *inter alia*, the maintenance of the normal water-conditions, requirements for irrigation, the use of water-power, or the necessity for constructing other and more advantageous ways of communication, a riparian State may be obliged to carry out works for the improvement of navigability which are asked for by another riparian State, if the latter State agrees to pay the cost of the works and a fair share of the additional cost of upkeep. It is understood that such works cannot be undertaken so

(Footnote 52 continued)

justification. The Nile's essential function is to irrigate Egypt, which is open to the danger of invasion by the desert sands which surround it; in the event of a conflict of interests between the requirements of navigation and those of irrigation, it would obviously be blinking the facts not to recognize the pre-eminence of the latter in Egypt." (See G. Sauser-Hall, *op. cit.*, pp. 520–521.)

[53] The Convention and Statute were adopted by the First General Conference on Communications and Transit by 29 votes to 1, with 2 abstentions (see League of Nations, *Barcelona Conference 1921, Verbatim Records and Texts relating to the Convention on the régime of navigable waterways of international concern*, 1921, p. 373). The Convention came into force on 31 October 1922, the ninetieth day after receipt by the Secretary-General of the League of Nations of the fifth ratification, in conformity with article 6.

Forty-two States were represented at the Barcelona Conference: Albania, Austria, Belgium, Bolivia, Brazil, British Empire, New Zealand, India, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Esthonia, Finland, France, Greece, Guatemala, Haiti, Honduras, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Panama, Paraguay, Persia, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Uruguay, Venezuela and Yugoslavia.

Two States were represented by observers: Germany and Hungary.

Twenty-nine States signed the Convention or acceded to it, their signatures or accessions being subject to ratification: Albania, Austria, Belgium, Bolivia, British Empire, New Zealand, India, Bulgaria, Chile, China, Colombia, Czechoslovakia, Denmark, Esthonia, Finland, France, Greece, Guatemala, Italy, Lithuania, Luxembourg, Norway, Panama, Peru, Poland, Portugal, Spain, Sweden and Uruguay. The British Empire signed subject to the declaration inserted in the Procès-verbal of the meeting of 19 April 1921 as to the British Dominions not represented at the Barcelona Conference.

Twenty States ratified the Convention or finally acceded thereto: Albania on 8 October 1921; Austria on 15 November 1923; Bulgaria on 11 July 1922; the British Empire (including Newfoundland) with New Zealand and India on 2 August 1922 (for the Federated Malay States and the Unfederated Malay States on 22 August 1923; for the Mandated Territory of Palestine on 28 January 1924); Italy on 5 August 1922; Denmark on 13 November 1922; Thailand on 29 November 1922; Finland on 29 January 1923; Romania on 9 May 1924; Norway on 4 September 1923; Czechoslovakia on 8 September 1924; France on 31 December 1926; Sweden on 15 September 1927; Greece on 3 January 1928; Chile on 19 March 1928; Hungary on 18 May 1928; Luxembourg on 19 March 1930; and Turkey on 27 June 1933.

One State denounced the Convention: India (to take effect on 26 March 1957). (League of Nations, *Treaty Series*, vols. VII, p. 35; XI, p. 407; XV, p. 307; XIX, p. 281; XXIV, p. 157; L, p. 160; LIX, p. 344; LXIX, p. 71; XCVI, p. 182 and CXXXIV, p. 393; and United Nations, *Treaty Series*, vol. 230, p. 448.)

[54] See League of Nations, *Treaty Series*, vol. VII, p. 37. See also *Legislative Texts . . . (op. cit.)* second part, treaty No. 1.

[55] See paras. 417–421 below.

[56] Article 1 of the Statute.

long as the State on whose territory they are to be carried out objects on the ground of its vital interests (art. 10, para. 3). The State which is obliged to carry out these works shall be freed from the obligation, if it authorizes the State which made the request to carry them out instead of it (art. 10, para. 4). The situation covered by this provision is worth stressing, for it is comparable with the situation which arises when rivers are developed for other uses.

82. *Necessity of agreement among the riparian States or the members of the international commission for the river in question to close a "navigable waterway of international concern". Exception (absence of an international commission; economic interest clearly greater than navigation; notice; conditions of closing).* A riparian State may, in the absence of any agreement to the contrary, close a waterway wholly or in part to navigation, with the consent of all the riparian States or of all the States represented on the International Commission in the case of navigable waterways for which there are international Commissions of this type. As an exceptional case, one of the riparian States of a navigable waterway of international concern for which there is no international commission may close the waterway to navigation, if the navigation on it is of very small importance, and if the State in question can justify its action on the ground of an economic interest clearly greater than that of navigation. In this case, the closing to navigation may only take place after a year's notice and subject to an appeal on the part of any other riparian State to the procedure for the settlement of disputes laid down by the Statute. If necessary, the judgement of the body called upon to settle the dispute shall prescribe the conditions under which the closing to navigation may be carried into effect (art. 10, para. 6).

Chapter II

AFRICA

A. MULTILATERAL TREATIES

83. Multilateral treaties concerning international rivers in Africa are outside the scope of this report, since they relate exclusively to navigation. Chapters IV and V of the General Act of the Berlin Conference of 26 February 1885,[57] for instance, refer to navigation on the Congo and the Niger. The same is true of the Declaration of the General Act of the Brussels Conference of 2 July 1890[58] concerning the conventional basin of the Congo, and the Convention Revising the General Act of Berlin and the General Act of Brussels, signed at Saint-Germain-en-Laye on 10 September 1919.[59] The General Act of the Berlin Conference extends to the conventional basin of the Congo, and to the Niger, the general principles enunciated in articles 108–116 of the Final Act of the Congress of Vienna of 1815, designed to regulate freedom of navigation on navigable rivers flowing between or through more than one State. The task of the International Commission for the Congo, established under article 17 of the General Act of the Berlin Conference of 1885, was only to supervise the application of the principles set forth in that Act, in particular the principles of freedom of navigation and equal treatment,[60] and to ensure the navigability of, and the policing of navigation on, the river.[61]

84. Mention should be made here, however, of the provisions of article IV, paragraph (*a*), of the Agreement between Great Britain, France, and Italy, respecting Abyssinia, signed at London on 13 December 1906,[62] whereby the Contracting Parties undertook to safeguard "the interests of Great Britain and Egypt in the basin of the Nile, particularly as regards the regulation of the waters of that river and of its affluents".

B. BILATERAL TREATIES[63]

1. Bilateral treaties concerned exclusively with the utilization and use of international rivers in Africa

(*a*) TREATIES RELATING GENERALLY TO CONTIGUOUS AND SUCCESSIVE RIVERS IN THE TERRITORIES OF TWO STATES

Ruanda-Urundi and Tanganyika

Agreement[64] between the Belgian Government and the Government of the United Kingdom of Great Britain and Northern Ireland regarding water rights on the boundary between Tanganyika and Ruanda-Urundi, signed at London on 22 November 1934[65]

85. This Agreement defines the water rights in respect of the use of the water of those rivers and streams which

[57] See G. F. de Martens, ed., *Noveau recueil général de traités*, (Gottingen, Librairie Dieterich, 1885–1886). 2ème série, tome X, p. 414.

[58] See G. F. de Martens, ed., *op. cit.*, 1891, 2ème série, tome XVI, p. 29.

[59] See G. F. de Martens, ed., *op. cit.* (publication de l'Institut de droit public comparé et de droit des gens) (Leipzig, Theodor Weicher, 1926), 3ème série, tome XIV, p. 12.

[60] See, for instance, D. Vignes, "*L'égalité du traitement des usagers dans les transports internationaux*", *Annuaire français de droit international, 1958* (Paris, 1959), vol. 4, p. 144.

[61] An Inter-African Conference on Hydrology was held at Nairobi on 16–25 January 1961 (see section C of annex II of the present report). It adopted recommendations on regional co-operation among countries bordering on the River Niger and on Lake Chad. Further meetings were subsequently held at Ségou on 17–20 May 1961. An intergovernmental conference was to held in February 1963, with a view to concluding a multilateral convention on the utilization and use of the River Niger.

[62] See *British and Foreign State Papers, 1905–1906* (London, H.M. Stationery Office, 1910), vol. 99, p. 486.

[63] As will be noted, the treaties mentioned in this section came into force on specific dates. However, the status of some of these treaties may have undergone modification as a result of the political changes of recent years in the African continent.

[64] This agreement came into force on 19 May 1938, the date of the exchange of the instruments of ratification at London.

[65] The League of Nations, *Treaty Series*, vol. CXC, p. 104. See also *Legislative Texts . . . (op. cit.)*, treaty No. 4.

form part of the boundary between the Tanganyika Territory and Ruanda-Urundi or which flow from one of those Territories into the other.

86. *Successive rivers: Diversion and return of water.* Water diverted shall be returned without substantial reduction to its natural bed at some point before the stream flows into the other Territory or before it forms the common boundary between the two Territories (art. 1).

87. *Continguous rivers:*

(a) *Diversion and return of water for operations of a mining or industrial nature.* Each Contracting Party shall have the right to divert, for operations of a mining or industrial nature, at any point where a stream forms a common boundary between the two Territories, "up to a maximum of half the volume of water flowing at such point measured during the season of low water, provided that such water after use shall *without substantial reduction* be returned to its natural bed" (art. 4). The Agreement also establishes a method for the determination of the flow of water in the streams and a point of determination in the streams (art. 5).

(b) *Prior notice of the commencement of operations for the utilization of water for irrigation purposes.* Either Government desiring to utilize, or to permit any person to utilize, water for irrigation purposes shall give to the other Government notice of its desire six months before commencing operations for the utilization of such water, in order to permit of the consideration of any objections which the other Government may wish to raise (art. 6).

(c) *Grants (Conditions, inspection).* All grants of water rights on the common boundary shall be conditional on the grantees installing at or near the point of intake a standard measurement weir which shall be open to inspection by officials of both Governments appointed for the purpose of inspecting such weirs (art. 7).

(d) *Right of access of officials.* The officials of either Contracting Party shall be permitted to have access to any point on any river forming the common boundary for any domestic or industrial purpose (art. 8).

(e) *Respect for acquired rights. Recognition of customary rights (domestic use, plants and fishing).* Any of the inhabitants of Tanganyika or of Ruanda-Urundi shall be permitted to take from the river forming the common boundary fish and aquatic plants and water for domestic purpose and for any purposes conforming with their customary rights (art. 9).

88. *Successive and contiguous rivers:*

(a) *Prohibition of operations interfering with navigation.* No operations of a mining or industrial nature shall be permitted by either of the Contracting Governments which may in any way lessen or otherwise interfere with navigable waters (art. 2).

(b) *Protection of the waters (pollution).* No operations of a mining or industrial nature shall be permitted by either of the Contracting Governments which may pollute or cause the deposit of any poisonous, noxious or polluting substance in the waters of the contiguous or successive rivers in the two Territories or any tributary river thereof (art. 3).

(c) *Settlement of disputes (arbitration).* In the event of any dispute arising in respect of any matter covered by the Agreement, the Contracting Governments shall refer the matter to such arbitrator or court of arbitration as may be mutually agreed upon (art. 10).

(*b*) Treaties relating to one or more specific rivers

River Shiré and Lake Nyasa (Mozambique and Rhodesia and Nyasaland)

Exchange of notes constituting an Agreement[66] *between Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Portuguese Government providing for Portuguese participation in the Shiré Valley project, Lisbon, 21 January 1953*[67]

89. The United Kingdom is prepared to recognize in principle the Median Line of the waters of Lake Nyasa as the frontier between Mozambique and Nyasaland, while Portugal assumes the responsibility of "taking part in the studies and work in progress with the object of controlling and utilizing the waters of the Lake and of the River Shiré".

90. *Sharing of the costs of the studies and execution of the technical control projects.* The share of the Portuguese Government "in the studies and technical projects and in their execution" is, in principle, fixed at the proportion of one-third (para. 2). The Portuguese Government also agrees to accept liability for one-third of the cost of the "preliminary survey of the nature and probable cost of the works entailed" undertaken by Messrs. Sir William Halcrow and Partners at the request of the Governments of Nyasaland and the United Kingdom. This survey will cost £300,000 (para. 4).

91. *Establishment of a joint corporation for the production of hydro-electric energy.* If the results of the survey should make it advantageous to proceed with the scheme, the two Parties would establish a joint corporation which would be responsible for the construction of the dam and the stabilization of the lake and river and for the production of hydro-electric energy. The Government of Nyasaland would hold the majority of the shares in the corporation. The size of the Portuguese Government share-holding would be determined according to the basis of its contribution. The corporation would be responsible for the production of power and for its sale in bulk to the Portuguese and Nyasaland Electricity Authorities, which would be responsible for the distribution of power. The capacity available to the Portuguese Government would be transmitted to the frontier by the Nyasaland Electricity Authority at an agreed charge (paras. 5 and 6).

[66] The Agreement came into force on 21 January 1953 by the exchange of the notes.

[67] See United Nations, *Treaty Series*, vol. 175, p. 14. See also *Legislative Texts . . . (op. cit.)*, treaty No. 31.

River Gash[68] (Ethiopia (Eritrea) and Sudan)

Exchange of notes constituting an Agreement[69] between the British and Italian Governments respecting the regulation of the utilization of the waters of the River Gash, Rome, 12 and 15 June 1925[70]

92. The Agreement regulates the division of the waters of the River Gash at Tessenei in accordance with the conclusions of a report by British and Italian experts dated 25 November 1924. The experts did not consider it to be technically practicable to have a single system which would serve for the irrigation of the territories of both Parties. In consequence, they recommended that "the projects relating to the territories of Eritrea and Kassala must be independent, except for certain arrangements for the division of the water, necessary to safeguard the interests of both territories" (see the report of the experts in the sub-enclosures in enclosure No. 1 of the Agreement (questions Nos. 4 and 5)).

93. *Division of the water.* Up to the discharge of 5 cubic metres, the supply of water remains entirely at the disposal of Eritrea. Above 5 cubic metres, the discharge of water will be utilized for the works at Tessenei in such proportionately progressive manner that when 20 cubic metres is reached, 10 will be used for the works at Tessenei, the other 10 being allowed to flow on for the benefit of the Province of Kassala. Lastly, the discharge in excess of 20 cubic metres will be utilized as regards one-half by the works at Tessenei up to the quantity necessary for the irrigation of the plain of Tessenei (enclosures 1 and 2 of the Agreement).

94. *Determination of the total quantity of water and the maximum discharge to be utilized by Eritrea.* The Government of Eritrea declares that the quantity of water from the River Gash which it will utilize for the irrigation works amounts altogether to 65 million cubic metres, and that the total discharge of such water will not exceed 17 cubic metres per second (enclosures 3 and 4 of the Agreement).

95. *Compensation to be paid by the Sudan.* The Sudan will make payment to Eritrea each year of 20 per cent of the sum in excess of a fixed amount of £50,000 annually which it receives in respect of cultivation by irrigation of land in the Gash delta. These sums are fixed according to an agreement between the Sudan Government and the Kassala Cotton Company. The Sudan undertakes to give Eritrea full statements each year showing how the amount payable to it is arrived at (enclosure 4 of the Agreement).

Kunene River (Rua Cana Falls) (Angola and the Territory of South West Africa)

Agreement[71] between the Government of the Union of South Africa and the Government of the Republic of Portugal regulating the use of the waters of the Kunene River for the purposes of generating hydraulic power and of inundation and irrigation in the Mandated Territory of South West Africa, signed at Cape Town on 1 July 1926[72]

96. In the preamble to the Agreement, the two Contracting Governments declare that the use of the waters of the Kunene River at the Rua Cana Falls is common to them; the Union of South Africa expresses the desire to be able to utilize the waters of the Kunene River at the Rua Cana Falls for the purpose of generating hydraulic power and also to undertake works for the purpose of restoring to the Mandated Territory the benefits which "from time immemorial" it enjoyed from the periodic inundations by the flood waters of the Kunene River; Portugal, "for reasons of humanity", declares its willingness, under certain conditions, and "whilst retaining its sovereign rights intact", to concede to the Union of South Africa as Mandatory "the right to construct and use works in the Kunene River within Portuguese Territory for drawing and conveying water" from that river "for use in the Mandated Territory".

97. *Utilization for the production of hydro-electric energy:*

(a) *Construction of works for the retention of the water.* A dam for the diversion of water to be utilized for the generation of hydraulic power in the Mandated Territory may be constructed across the Kunene River on Portuguese territory (para. 1). Such a dam may be constructed by the Union of South Africa, by Portugal, or jointly. The Agreement specifies, in each case, the notice, the periods of notice to participate, and the division of the cost of construction (para. 2).

(b) *Division of the water.* The Government which constructs the dam "shall be entitled to the use of all the water, until such time as the other Government shares in the scheme". However, "the Government entitled to the use of all the water may, under contract, give a share of the power to the other Government" (para. 2).

(c) *Construction of intake works.* Within certain limits specified in the Agreement, the Union of South Africa has the right to construct intake works immediately above the dam and "thus to impound and to divert into a canal to be constructed by it on the left bank of the river in Portuguese territory so much of the water of the river as it may at that point be entitled to" (para. 4).

98. *Utilization for irrigation:*

(a) *Division and diversion of the water.* Portugal concedes to the union of South Africa "the right to use up to one half of the flood water of the Kunene River for the purposes of inundation and irrigation in the Mandated Territory" provided that this is feasible according to an investigation to be made by a joint technical commission (para. 6). For that purpose, and subject to certain reservations, the Union of South Africa has the right to divert water (para. 8(*a*)).

(b) *Limitation of the right to divert water.* No diversion of water shall be made by either Government between the

[68] The upper course of the river is named the Mareb. Upon entering Ethiopia, it becomes the Gash (in French, Gâch). For a short stretch, between the Mareb and the Gash, it is called the Sona. The Gash is a closed basin.

[69] The Agreement came into force on 15 June 1925 by the exchange of notes.

[70] See League of Nations, *Treaty Series*, vol. XXXVIII, p. 190. See also *Legislative Texts . . . (op. cit.)*, treaty No. 28.

[71] The Agreement entered into force on the date of signature.

[72] See League of Nations, *Treaty Series*, vol. LXX, p. 316. See also: *Legislative Texts . . . (op. cit.)*, treaty No. 29.

Kazambue Rapids and Naulila unless a quantity sufficient for any power works constructed at any point below the Rapids is allowed to pass down (para. 7).

(c) *Joint technical investigating Commission.* The Governments shall each appoint an equal number of members to serve on the Commission, which shall devise a means of supplying water for the purpose of inundation and irrigation in the Mandated Territory. With that object in view, it shall: (*a*) report on the feasibility of diverting the water of the Kunene River; (*b*) fix the points for such diversion; (*c*) design the necessary works; (*d*) estimate the cost of construction and maintenance of such works; and (*e*) submit proposals regarding the operation and maintenance of the works constructed. The costs of investigation shall be borne by the Union of South Africa (para. 9).

(d) *Construction and maintenance of the diversion works.* The Union of South Africa has the right to construct and maintain, at its own expense, such works as may be necessary for the diversion of the water and for the protection, operation and regulation of the diversion works (paras. 8(*b*), (*c*) and (*d*), 10 and 11).

99. *Provisions relating to the use of water, whether for the production of hydro-electric energy or for irrigation:*

(a) *Reservation of sovereign rights.* The Agreement provides that Portugal, notwithstanding the rights granted to the Union of South Africa, shall retain "its sovereignty over the areas affected by the . . . works" (para. 16). It also stipulates that "no hydraulic works on the Kunene or Okavango (Cubango) Rivers, except those at the Rua Cana Falls, may, where these rivers form the boundary . . . be constructed by the Government of the Union of South Africa or by that of the Republic of Portugal without the previous consent of the other Government having been obtained" (para. 18).

(b) *Rights of access.* Portugal concedes to the Union of South Africa rights of entry for purposes of the design, construction, maintenance and operation of the works contemplated in the Agreement (para. 13).

(c) *The right to appropriate materials.* The Union of South Africa has the right to appropriate materials "lying convenient to the works" in Portuguese territory (para. 14).

(d) *Applicability of local laws.* The design, construction, maintenance and operation shall be subject to the laws obtaining in Angola (para. 17).

(e) *Settlement of disputes (arbitration).* All disputes between the Parties arising out of the Agreement shall be settled by arbitration (para. 19).

River Nile (SUDAN AND THE UNITED ARAB REPUBLIC (EGYPT))

(1) *Exchange of notes*[73] *between His Majesty's Government in the United Kingdom and the Egyptian Government in regard to the use of the waters of the River Nile for irrigation purposes, Cairo, 7 May 1929*[74]

100. The Egyptian Government declares its willingness to agree with the United Kingdom Government upon such an increase of the quantity of water needed for the development of the Sudan, "as does not infringe Egypt's natural and historical rights in the waters of the Nile and its requirements of agricultural extension, subject to satisfactory assurances as to the safeguarding of Egyptian interests" (note No. 1, para. 2). The United Kingdom Government acknowledges the "natural and historic rights of Egypt in the waters of the Nile" (note No. 2, para. 4).

101. *Division of the waters. Reconciliation of interests on the basis of the 1925 Nile Commission Report.*[75] The two Parties accept the findings of the 1925 Nile Commission, whose report is annexed to the exchange of notes, and is considered an integral part of the Agreement (notes Nos. 1 and 2, para. 3).[76] However, "in view of the delay in the construction of the Gebel Aulia Dam, which, under paragraph 40 of the Nile Commission's report, is regarded as a counterpart of the Gezira scheme, the dates and quantities of gradual withdrawals of water from the Nile by the Sudan in flood months as given in article 57 of the Commission's report [should] be modified in such a manner that the Sudan should not withdraw more than 126 cubic metres per second before 1936, it being understood that the schedule contained in the above-mentioned article will remain unaltered until the discharge of 126 cubic metres per second is reached. These quantities are based on the Nile Commission's report, and are therefore subject to revision as foreseen therein" (note No. 1, para. 3).

102. *Construction of irrigation or power works: previous agreement.* Save with the previous agreement of the Egyptian Government, no irrigation or power works or measures are to be constructed or taken on the River Nile and its branches, or on the lakes from which it flows, so far as all these are in the Sudan or in countries under British administration, which would, in such a manner as to entail any prejudice to the interests of Egypt, either reduce the quantity of water arriving in Egypt, or modify the date of its arrival, or lower its level (note No. 1, para. 4 (*b*)).

103. *Safeguarding of local interests.* In case the Egyptian Government decides to construct in the Sudan any works on the river and its branches, or to take any measures with a view to increasing the water supply for the benefit of Egypt, it will agree beforehand to take measures with the local authorities for safeguarding local interests. The construction, maintenance and administration of the above-mentioned works shall be under the direct control of the Egyptian Government (note No. 1, para. 4 (*d*)).

[73] The Agreement entered into force on 7 May 1929 by the exchange of notes.

[74] See League of Nations, *Treaty Series*, vol. XCIII, p. 44. See also *Legislative Texts . . . (op. cit.)*, treaty No. 7.

[75] The Commission was appointed following an exchange of notes dated 26 January 1925 between the United Kingdom High Commissioner for Egypt and the President of the Council of Ministers of Egypt. It was agreed, under the terms of that exchange of notes, that a Commission should be appointed for the purpose of examining and proposing the basis on which irrigation could be carried out with full consideration of the interests of Egypt and without detriment to its natural and historic rights.

A Commission had been set up as early as 1920 for the purpose of preparing projects on the Nile; but the Egyptian Government, because of the high cost estimates for the Gebel Aulia Dam and for ancillary and related works, had decided in May 1921 to suspend all operations on those projects.

[76] For the full text of the Commission's findings, see *Legislative Texts . . . (op. cit.)*, treaty No. 7.

104. *Granting of facilities for the study and record of hydrology.* The Egyptian Government, in carrying out all the necessary measures required for the complete study and record of the hydrology of the River Nile in the Sudan, will have all the necessary facilities for so doing (note No. 1, para. 4 (*c*)).

105. *Arrangements for technical co-operation.* The Inspector-General of the Egyptian Irrigation Service in the Sudan and his staff, or any other officials whom the Minister of Public Works may nominate, shall have the full liberty to co-operate with the Resident Engineer of the Sennar Dam in the measurement of discharges and records to satisfy the Egyptian Government that the distribution of water and the regulation of the dam are carried out in accordance with the agreement reached (note No. 1, para 4 (*a*)). The United Kingdom Government "shall use their good offices so that the carrying out of surveys, measurements, studies and works . . . is facilitated by the Governments of those regions under British influence" (note No. 1, para 4 (*e*)).

106. *Principles of good faith.* Any uncertainty as to the interpretation of a question of principle or as to technical or administrative details will be settled in a spirit of mutual good faith (note No. 1, para. 4 (*f*)).

107. Mention should be made here of an official declaration issued at Khartoum on 18 October 1952 by the Public Relations Office of the Government of the Sudan.[77] The declaration, which contains the provisions of an Agreement amending the Agreement in regard to the use of the waters of the River Nile of 7 May 1929, stipulates:

(I) That the Sudan can raise the level of water in Sennar reservoir by one metre, subject, until the construction of the proposed Lake Tana dam, to special conditions in the case of very low years;

(II) That Egypt can build the Fourth Cataract dam and the Sudan will give all possible help, as in the case of Gebel Aulia;

(III) That when the necessary data have been collected there will be technical discussions to decide the respective shares of the Sudan and Egypt in the additional water available on the completion of new projects, including the Fourth Cataract dam; the Sudan will begin to benefit from the first project to be completed; the shares in cost will be agreed for each project in proportion to the shares in benefit; the shares in the Lake Tana project remain as originally agreed, half to Egypt and half to the Sudan.

In addition, agreement has been reached on means of making available to the Sudan surplus "flood" water which can be stored. Investigations are now being made to establish how much can be stored in the Gebel Aulia reservoir without affecting existing pump schemes, *saqias* etc. In consequence of this agreement, an additional allocation of water has already been made to the Pumps Control Board.

(2) *Agreement*[78] *between the United Arab Republic and the Republic of Sudan for the full utilization of the Nile waters, signed at Cairo on 8 November 1959*[79]

108. The Agreement of 7 May 1929 only regulated a partial use of the Nile waters and did not establish a full control of the waters. The Agreement of 8 November 1959 proceeds to regulate the full utilization of the Nile waters and institutes full control of the waters.[80]

109. This Agreement deals with the established rights to the use of the waters, the construction of works, the allotment of the net benefits, compensation for damages, and the preparation of projects for the exploitation of waters lost in the Upper Nile Basin. It also makes arrangements for technical co-operation and, for that purpose, it establishes a Committee to be known as the "Joint Technical Committee". Lastly, it provides for concerted action by the Parties vis-à-vis other riparian States.

110. *Utilization of the waters:*

(a) *Established rights.* The quantities of water actually used by the United Arab Republic until the date of signing this Agreement constitute its established right prior to the benefits accruing to it through the implementation of the control works referred to in this Agreement. This established right amounts to 48 milliards of cubic metres per year, measured at Aswan. The quantities of water used at present by the Republic of the Sudan constitute its established right prior to the benefits accruing to it through the implementation of the aforementioned control works. This established right amounts to 4 milliards of cubic metres per year as measured at Aswan (art. I).

(b) *Construction of works to improve the use of the waters.* In order to improve the use of the Nile waters and to stop their flow to the sea, the United Arab Republic may construct the Sudd el Aali Reservoir at Aswan as the first of a series of storage schemes on the Nile. In order that it may better exploit its share, the Sudan may construct the Roseires Reservoir on the Blue Nile and any other works deemed necessary by the Sudan for the same purpose (art. II, paras. 1 and 2).

(c) *Allotment of the net benefit from the construction of the works mentioned.* Taking as a basis an annual mean of 84 milliards of cubic metres, calculated according to the mean annual supply at Aswan in this century, and estimating losses by evaporation from the Sudd el Aali Reservoir at 10 milliards of cubic metres, the Contracting Parties agree to share the amount of 22 milliards of cubic metres which remain after the deduction of the established rights (52 milliards of cubic metres) in such a way that, of that amount, the United Arab Republic will receive 7.5 milliards of cubic metres and the Sudan 14.5 milliards of cubic metres. Thus, of the natural (mean) river supply, the United Arab Republic will receive a total of 55.5 milliards and the Sudan a total of 18.5 milliards of cubic metres. Any increase in excess of 84 milliards of cubic metres will be equally divided between the two States concerned. It is also laid down that

[77] This declaration is cited by Abd El-Fattah I. S. Baddour in *Sudanese–Egyptian Relations, A Chronological and Analytical Study* (The Hague, Nijhoff, 1960), p. 211. The writer states that the Egyptian Government has not publicly acknowledged the existence of the declaration. In support of that assertion, he refers to an article entitled "The utilization of the Nile waters", published by R. Batstone in *The International and Comparative Law Quarterly* (London), vol. 8, part 3, July 1959, 4th series, pp. 523–558.

[78] This Agreement came into force on 22 November 1959, in accordance with article VII.

[79] See *Egyptian Review of International Law* (Cairo), vol. 15, 1959, p. 321 (translation prepared by the Ministry of Foreign Affairs of the United Arab Republic). See also *Legislative Texts . . . (op. cit.)*, treaty No. 34.

[80] For some commentaries on this Agreement, see G. M. Badr, "The Nile Waters Question, Background and Recent Development", *Egyptian Review of International Law* (Cairo), vol. 15, 1959, pp. 94–117; Abd El-Fattah I. S. Baddour, *op cit.*, pp. 201–241; and J. Andrassy, "Rapport définitif sur l'utilisation des eaux internationales non maritimes (en dehors de la navigation)", *Annuaire de l'Institut de droit international, 1960* (Basle), pp. 3–5.

the net benefit from the Sudd el Aali Reservoir will be subject to revision "at reasonable intervals to be agreed upon" as from the date of the operation of the complete reservoir (art. II, paras. 3, 4 and 5).

(d) *Compensation for damages.* The United Arab Republic will pay 15 million Egyptian pounds to the Sudan as compensation for the damages to Sudanese property resulting from the storage of water in the Sudd el Aali Reservoir to a level of 182 metres. After the completion of the Sudd el Aali Reservoir, the United Arab Republic will not require the use of Gebel Aulia reservoir for storage (art. II, paras. 6 and 8).

(e) *Transition period before the working of the complete Sudd el Aali Reservoir.* For the period between the conclusion of the Agreement and the completion of work at Sudd el Aali, the two Parties will prepare their programmes of agricultural expansion in a manner that will not affect their present water requirements (art. VI).

(f) *Water loan to the United Arab Republic from the Sudanese share for a certain period.* The Sudan Republic agrees in principle to grant the United Arab Republic a water advance from the Sudanese share in the High Dam waters, to meet the requirements of United Arab Republic agricultural expansion projects. The United Arab Republic will request such a loan after it has reviewed its programmes within five years from the date of signing this Agreement, and should the review reveal the United Arab Republic's continued need of the loan, the Sudan Republic will loan not more than one and a half milliard cubic metres from its share, provided that such a loan is not used beyond November 1977 (annexure I of the Agreement).

111. *Projects for the exploitation of waters lost in the Upper Nile Basin: Sharing of the costs and benefits.* The Sudanese Government, in agreement with the United Arab Republic, will undertake projects for the increase of Nile waters by preventing water waste in the marshes of Bahr El-Gabal, Bahr El-Zaraf, Bahr El-Ghazal and its tributaries, the River Subat and its branches and the White Nile basin. Net revenue from these projects will accrue in equal shares to both Republics, which will also equally share the costs involved in such projects. If the United Arab Republic wishes to carry out a project aiming at increasing the Nile waters through the saving of lost water, at a time when the Sudan is not in need of such a project, the United Arab Republic shall notify the Sudan of the time suitable for the implementation of such a project. Within two years of such a notification, each of the two Republics will submit a programme to take advantage of its share in the surplus water resulting from the project. The programme will be binding on both parties. At the end of the two years, the United Arab Republic will begin the implementation of the project at its own expense. When the Sudan is ready to take advantage of its share in accordance with the programme agreed upon, it will reimburse the United Arab Republic a percentage of the expenses that will equal the share it received from the net gain from the project, with the proviso that the share of each Republic will not exceed half of the full net gain from the project (art. III).

112. *Technical co-operation: Joint Technical Committee.* The Agreement establishes a permanent technical body, the Joint Technical Committee,[81] to ensure the execution of the projects for control and for increasing the river supply and the continuation of hydrological survey work in the upper reaches of the Nile (art. IV).

113. *Concerted action by the Parties vis-à-vis other riparian States:*

(a) *Negotiations with other riparian States.* The Agreement provides for concerted action by the Parties in case of negotiations with other riparian countries on the Nile or its affluents. Before entering into such negotiations, the two Parties will agree on a unified view in accordance with the investigations made by the Joint Technical Committee. The unified view adopted by the two Parties will serve as a guide to the Committee in its negotiations with the third Governments concerned (art. V, para. 1, first sub-paragraph).

(b) *Construction of works in a third State.* If the negotiations entered into result in the conclusion of an agreement to construct works on the Nile in the territory of a third State, the Joint Technical Committee will contact the authorities in the territory concerned in order to lay down the technical details in connexion with the execution of the works and the working arrangements for their construction and maintenance. The Committee will also supervise the execution of the technical agreements, after they have been approved by the Governments concerned (art. V, para. 1, second sub-paragraph).

(c) *Allotment of water to other riparian States.* If it is found necessary to recognize the right of one or the other riparian country to utilize a certain amount of the waters of the Nile or its affluents, the necessary deductions will be borne by the two Contracting States equally on the basis of an agreement concluded in advance. The Joint Technical Committee will make arrangements with the competent authorities in the third countries concerned in connexion with the control and distribution of the amounts allotted to them (art. V, para. 2).

River Nile (Owen Falls) (UGANDA)

(1) *Exchange of notes*[82] *between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Egypt regarding the construction of the Owen Falls Dam, Cairo, 30 and 31 May 1949*[83]

114. Egypt and the United Kingdom, in accordance with the spirit of the Nile Waters Agreement of 7 May 1929, have agreed to the construction of a dam at Owen Falls in Uganda for the production of hydro-electric

[81] See "Protocol concerning the establishment of the Permanent Joint Technical Committee of the United Arab Republic and the Republic of the Sudan", which was signed at Cairo on 17 January 1960, and entered into force on the date of signature, in *Egyptian Review of International Law* (Cairo), vol. 15 (1959), p. 328.

[82] The Agreement entered into force on 31 May 1949 by the exchange of notes.

[83] See United Nations, *Treaty Series*, vol. 226, p. 274. See also *Legislative Texts . . . (op. cit.)*, treaty No. 9.

power and for the control of the waters of the Nile. It may be pointed out that, since Uganda has no common frontier with Egypt, this Agreement only serves to emphasize the unity and the international character of the Nile Basin.

115. *Construction of a dam to be the responsibility of the Uganda Electricity Board. Approval by the Governments.* The construction of the dam will be the responsibility of the Uganda Electricity Board, to which the two Governments entrust "the issue of an invitation for tenders and the placing of contracts" in agreement with the plans and specifications previously approved by them. The contracts will subsequently be submitted to the two Governments for their approval[84] (note I, paras. 2 and 3).

116. *Representation of the interests of Egypt at Owen Falls.* During the construction of the dam, the interests of Egypt will be represented at the site by an Egyptian resident engineer stationed there by the Egyptian Government, who will enjoy all facilities for the accomplishment of his duties (para. 4).

117. *Administration and maintenance of the dam.* The dam, when constructed, will be administered and maintained by the Uganda Electricity Board. Nevertheless, the discharges to be passed through the dam will be regulated "on the instructions of the Egyptian resident engineer to be stationed with his staff at the dam by the Royal Egyptian Government for this purpose in accordance with arrangements to be agreed between the Egyptian Ministry of Public Works and the Uganda authorities pursuant to the provisions of agreements to be concluded between the two Governments" (para. 4).

118. *Settlement of disputes (consultation, arbitration).* On matters of mutual interest, the Egyptian Ministry of Public Works and the Uganda Electricity Board will consult together, and "any difference of opinion which may arise . . . in connexion with the control of the water or with the generation of hydro-electric power will be a matter for discussion and settlement in a spirit of friendly co-operation between them. If these authorities find themselves unable to settle it, the matter will be referred to arbitration in accordance with arrangements to be agreed between the two Governments" (para. 5).

(2) *Exchange of notes constituting an Agreement[85] between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Egypt regarding the construction of the Owen Falls Dam in Uganda, Cairo, 16 July 1952 and 5 January 1953[86]*

119. The Agreement specifies the costs and the compensation which Egypt will bear in connexion with the construction of the Owen Falls Dam, in accordance with the exchange of notes of 30 and 31 May 1949 referred to above.

River Nile (Equatorial Lakes) (UGANDA AND EGYPT)

Exchange of notes constituting an Agreement[87] between the Government of the United Kingdom of Great Britain and Northern Ireland (on behalf of the Government of Uganda) and the Government of Egypt regarding co-operation in meteorological and hydrological surveys in certain areas of the Nile Basin, Cairo, 19 January, 28 February and 20 March 1950[88]

120. The Agreement makes arrangements for co-operation with a view to collecting and recording meteorological and hydrological information about the Equatorial Lakes. The Government of Egypt undertakes to collaborate with the Government of Uganda with a view to extending the research, observation, and meteorological and hydrological recording undertaken so far.

121. *Definition of the river basin.* The collection of hydrological data covers "the areas of the basin which feeds the Nile, whether in the East African territories or in the Belgian Congo", and also "the gathering of certain additional data concerning Lake Victoria" (note I, third paragraph).

122. *Conditions for co-operation.* The Egyptian Government agrees that the Government of Uganda should take on the services of certain persons, as well as make use of the equipment at present in Uganda. It also agrees to contribute to the expenses incurred. The Hydrological Department of Uganda undertakes to supply to the Egyptian Government all the meteorological data and information collected for the observation posts (fourth paragraph, sub-paragraphs 1 and 2).

123. *Right of access.* The resident Egyptian engineer at the Owen Falls Dam and his assistants "shall have access to all the posts which are in Uganda in order to undertake periodical inspections to assure themselves that the posts are being satisfactorily maintained and the observations regularly collected" (fourth paragraph, sub-paragraph 3).

Tanoe River[89] (IVORY COAST AND GHANA)

Exchange of notes[90] between the British and French Governments respecting licences to dredge in the Tanoe River, in completion of the Anglo-French Agreement of 10 August 1889, London, 16 and 25 June 1907[91]

124. *Use of rivers (dredging for gold).* Licences to dredge in the Tanoe River should be submitted to the common consent of the local Governments.

[84] See "Exchange of notes constituting an Agreement between the Government of the United Kingdom and the Government of Egypt regarding the construction of the Owen Falls Dam, Uganda, Cairo, 5 December 1949, which came into force on the date of the exchange of notes, in United Nations, *Treaty Series*, vol. 226, p. 280. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 10.

[85] The Agreement came into force on 5 January 1953 by the exchange of notes.

[86] See United Nations, *Treaty Series*, vol. 207, p. 278. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 12.

[87] The Agreement entered into force on 20 March 1950, with effect from 1 March 1950, in accordance with the terms of the said notes.

[88] See United Nations, *Treaty Series*, vol. 226, p. 288. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 11.

[89] Also called the Tendo.

[90] The Agreement came into force on 25 June 1907 by the exchange of notes.

[91] See *British and Foreign State Papers, 1906–1907* (London, 1911), vol. 100, p. 498. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 23.

2. Bilateral treaties containing provisions relating to the utilization and use of international rivers in Africa

(a) Provisions of treaties relating generally to rivers contiguous to the territories of two States[92]

Dahomey and Nigeria

Exchange of notes constituting an Agreement[93] between the United Kingdom and France relative to the frontier between the British and French possessions from the Gulf of Guinea to the Niger (Southern Nigeria and Dahomey), Paris, 19 October 1906[94]

125. *Respect for established rights (domestic use, watering places).* The Agreement stipulates that the inhabitants of the villages situated in the proximity of the frontier shall retain "the right to use the . . . springs and watering-places which they have heretofore used".[95]

Ghana and Togo

Exchange of notes constituting an Agreement[96] between France and the United Kingdom regarding the protocol and final report of the Commissioners appointed to define the frontier between the British and French Mandated Territories in Togoland, signed at Lomé, on 21 October 1929—London, 30 January and 19 August 1930[97]

126. *Respect for established rights (watering and fishing rights).* Whether the boundary follows a stream or river, all existing watering and fishing rights shall be preserved (Protocol, general clauses, para. (*k*)).

Chad and Central African Republic and Sudan

Exchange of notes[98] between Great Britain and France agreeing to the ratification of the Protocol defining the boundary between French Equatorial Africa and the Anglo-Egyptian Sudan, together with the Protocol, London, 21 January 1924[99]

127. *Respect for established rights (watering rights).* The watering rights existing in frontier waters will be preserved by the inhabitants on either side.

(b) Provisions of treaties relating to one or more specific rivers

Atbara River (tributary of the Nile) (Ethiopia (Eritrea) and Sudan)

Protocol[100] between the Governments of Italy and the United Kingdom for the demarcation of their respective spheres of influence in Eastern Africa, signed at Rome on 15 April 1891[101]

128. *Limitations on the control of the river by the upstream State (irrigation).* The Italian Government undertakes not to construct on the Atbara, for irrigation purposes, any works which might sensibly modify its flow into the Nile (art. III).

Blue Nile and Sobat Rivers (tributaries of the Nile) and Lake Tsana (Ethiopia and Sudan)

Treaty[102] between Ethiopia and the United Kingdom relative to the frontiers between the Anglo-Egyptian Sudan, Ethiopia and Eritrea, signed at Addis Ababa on 15 May 1902[103]

129. *Limitations on the control of the river by the upstream State.* The Emperor Menelik II of Ethiopia engages himself towards the Government of His Britannic Majesty "not to construct, or allow to be constructed, any work across the Blue Nile, Lake Tsana, or the Sobat which would arrest the flow of their waters into the Nile, except in agreement with His Britannic Majesty's Government and the Government of the Sudan" (art. III).

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[92] It will be noted that, before the First World War, Germany had concluded treaties with France and the United Kingdom recognizing that the populations on the banks of rivers and streams in certain African territories who were nationals of one or the other Power had equal fishing rights in the frontier waters. The provisions in question are those contained in article 10 of the Agreement between Germany and the United Kingdom concerning the demarcation of the boundary between the British and German territories from Yola to Lake Chad, signed at London on 19 March 1906 (see G. F. de Martens, ed., *op. cit.* (Leipzig, Librairie Dieterich, 1910), 3ème série, tome II, p. 691); article 4 of the Convention between Germany and France to define the boundary between Cameroon and the French Congo, signed at Berlin on 18 April 1908 (*ibid.* (1909), 3ème série, tome I, p. 612); and article 29 of the Agreement between Germany and the United Kingdom to demarcate the boundary between Cameroon and Nigeria and to regulate navigation on the Cross River, signed at London on 11 March 1913 (*ibid.* (Leipzig, Theodor Weicher, 1919), 3ème série, time IX, p. 190).

[93] The Agreement entered into force on 19 October 1906 by the exchange of the said notes.

[94] See *British and Foreign State Papers, 1905–1906* (London, H.M. Stationery Office, 1910), vol. 99, p. 217. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 22.

[95] An identical provision is contained in the exchanges of notes between the United Kingdom and France relative to the boundary between the Gold Coast and the French Sudan, of 18 March and 25 April 1904 (see *British and Foreign State Papers, 1905–1906* (London, 1910), vol. 99, p. 203; see also *Legislative Texts . . .* (*op. cit.*), treaty No. 20) and the definition of the boundary between the Gold Coast and the Ivory Coast, of 11 and 15 May 1905 (J. Basdevant, *Traités et Conventions en vigueur entre la France et les puissances etrangères*, tome II (*Espagne-Italie*) (Paris, Imprimerie nationale, 1919), p. 429; see also, *Legislative Texts . . .* (*op. cit.*), treaty No. 21).

[96] The Agreement came into force on the date of the exchange of notes.

[97] See G. F. de Martens, ed., *op. cit.* (Leipzig, Theodor Weicher, 1932), 3ème série, tome XXV, p. 452. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 26.

[98] The Agreement came into force on 21 January 1924.

[99] See *British and Foreign State Papers, 1924*, part I (London, 1927), vol. 119, p. 354. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 25.

[100] It appears from its provisions that the Protocol did not require ratification.

[101] See *British and Foreign State Papers, 1890–1891* (London, 1897), vol. 83, p. 19. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 27.

[102] The exchange of ratifications took place at Addis Ababa on 28 October 1902.

[103] See *British and Foreign State Papers, 1901–1902* (London, 1905), vol. 95, p. 467. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 13.

Great Skarcies River (GUINEA AND SIERRA LEONE)

Exchange of notes[104] *between the United Kingdom and France with reference to the Agreement of 21 January 1895*[105] *fixing the boundary between the British and French possessions to the north and east of Sierra Leone so far as concerns the navigation and the use of the Great Skarcies River, Paris, 22 January and 4 February 1895*[106]

130. *Respect for established rights.* Although the frontier line follows the right bank of the Great Skarcies, the United Kingdom Government will permit the riverain inhabitants dwelling on the right bank to continue "to use the river to the same extent as heretofore".

131. *Application of local laws.* The inhabitants of the right bank of the Great Skarcies will be subject to such laws or ordinances as may from time to time be promulgated by the authorities of Sierra Leone in connexion with the control of the waters of the river.

Hadou Wells (SOMALIA AND FRENCH SOMALILAND)

Agreement[107] *between the Governments of Great Britain and France with regard to the Somali Coast, London, 2 and 9 February 1888*[108]

132. *Common use of the waters.* It is agreed that the use of the wells of Hadou, through which the boundary passes, shall be common to both parties.

River Komadugu[109] (NIGER AND NIGERIA)

Convention[110] *between Great Britain and France respecting Newfoundland and West and Central Africa, signed at London on 8 April 1904*[111]

133. *Fishing.* In that portion of the River Komadugu which is common to both Parties, the populations on the banks shall have equal rights of fishing (art. 8).

Kwando River (ANGOLA AND RHODESIA AND NYASALAND)

Agreement[112] *between the Government of the United Kingdom of Great Britain and Northern Ireland (on their own behalf and on behalf of the Government of the Federation of Rhodesia and Nyasaland) and the Government of Portugal with regard to certain Angolan and Northern Rhodesian natives living on the Kwando River, signed at Lisbon, on 18 November 1954*[113]

134. *Use of the waters (domestic use, watering-places, fishing).* The Agreement permits the temporary residence of certain tribes of the Barotse Kingdom in Angola and of certain natives of Angola in Northern Rhodesia. The natives of villages in the Barotse Kingdom of Northern Rhodesia situated in the Senanga and Sesheke districts between the Zambesi and the Kwando rivers are permitted to camp in temporary settlements on the left bank of the Kwando river in Portuguese territory during every dry season for as long as adequate water is unobtainable within the Northern Rhodesia border. These natives will be allowed "to have access to water for themselves and their cattle" and "to fish, not more than is necessary for their own consumption during the season, it being understood that they may not employ for this purpose methods which alter the banks or the course of the water" (art. 1, paras. 1 and 2).

135. *Settlement of disputes (arbitration).* Any difference or dispute about the interpretation or application of the Agreement shall be referred to two arbitrators appointed by each Government. If within four months of the date on which they are appointed the two arbitrators are unable to give a decision, the dispute shall be referred to a third arbitrator appointed by them or by a third Power designated by the two Governments. In either case, the decision of the arbitrator or arbitrators shall be "final and binding" on the Parties (art. 3).

Malka Murri (frontier waters at) (ETHIOPIA AND KENYA)

Exchange of notes constituting an Agreement[114] *between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ethiopia amending the description of the Kenya–Ethiopia boundary, Addis Ababa, 29 September 1947*[115]

136. *Use of the waters (domestic use, watering-places).* The Boundary Commissioners, in making their decision with regard to the demarcation of the boundary at Malka Murri, will take into account "the most suitable arrangements for the supply of water to the Police Posts on both sides, and for the watering of the stock of the tribesmen from both Ethiopian and British territory" (note No. I, para. 3 (i) and (iv)).

Rivers Meli and Moa (GUINEA AND SIERRA LEONE)

Exchange of notes constituting an Agreement[116] *between Great Britain and France respecting the boundary between Sierra Leone and French Guinea, London, 4 September 1913*[117]

137. *Hydraulic power.* The use of the frontier waters of the Rivers Meli and Moa may only be employed for the production of hydraulic power after an agreement made

[104] The Agreement entered into force on 4 February 1895 by the exchange of notes.

[105] See *British and Foreign State Papers, 1866–1867* (London, 1871), vol. 87, p. 4. See also *Legislative Texts . . . (op. cit.)*, treaty No. 18.

[106] See *British and Foreign State Papers, 1866–1867* (London, 1871), vol. 87, p. 17.

[107] The Agreement came into force on 9 February 1888 by the exchange of notes.

[108] See *British and Foreign State Papers, 1890–1891* (London, 1897), vol. 83, p. 672. See also *Legislative Texts . . . (op. cit.)*, treaty No. 16.

[109] Also called the Komadugu Waube or Komadugu Yobe.

[110] The instruments of ratification were exchanged in London on 8 December 1904.

[111] See *British and Foreign State Papers, 1903–1904* (London, 1908), vol. 97, p. 31. See also *Legislative Texts . . . (op. cit.)*, treaty No. 19.

[112] This Agreement came into force as from the date of signature, in accordance with article 5.

[113] See United Nations, *Treaty Series*, vol. 210, p. 280. See also *Legislative Texts . . . (op. cit.)*, treaty No. 33.

[114] The Agreement came into force on 29 September 1947, by the exchange of notes.

[115] See United Nations, *Treaty Series*, vol. 82, p. 192. See also *Legislative Texts . . . (op. cit.)*, treaty No. 14.

[116] The Agreement entered into force on 4 September 1913, by the exchange of notes.

[117] See *British and Foreign State Papers, 1913* (London, 1916), vol. 106, p. 763. See also *Legislative Texts . . . (op. cit.)*, treaty No. 24.

beforehand between the two Governments (Protocol, art. 5).

138. *Fishing.* Fishing is free in the frontier waters of the rivers Meli and Moa. In the part of the Moa belonging entirely to France, the inhabitants of the two banks have equal rights of fishing (Protocol, arts. 5 and 8).

Rivers Muni and Outamboni (GABON AND RIO MUNI)

Convention[118] *between France and Spain for the demarcation of the French and Spanish possessions on the Sahara Coast and the Gulf of Guinea Coast, signed at Paris on 27 June 1900*[119]

139. *Control and use of the waters.* The control and use of the waters of the rivers Muni and Outamboni shall be the subject of arrangements to be agreed between the two Governments (art. V).

140. *Fishing.* Fishing shall be free in these rivers for French and Spanish nationals. Fisheries control shall also be the subject of arrangements between the two Governments (art. V).

River M'Pozo (ANGOLA AND CONGO (LEOPOLDVILLE))

Convention[120] *between Belgium and Portugal regarding various questions of economic interest in the colonies of the Belgian Congo and Angola, signed at Sao Paulo de Loanda on 20 July 1927*[121]

141. *Construction of a dam for the production of hydro-electric power.* Portugal agrees to the construction by Belgium of a dam on the River M'Pozo (art. 2, first para.).

142. *Compensation for damages.* Since, as a result of the construction of the dam, the level of the River M'Pozo will be raised in that part of its course which is situated in Angolan territory, Belgium, the up-stream State, shall compensate Portugal, the down-stream State, for any damages occasioned. The amount of compensation is specified by the Convention. The holder of the concession for the use of the dam shall be obliged to maintain at the disposal of the Portuguese Government or of nationals specified by the latter, in Angolan territory, an amount of electrical power equal to 15 per cent of the total power produced by the dam. The expense of transmitting the electrical power to Angolan territory shall be borne by the utilizer. Transmission shall be subject to local laws and regulations. The electrical power shall be supplied to the Portuguese Government at "cost price" and shall not be retailed by it " at a price lower than that which the holder of the concession of the dam charges to his own customers" (art. 2, second and third paragraphs).

143. *Settlement of disputes (arbitration).* All disputes between the Parties concerning the interpretation of the Convention shall be settled by arbitration (art. 5).

River Nile (UNITED ARAB REPUBLIC (EGYPT) AND SUDAN)

Treaty[122] *of alliance between the United Kingdom and Egypt, signed at London on 26 August 1936—Exchange of notes of 12 August 1936 annexed to the Treaty*[123]

144. *Arrangements for technical co-operation.* It is considered "desirable and acceptable" that the Inspector-General of the Egyptian Irrigation Service in the Sudan should be invited to attend the Governor-General's Council when matters relating to his departmental interests are before the Council.

Lake Nyasa (MOZAMBIQUE AND RHODESIA AND NYASALAND)

Agreement[124] *between the Government of the United Kingdom (acting on their own behalf and on behalf of the Government of the Federation of Rhodesia and Nyasaland) and the Government of Portugal regarding the Nyasaland–Mozambique frontier, signed at Lisbon, on 18 November 1954*[125]

145. *Use of the waters (fishing, other legitimate purposes).* The inhabitants of Nyasaland and Mozambique "shall have the right to use the waters of Lake Nyasa for fishing and other legitimate purposes" (art. 1, para. 3).

146. *Fishing:*

(a) *Regulation of methods of fishing.* The methods of fishing which may be employed shall be only those agreed between the Government of Nyasaland and the Government of Mozambique. The Governments may, however, agree "that different methods of fishing may be employed in the waters of one Party from those which may be employed in the waters of the other Party" (art. 1, para. 3).

(b) *Principle of non-discrimination.* There shall be no discrimination as between the inhabitants of Nyasaland and those of Mozambique under the regulations made by the Governments (art. 1, para. 3).

(c) *Fishing concessions.* In the event of a fishing concession being granted by either of the two Governments, the area of the concession shall be confined to the waters of the Government granting it (art. 1, para. 3).

Ramla Well (LIBYA AND EGYPT)

Agreement[126] *between Egypt and Italy fixing the frontier between Cyrenaica and Egypt, signed at Cairo on 6 December 1925*[127]

[118] The instruments of ratification were exchanged in Paris on 22 March 1901.

[119] See *British and Foreign State Papers, 1899–1900* (London, 1903), vol. 92, p. 1014. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 15.

[120] The exchange of the instruments of ratification took place at Lisbon on 2 March 1928.

[121] See League of Nations, *Treaty Series*, vol. LXXI, p. 436. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 3.

[122] The instruments of ratification were exchanged at Cairo on 22 December 1936.

[123] See *Supplement to the American Journal of International Law, 1937*, (Washington, D.C., The American Society of International Law, 1937), vol. 31, p. 93. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 8.

[124] The Agreement came into force on 26 October 1955 by the exchange of the instruments of ratification.

[125] See United Nations, *Treaty Series*, vol. 325, p. 308. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 32.

[126] The instruments of ratification were exchanged at Rome on 25 April 1933.

[127] See *British and Foreign State Papers, 1930*, part II (London, 1935), vol. 133, p. 976. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 6.

147. *Territory ceded for the purpose of providing drinking water (domestic use).* In order to provide a supply of drinking water to the inhabitants of Sollum, Italy cedes to Egypt the ownership of the Ramla Well at present operated by the Government of Italy, together with a zone around the said well and a strip of territory sufficient to link the well to the Egyptian frontier. When using the water of the Ramla Well, Egypt shall reserve an adequate amount of water for the needs of the local inhabitants who are Italian nationals (arts. 5 and 6).

River Rovuma (MOZAMBIQUE AND TANGANYIKA)

Exchange of notes constituting an Agreement[128] *between His Majesty's Government in the United Kingdom and the Portuguese Government regarding the boundary between Tanganyika Territory and Mozambique, Lisbon, 11 May 1936*[129]

148. *Use of the waters (domestic use, fishing, extraction of salt).* In order to supply their needs, the inhabitants of both banks shall have the right "over the whole breadth of the river to draw water, to fish and to remove saliferous sand for the purpose of extracting salt therefrom" (para. 5).

Semliki River[130] **and Lake Albert** (CONGO (LEOPOLDVILLE) AND UGANDA AND SUDAN)

Agreement between Great Britain and the Independent State of the Congo, modifying the Agreement signed at Brussels, 12 May 1894, relating to the spheres of influence of Great Britain and the Independent State of the Congo in East and Central Africa, signed at London on 9 May 1906[131]

149. *Limitations on the control of the river by the upstream State.* The Independent State of the Congo undertakes "not to construct, or allow to be constructed, any work on or near the Semliki or Isango River" which would diminish the volume of water entering Lake Albert, except in agreement with the Sudanese Government (art. III).

150. *Settlement of disputes.* All disputes concerning which the Parties are unable to come to an amicable understanding shall be submitted to the arbitration of the Hague Tribunal, whose decision shall be binding on both Parties (art. VIII).

Tanoe River (IVORY COAST AND GHANA)

Arrangement[132] *between Great Britain and France, fixing the boundary between the British and French possessions on the Gold Coast, signed at Paris on 12 July 1893*[133]

151. *Fishing:*

(a) *Respect for established rights.* The inhabitants of villages in the French possessions shall continue to enjoy the right of fishing on the Tanoe or Tendo River which they possessed previously to the conclusion of the Agreement (art. 5).

(b) *Application of local laws.* The exercise of the right of fishing shall be subject to local regulations (art. 5).

[128] This Agreement came into force on 1 February 1938. It was approved by the Council of the League of Nations and entered into force on the date mentioned, in accordance with the exchange of notes between the two Governments of 28 December 1937.

[129] See League of Nations, *Treaty Series*, vol. CLXXXV, p. 206. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 30.

[130] Also called the Isango.

[131] See *British and Foreign State Papers, 1905–1906* (London, 1910), vol. 99, p. 173. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 5.

[132] The Agreement came into force upon signature.

[133] See *British and Foreign State Papers, 1892–1893* (London, 1899), vol. 85, p. 31. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 17.

Chapter III

AMERICA

A. MULTILATERAL TREATIES

152. In this section, there is only the *Agreement concluded between Argentina, Bolivia and Paraguay on the utilization of the waters of the river Pilcomayo, signed at Buenos Aires on 10 February 1941,*[134] establishing a joint international commission to study the utilization of the river Pilcomayo. This Agreement has not entered into force.

153. It is pertinent to note that in the course of international conferences held by American States, joint declarations or resolutions on the utilization of the waters of international rivers have been adopted, enunciating both principles governing the utilization and use of international rivers in general, and principles applicable to certain specific rivers. The declarations and resolutions in question are those adopted by the seventh Inter-American Conference, held at Montevideo in 1933,[135] by the Regional Conference of the Countries of the River Plate, held at Montevideo in 1941,[136] and by the Tripartite Conference provided for in article 11 of the Agreement between Argentina and Uruguay relating to the utilization of the rapids of the Uruguay river in the area of Salto Grande, held at Buenos Aires in 1960.[137]

[134] Argentina, Ministerio de Relaciones Exteriores y Culto, *Memoria 1940–1941*, vol. I, pp. 265–267. Also M. O. Hudson, *International Legislation, 1938–1941* (Washington, D.C., The Carnegie Endowment for International Peace, 1949), vol. VIII, p. 631.

[135] Declaration of Montevideo concerning the industrial and agricultural use of international rivers, 24 December 1933 (see section A of annex I to the present report).

[136] Resolution concerning the establishment of joint technical commissions to study the hydrographic system of the River Plate, 6 February 1941 (see section B of annnex I to the present report).

[137] Joint Declaration of Argentina, Brazil and Uruguay, of 23 September 1960 (see foot-note 228 below).

B. BILATERAL TREATIES

1. Bilateral treaties concerned exclusively with the utilization and use of international rivers in America

(*a*) TREATIES RELATING GENERALLY TO CONTIGUOUS RIVERS AND TO CERTAIN SUCCESSIVE RIVERS IN THE TERRITORIES OF TWO STATES

Canada and the United States of America

Treaty[138] *between Great Britain and the United States relating to Boundary Waters, and Questions arising between the United States and Canada, signed at Washington, January 11, 1909*[139]

154. It is advisable to mention that three major issues of water regulation between Canada and the United States were outstanding at the beginning of 1900.[140] The most immediate problem was the allocation of the waters of the Milk and St. Mary Rivers between Alberta (Canada) and Montana (United States). A second problem was raised over a suggested diversion of the waters of Birch Lake in Minnesota (United States) which, in its natural course, flowed into the Lake of the Woods, and thus into Lake Superior, in order to generate electrical power. The most important and disturbing problem was the diversion of the waters of Lake Michigan by way of a drainage canal at Chicago which directed those waters into the Mississippi river above St. Louis.[141]

155. In 1905, a commission known as the "International Waterways Commission" was created.[142] It was a purely investigative body, with no authority whatsoever to act upon or enforce its decisions. In a report of 15 November 1906, dealing with an application of the Minnesota Canal and Power Company for permission to divert certain waters in the state of Minnesota from the boundary waters between Canada and the United States, the International Waterways Commission recommended the establishment of certain principles governing the use of boundary waters, and also the creation of a permanent commission having wider powers than its own. As early as 6 April 1906, Sir George Gibbons, a Canadian member of the International Waterways Commission, wrote to Mr. George Clinton, his American counterpart, suggesting that a treaty should be entered into to settle causes of differences between the two countries in respect of all international rivers. As a result of suggestions like that of Sir George Gibbons and of the recommendations of the International Waterways Commission, negotiations were conducted at Washington during the years 1907 and 1908 between the representatives of Canada and the United States. Sir George Gibbons and Mr. Clinton were instructed by their Governments to prepare a draft treaty based on the Commission's recommendations. A final draft treaty was worked out during the summer of 1908. The treaty drawn up as a result of the negotiations was signed at Washington on 11 January 1909.[143]

156. The purposes of this treaty are set forth in the preamble as follows: "to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise". The treaty also includes specific provisions relating to the Niagara, Milk and St. Mary Rivers.

157. *Definition of the term "boundary waters"*. Boundary waters are defined in the preliminary article of the treaty as "the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers and waterways, or waters flowing from such

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[138] The Treaty came into force on 5 May 1910 by exchange of instruments of ratification. Article I deals with navigation.

[139] See *British and Foreign State Papers, 1908–1909* (London, 1913), vol. 102, p. 137. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 79.

[140] Treaties on international rivers concluded between Canada and the United States in the nineteenth century concerned the definition of fluvial boundaries and navigation; e.g., the treaties signed at Washington on 5 June 1854 and 8 May 1871 between the United States of America and Great Britain on navigation in the St. Lawrence.

[141] See J. Austin, "Canadian United States practice and theory respecting the international law of rivers: A study of the history and influence of the Harmon doctrine", in *The Canadian Bar Review* (Ottawa, September 1959), vol. 37, p. 412. See also J. Q. Dealey, Jr., "The Chicago Drainage Canal and St. Lawrence Development", in *American Journal of International Law* (Washington, D.C., April 1929), vol. 23, p. 307; G. H. Hackworth, *Digest of International Law* (Washington, D.C., U.S. Government Printing Office, 1940), vol. I, p. 591; J. Simsarian, "The diversion of waters affecting the United States and Canada", in *American Journal of International Law* (Washington, D.C., 1938), vol. 32, p. 488; L. M. Bloomfield and G. F. Fitzgerald, *Boundary waters problems of Canada and the United States (The International Joint Commission 1912–1958)* (Toronto, The Carswell Company Ltd., 1958); W. L. Griffin, "A History of the Canadian-United States Boundary Waters Treaty of 1909", in *University of Detroit Law Journal* (Detroit, Mich., October 1959), vol. 37, p. 76.

[142] This Commission was the forerunner of the International Joint Commission, but its duties were limited to investigation and report. The idea of the Commission arose from a proposal made at a meeting of the Irrigation Congress of the United States held in New Mexico in 1895, where a resolution was passed asking for steps to be taken "for the appointment of an international commission to act in conjunction with the authorities of Mexico and Canada in adjudicating the conflicting rights which have arisen, or may hereafter arise, on streams of an international character". In 1896, the Canadian Government informed the United States that it favoured such a proposal. In 1902, the United States Congress authorized the President to invite Great Britain to join in the foundation of an international commission "to investigate and report upon the conditions and uses of the waters adjacent to the boundary lines between the United States and Canada, including all of the waters of the lakes and rivers whose natural outlet is by the River Saint Lawrence to the Atlantic ocean . . ." (see River and Harbor Act, 32 Stats. 331). It might be pointed out here that the jurisdiction of the Commission included Lake Michigan, which was left out of the definition of boundary waters under the treaty of 1909. In 1906, with the appointment of the Canadian members, the Commission began its short but useful existence (1906–1915). Reference may be made to the following works: G. P. Glazebrook, *A history of Canadian external relations* (published under the auspices of the Canadian Institute of International Affairs) (London, Toronto, New York, Oxford University Press, 1950), pp. 239 and 240; "The International Joint Commission, Round Table, September 1915", in *Papers relating to the work of the International Joint Commission* (Ottawa, 1929), p. 43; C. J. Chacko, *The International Joint Commission between the United States of America and the Dominion of Canada* (New York, Columbia University Press, and London, P. S. King and Son Ltd., 1932), pp. 71–78; J. M. Callahan, *American foreign policy in Canadian relations* (New York, The MacMillan Company, 1937), pp. 500–510 (see J. Austin, *op. cit.*, p. 414, foot-note 72).

[143] L. M. Bloomfield and G. F. Fitzgerald, *op. cit.*, pp. 10–14.

lakes, rivers and waterways, or the waters of rivers flowing across the boundary".

158. *Utilization and diversion of waters of rivers flowing into boundary waters, as well as of waters of successive rivers. Respect for acquired rights with regard to navigation.* Each Party reserves to itself the exclusive jurisdiction and control over the use and diversion, whether temporary or permanent, of all waters on its own side of the line which in their natural channels would flow across the boundary or into boundary waters; but it is agreed that any interference with or diversion from their natural channel of such waters on either side of the boundary, resulting in any injury on the other side of the boundary, shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diversion or interference occurs; but this provision shall not apply to cases already existing or to cases expressly covered by special agreement between the Parties[144] (art. II).

159. Neither of the Parties intends to surrender any right which it may have to object to any interference with or diversions of water on the other side of the boundary, the effect of which would be productive of material injury to the navigation interests on its own side of the boundary (art. II, *in fine*).

160. *Utilization and diversion of boundary waters affecting the natural level or flow of those waters. Respect for existing rights regarding works for the improvement of navigation. Domestic and sanitary uses.* It is agreed that, in addition to the uses, obstructions and diversions heretofore permitted or hereafter provided for by special agreement between the Parties, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line, shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval of a joint commission, to be known as the International Joint Commission (art. III). The foregoing provisions are not intended to limit or interfere with the existing rights of the United States and Canada to undertake and carry on governmental works in boundary waters ... for the benefit of commerce and navigation, provided that such works are wholly on its own side of the line and do not materially affect the level or flow of the boundary waters on the other, nor are such provisions intended to interfere with the ordinary use of such waters for domestic and sanitary purposes (art. III, *in fine*).

161. *Prohibition of works in rivers flowing from boundary waters, or, in the case of successive rivers, in waters at a lower level than the boundary the effect of which is to raise the natural level of waters.* The Parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary, unless the construction or maintenance thereof is approved by the International Joint Commission (art. IV).

162. *Pollution.* Boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other (art. IV, *in fine*).

163. *Special agreements. Concurrent legislation.* In all cases, "special agreements" are understood and intended to include not only direct agreements between the Parties, but also any mutual arrangement between the United States and Canada expressed by concurrent or reciprocal legislation (art. XIII).

164. *Establishment of an international joint commission.* Taking into account the need for machinery to carry out its aims, the treaty provides for the establishment and maintenance of an International Joint Commission of the United States and Canada composed of six commissioners, three from each country (art. VII). The Commission exercises various functions under the treaty. Depending on the type of case referred to it, this body may perform judicial, investigative, administrative and arbitral functions (articles VI, VIII, IX and X). In its judicial and investigative capacities, it has had many cases before it; in its administrative capacity, it has performed a continuing service in relation to the waters of the St. Mary and Milk Rivers, but it has not yet been called upon to act in an arbitral capacity.[145] The Commission also discharges various functions devolving upon it principally under the Lake of the Woods Treaty, 1925,[146] the Rainy Lake Convention, 1938,[147] the Niagara Diversion Treaty, 1950,[148] and the Columbia River Basin Treaty, 1961.[149]

165. *General provisions governing the International Joint Commission in its capacity as a judicial organ.* In passing judgement upon cases involving the use of obstruction or diversion of the waters in respect to which, under articles III and IV of the treaty, the Commission has jurisdiction, that body is governed by certain rules set out in the treaty (art. VIII):

(a) *Equality of rights in the use of boundary waters.* Each Party has, on its own side of the boundary, equal and similar rights in the use of boundary waters as defined in the treaty.

(b) *Order of precedence among the various uses of boundary waters.* The Commission shall observe the following order of precedence among the various uses of boundary waters: (i) uses for domestic and sanitary purposes; (ii) uses for navigation, including canal navigation; (iii) uses for power and for irrigation purposes. It is understood that no use is permitted which tends materially to conflict with or

[144] See R. Scott, "The Canadian-American boundary waters treaty: why article II?" in *The Canadian Bar Review* (Ottawa, December 1958), vol. 36, p. 511.

[145] See L. M. Bloomfield and G. F. Fitzgerald, *op. cit.*, p. 15; and R. A. Mackay, "The International Joint Commission between the United States and Canada", in *American Journal of International Law* (Washington, D.C., April 1928), vol. 22, p. 292.

[146] See paras. 174–183 below.

[147] See paras. 239 and 240 below.

[148] See paras. 227–232 below.

[149] See paras. 188–200 below.

restrain any other use which is given preference over it in the order of precedence.

(c) *Respect for acquired rights of use.* The foregoing provisions shall not apply to or disturb any existing uses of boundary waters on either side of the boundary.

(d) *Suspension of requirement for an equal division of boundary waters in cases of temporary diversion.* The requirement for an equal division may in the discretion of the Commission be suspended in cases of temporary diversions along boundary waters at points where such equal divisions cannot be made advantageously on account of local conditions, and where such diversions do not diminish elsewhere the amount available for use on the other side.

(e) *Prior approval of the Commission for the construction of protective works. Compensation for injury.* The Commission in its discretion may make its approval in any case conditional upon the construction of remedial or protective works to compensate so far as possible for the particular use or diversion proposed, and in such cases may require that suitable and adequate provision, approved by the Commission, be made for the protection and indemnity against injury of any interests on either side of the boundary. But it is mandatory that in cases involving the elevation of the natural level of waters, the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.

166. *Provisions concerning the Niagara River:*

Diversion of waters. Limitations. The Parties agree that it is expedient to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both Parties to accomplish this object with the least possible injury to investments which have already been made in the construction of power plants. No diversion of the waters of the Niagara River above the Falls from the natural course and stream thereof shall be permitted except for the purposes and to the extent hereinafter provided (article V).[150]

167. *Provisions concerning the St. Mary and Milk Rivers:*

(a) *Use of waters for irrigation and production of power.* The Parties agree that the St. Mary and Milk Rivers and their tributaries, in the State of Montana and the Provinces of Alberta and Saskatchewan, are to be treated as one stream for the purposes of irrigation and power (art. VI).

(b) *Equitable apportionment of waters.* The waters thereof are to be apportioned equally between the United States and Canada, but in making such equal apportionment more than half may be taken from one river and less than half from the other by either country, so as to afford a more beneficial use to each. The treaty also contains special provisions regarding prior appropriations in the apportionment of the waters during the irrigation season between 1 April and 31 October. The measurement and apportionment of the water to be used by each country is from time to time to be made jointly by the properly constituted irrigation officers of the two Governments under the direction of the International Joint Commission (art. VI).

(c) *Use of river channels for the diversion of waters.* The channel of the Milk River in Canada may be used at the convenience of the United States for the conveyance, while passing through Canadian territory, of waters diverted from the St. Mary River (art. VI).

(*b*) Treaties relating to one or more specific rivers[151]

Acaray and Monday Rivers (Brazil and Paraguay)

Agreement[152] concerning co-operation between the United States of Brazil and the Republic of Paraguay in a study on the utilization of the water-power of the Acaray and Monday Rivers, signed at Rio de Janeiro on 20 January 1956[153]

168. Brazil and Paraguay concluded this agreement to promote the adoption of measures conducive to their economic development. The agreement concerns a study of the utilization in Paraguayan territory, in the vicinity of the Brazilian boundary, of the water-power of the Acaray and Monday Rivers, which are tributaries of the Paraná River.

169. *Studies to be carried out by the Government of Brazil.* The studies, to be carried out by the Government of Brazil, are to consist mainly of: (*a*) a reconnaissance and site inspection of the region in which the waterfalls of the rivers are situated, in order to determine the ways in which their power could be utilized; (*b*) a hydrological study of the régime of the rivers in the vicinity of the waterfalls; (*c*) a description of the hydro-electric project; (*d*) a preliminary plan and specification for transmission lines; and (*e*) an economic study of the works and their repercussions on the development of the neighbouring regions, including suggestions for electricity tariffs (art. II).

170. *Communication of completed studies to the Government of Paraguay.* All studies, together with the documents on which they are based, shall be transmitted by the Government of Brazil to the Government of Paraguay as they are completed (art. III).

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[150] See the Treaty between Canada and the United States of America concerning the Diversion of the Niagara River, signed at Washington on 27 February 1950 (paras. 227–232 below).

[151] The treaty concluded between Guatemala and El Salvador concerning the use of the waters of Lake Güija, signed 15 April 1957, has not entered into force and is therefore not included in the present report (for an analysis of the provisions of this treaty, see M. Villacorta, A. Palacios and S. Osorio, "Dictamen sobre el tratado para el aprovechamiento de las aguas del lago de Güija", *Universidad de San Carlos*, No. 44 (Guatemala, 1958), p. 93).

Canada and the United States of America have concluded agreements concerning the conservation and the ascent of salmon in the Fraser basin; these agreements comprise the Convention of 26 May 1930 (see League of Nations, *Treaty Series*, vol. CLXXXIV, p. 306), amended by the Protocol of 28 December 1956 (see United Nations, *Treaty Series*, vol. 290, p. 104) and the Exchange of Notes of 21 July and 5 August 1944 (United Nations, *Treaty Series*, vol. 121, p. 300). However, since the Fraser is a Canadian national river, those agreements are not reproduced here either.

[152] The exchange of the instruments of ratification took place at Rio de Janeiro on 6 September 1957.

[153] Brazil, Ministry of Foreign Affairs, *Coleção de Atos Internacionais do Brasil*, No. 393, p. 4. See also *Legislative Texts* ... (*op. cit.*), treaty No. 46.

171. *Apportionment of water-power produced. Prior communication by Brazil. Terms of payment.* For a period of twenty years from the date on which the first electric generator is put into service, Brazil shall have the right to consume up to 20 per cent of the electric power which the generators in service can produce, paying the rates to be established in the corresponding tariffs. This right may be reserved for the same number of years by agreement between the parties (art. V). The Government of Brazil shall inform the Government of Paraguay, with at least three years' notice, of the date on which it will begin to make use of the right granted to it and of the quantity of electricity that it wishes to consume (art. VI). The terms of payment for the power requested or consumed by Brazil shall be subject to adjustment in a manner to be agreed upon by the administrative authorities of both countries (art. VII).

172. *Right of access.* Personnel of either country whose task it is to carry out the studies may freely enter, travel and leave the territory of the two States with the equipment necessary for the discharge of their duties (art. VIII).

173. *Financing of works to be undertaken.* The Government of Brazil shall collaborate with the Government of Paraguay in obtaining finance for the works to be undertaken in pursuance of the Agreement (art. X).

Lake of the Woods (Canada and the United States)

Agreement[154] *and Protocol*[155] *between Canada and the United States to regulate the level of Lake of the Woods, signed at Washington on 24 February 1925*[156]

174. The two Parties accept as a basis of agreement the recommendations made by the International Joint Commission[157] in its final report of 18 May 1917,[158] on the reference concerning Lake of the Woods submitted to it by the Governments of the United States of America and Canada. The level of the lake shall be regulated with a view to securing to the inhabitants of Canada and the United States the most advantageous use of the waters thereof and of the waters flowing into and from the lake for domestic and sanitary purposes, and for navigation, fishing, power, irrigation and reclamation purposes (art. 2).

175. *Establishment of lake control boards.* The Government of Canada shall establish and maintain a Canadian Control Board to regulate and control the outflow of the waters of the Lake of the Woods. Moreover, there shall also be established and maintained an International Lake of the Woods Control Board composed of two engineers, one appointed by the Government of Canada and the other by the Government of the United States. Whenever the level of the lake rises above a particular elevation or falls below a particular elevation, the rate of total discharge of water from the lake shall be subject to the approval of this Board (art. 3).

176. *Regulation of the waters of the lake.* The level of the Lake of the Woods shall ordinarily be maintained between two specified elevations. Regulation between these two elevations shall be such as to ensure the highest continuous uniform discharge of water from the lake. The level of the lake shall at no time be reduced below the lower elevation, except during periods of low precipitation, and then only upon the approval of the International Lake of the Woods Control Board and subject to such conditions and limitations as may be necessary to protect the use of the waters of the lake for domestic, sanitary, navigation and fishing purposes (art. 4). In certain circumstances, and in the light of experience, the Control Board may permit the raising of the elevation of the upper level of the lake (art. 5).

177. *Disagreements as to the exercise of the functions of the International Lake of the Woods Control Board.* Any disagreement between the members of the Board as to the exercise of the functions of the Board shall be immediately referred to the International Joint Commission, whose decision shall be final (art. 6).

178. *Works to be constructed at the request of Canada.* The works needed to enlarge the capacity of the outlets of the Lake of the Woods, as well as the necessary works and dams for controlling and regulating the outflow of the water, shall be provided for at the instance of the Government of Canada, either by the improvement of existing works and dams or by the construction of additional works (art. 7).

179. *Flowage easement upon lands bordering on the Lake of the Woods in the United States.* A flowage easement shall be permitted up to a specific elevation upon all lands bordering on the Lake of the Woods in the United States, and the United States assumes all liability to the owners of such lands for the costs of such easements (art. 8, first paragraph).

180. *Protective works and measures to be provided by the United States.* The Government of the United States shall provide for protective works and measures in the United States along the shores of the Lake of the Woods and the banks of the Rainy River, in so far as such protective works and measures may be necessary for the purposes of the regulation of the level of the lake. Such works and measures are listed in the agreement (art. 8, second paragraph).

181. *Compensation to be paid by Canada to the United States.* In consideration of the undertakings of the United States, the Government of Canada shall pay to the Government of the United States a sum specified in the agreement (art. 10, second paragraph).

182. *Responsibility for damage or injury.* Canada and the United States shall each on its own side of the boundary assume responsibility for any damage or injury which may have resulted to it or to its inhabitants prior to the conclusion of the agreement from the fluctuations of the level of the Lake of the Woods or of the outflow therefrom. Each Party shall likewise assume responsibility for any damage or injury which may hereafter result to it or to its inhabitants from the regulation of the level of the lake in the manner provided for in the agreement (art. 9). The Governments of

[154] This Agreement entered into force on 17 July 1925 by the exchange of the instruments of ratification.

[155] The Protocol concerns the implementation of certain provisions of the Agreement.

[156] See League of Nations, *Treaty Series*, vol. XLIII, p. 252. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 50.

[157] See para. 164 above.

[158] *Final report of the International Joint Commission on the Lake of the Woods Reference* (Washington, D.C., 1917).

Canada and the United States shall each be released from responsibility for any claims arising in the territory of the other (art. 10, first paragraph).

183. *Prohibition of diversion of waters from the Lake of the Woods watershed.* No diversion shall be made of any waters from the Lake of the Woods watershed to any other watershed except by authority of the United States or Canada within their respective territories and with the approval of the International Joint Commission (art. 11).[159]

Colorado River and Rio Grande[160]

(UNITED STATES OF AMERICA AND MEXICO)

Boundary Convention[161] between the United States of America and Mexico, signed at Washington on 1 March 1889[162]

184. This Convention was concluded to facilitate the carrying out of the principles contained in the treaty of 12 November 1884[163] concerning the boundary line where that line follows the bed of the Rio Grande and that of the Colorado River, and to avoid the difficulties arising out of alterations in the beds of those two rivers.

185. *Establishment of an International Boundary Commission.* All differences or questions that may arise on that portion of the frontier between the United States and Mexico where the Rio Grande and the Colorado Rivers form the boundary line, whether such differences or questions grow out of alterations or changes in the bed of the aforesaid Rio Grande and that of the aforesaid Colorado River, or of works that may be constructed in those rivers, or of any other cause affecting the boundary line, shall be submitted for examination and decision to an International Boundary Commission, which shall have exclusive jurisdiction in the case of those differences or questions (art. I). The Convention also defines the composition, duties and powers of the Commission (arts. II to VIII).[164]

Columbia River (Basin) (CANADA AND THE UNITED STATES)

(1) *Exchange of Notes[165] constituting an Agreement between the United States of America and Canada relating to a study to be made by the International Joint Commission with respect to the Upper Columbia River Basin, Ottawa, 25 February and 3 March 1944[166]*

186. In order to determine whether a greater use than is currently being made of the waters of the Columbia River system would be feasible and advantageous, the Governments of the United States and Canada agreed by this exchange of notes to refer the matter to the International Joint Commission pursuant to article IX of the Treaty relating to Boundary Waters between the United States and Canada of 11 January 1909.[167]

187. *Investigation to be undertaken by the International Joint Commission—concept of a river basin.* The Commission is requested to determine whether the further development of the river basin would be practicable and in the public interest, bearing in mind domestic water supply and sanitation, navigation, efficient development of water power, the control of floods, the needs of irrigation, reclamation of wet lands, conservation of fish and wildlife, and other beneficial public purposes (para. 2).

(2) *Treaty[168] between the United States of America and Canada relating to co-operative development of the water resources of the Columbia River Basin, signed at Washington, 17 January 1961[169]*

188. An essential fact in the discussion of the development of the Columbia River is that the demand for electric power in the Canadian and United States Pacific North-West has increased enormously since the Second World War. It is the competition between Canadian and United

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[159] This article arose from the following recommendations of the International Joint Commission:

". . . as a matter of sound international policy, neither Government should permit the permanent or temporary diversion out of the watershed of any waters within its jurisdiction which are tributary to the boundary waters under consideration, without first referring the matter to the Commission for such recommendation as it may deem appropriate" (*ibid.*, p. 38).

"The Commission appreciates the fact that, in the case of drainage basins that lie wholly within one country or the other, it may be desirable artificially to divert waters out of and from their own local watershed for use in another. On the other hand, diversions from an international watershed, such as that of the Lake of the Woods, whereby the international channel in that watershed would be deprived by such diversion of waters which naturally belong to the Lake of the Woods drainage system, would very probably lead to irrigating disputes between the people of two neighbouring countries. Further, the existing and future development of the entire waters of the Lake of the Woods watershed will involve very large expenditures, and an investment of such magnitude must naturally depend upon some definite understanding that the flow of water on which it is based will not be diminished by a diversion of any portion thereof from the watershed. For these reasons, the Commission has suggested that no diversions, temporary or permanent, out of the Lake of the Woods watershed, of any waters which in their natural course flow into these boundary waters, should be permitted without first referring the matter to the Commission for such recommendations as it may deem appropriate" (*ibid.*, pp. 70 and 71).

[160] Known also as Rio Bravo.

[161] The Convention came into force on 24 December 1890 by the exchange of the instruments of ratification. This Convention was indefinitely extended by article 2 of the Treaty of 3 February 1944 between the United States of America and Mexico relating to the utilization of the waters of the Colorado and Tijuana Rivers, and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico (see paras. 211–216 below).

[162] See Mexico, Secretaría de Relaciones Exteriores, *Tratados y Convenciones Vigentes* (Mexico, 1904), pp. 168–172; see also W. M. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers, 1776–1909* (Washington, D.C., U.S. Government Printing Office, 1910), vol. I, p. 1167. See also *Legislative Texts . . . (op. cit.)*, treaty No. 74.

[163] See Mexico, Secretaría de Relaciones Exteriores, *Tratados y Convenciones Vigentes* (Mexico, 1904), pp. 75–79; see also W. M. Malloy, *op. cit.*, p. 1159.

[164] C. A. Timm, *The International Boundary Commission: United States and Mexico* (Austin, Texas, Publication No. 4134 of the Bureau of Research in the social sciences studies, University of Texas, 1941).

[165] The Agreement came into force on 3 March 1944 by the exchange of notes.

[166] See United Nations, *Treaty Series*, vol. 109, p. 192. See also *Legislative Texts . . . (op. cit.)*, treaty No. 58.

[167] See paras. 154–167 above.

[168] Ratified by the United States on 16 March 1961.

[169] See *United States of America, Senate, Columbia River Treaty. Report of the Committee on Foreign Relations, Executive C, 87th Congress, 1st session* (Washington, D.C., U.S. Government Printing Office, 1961), p. 12. See also *Legislative Texts . . . (op. cit.)*, treaty No. 65.

States interests for cheap power that underlies the problems in the development of the Columbia River. One of the most important features of the Columbia River for hydro-electric power purposes is that its flow is subject to great seasonal fluctuations. These seasonal fluctuations can best be cured by dams built in Canada. The waters may then be released from time to time so that they flow away below the dam and power plants down-stream are served by a greatly increased continuous flow and can usually produce more electric power at little extra cost. Another fact of interest is the present unequal development of the Columbia River in Canada and in the United States. The history of the controversy about the Columbia River starts in March 1944, when the Canadian and United States Government submitted a reference to the International Joint Commission by the Exchange of Notes above. The Commission then established the International Columbia River Engineering Board to make the necessary studies. The report of this Board was completed about the end of 1958 and was brought before the International Joint Commission for discussion in March 1959. Only then did all the relevant facts about the hydro-electric potential of the river become available.[170] The issues in law were the right of Canada to divert its up-stream waters in the Columbia and Kootenay Rivers within its boundaries under international law and under article II of the Boundary Waters Treaty of 1909,[171] and the fact and extent of liability on Canada's part, if any.[172] The treaty signed at Washington on 17 January 1961 settled these questions. After enumerating the purposes of the Treaty, the preamble thereto includes the recognition "that the greatest benefit to each country can be secured by co-operative measures for hydro-electric power generation and flood control".

189. *Provision and storage by the up-stream State, Canada, of an additional quantity of water in order to increase the volume of water down-stream. Construction of dams up-stream.* Canada shall provide in the Columbia River basin in Canada 15.5 million acre-feet of storage usable for improving the flow of the Columbia River. In order to provide this storage, Canada shall construct dams on the Columbia River near Mica Creek, near the outlet of Arrow Lakes, and on one or more tributaries of the Kootenay River (art. II).

190. *Operation of hydro-electric facilities by the down-stream State, the United States.* The United States shall maintain and operate its hydro-electric facilities in a manner that makes the most effective use of the improvement in stream flow resulting from the operation of the new additional Canadian storage for hydro-electric power generation in the United States power system (art. III).

191. *Operation of storage and flood control by the up-stream State, Canada.* For the purpose of increasing hydro-electric power generation in the United States and Canada, Canada shall operate the Canadian storage in accordance with the procedures described in annex A of the treaty and pursuant to hydro-electric operating plants made therein (art. IV, para 1). For the purpose of flood control, Canada shall operate in accordance with annex A and pursuant to flood control operating plans set forth by the treaty (art. IV, paras. 2–6). For the flood control provided by Canada, the United States shall pay or compensate Canada according to the provisions of article VI.

192. *Utilization by one State, for hydro-electric power purposes, of the improvement in stream flow brought about by operation of storage constructed in the other State. Prior approval.* Improvement in stream flow in one country brought about by operation of storage constructed under the treaty in the other country shall not be used directly or indirectly for hydro-electric power purposes without the prior approval of the former country (art. XI).

193. *Diversion of water. Prior approval.* Except as provided in the treaty, neither the United States nor Canada shall, without the consent of the other, evidenced by an exchange of notes, divert for any use, other than a consumptive use, any water from its natural channel in a way that alters the flow of any water as it crosses the Canada-United States boundary within the Columbia River basin (art. XIII).

194. *Provisions concerning the down-stream power benefits:*

(a) *Determination of benefits.* The down-stream power benefits shall be the difference in the hydro-electric power capable of being generated in the United States with and without the use of Canadian storage. For the purpose of determining the down-stream power benefits, the principles and procedures set out in annex B of the treaty shall be used and followed (art. VII).

(b) *Rights of the up-stream State, Canada.* Canada is entitled to one-half of the down-stream power benefits. The United States shall deliver to Canada at a point on the Canada-United States boundary the down-stream power benefits to which Canada is entitled (art. V).

(c) *Disposal of entitlement.* With the authorization of the United States and Canada, evidenced by exchange of notes, portions of the down-stream power benefits to which Canada is entitled may be disposed of within the United States. The respective general conditions and limits within which the entities may arrange initial disposals shall be set out in an exchange of notes to be made as soon as possible after the ratification date. The entities may arrange and carry out exchanges of the dependable hydro-electric capacity and average annual usable hydro-electric energy to which Canada is entitled for average annual usable hydro-electric energy and dependable hydro-electric capacity respectively (art. VIII).

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[170] See C. B. Bourne, "The Columbia River Controversy", *The Canadian Bar Review* (Ottawa, September 1959), vol. 37, p. 444.

[171] See paras. 158 and 159 above.

[172] See, in "The diversion of Columbia River waters", published by the University of Washington, Seattle (Washington) in June 1956, the articles by Messrs. Ladner, Hutcheson, Bourne, Sherwood and Parry, quoted in *Proceedings of the American Society of International Law at its fiftieth annual meeting held at Washington, D.C., April 25–28, 1956* (Washington, D.C., American Society of International Law, 1957), p. 274. See also C. Eagleton, "The use of the panel discussion on the Columbia River", in *Annual Meeting, The Canadian Bar Association* (Banff, Alberta, September 1957); L. J. Ladner, "Diversion of Columbia River waters", in *University of British Columbia, Lecture series No. 27* (1956); C. E. Martin, "The Diversion of Columbia River Waters", *Proceedings of the American Society of International Law at its fifty-first annual meeting held at Washington, D.C., April 25–27, 1957* (Washington, D.C., American Society of International Law, 1958), p. 2: M. Cohen, "Some legal and policy aspects of the Columbia River dispute", in *The Canadian Bar Review* (Ottawa, March 1958), vol. 36, p. 25; R. Scott, *op. cit.*; J. Austin, *op. cit.*; C. B. Bourne, *op. cit.*

(d) *Variation of entitlement.* If the United States considers with respect to any hydro-electric power project planned on the main stream of the Columbia River between Priest Rapids Dam and McNary Dam that the increase in entitlement of Canada to down-stream benefits resulting from the operation of the project would produce a result which would not justify the United States in incurring the costs of construction and operation of the project, the United States and Canada at the request of the United States shall consider the modification of the increase in entitlement. An agreement reached for this purpose shall be evidenced by an exchange of notes (art. IX).

195. *Development of the Kootenay River (tributary of the Columbia). Construction of a dam by the down-stream State, the United States.* The United States, for a period of five years from the ratification date, has the option to commence the construction of a dam on the Kootenay River near Libby (Montana) to provide storage to meet flood control and other purposes in the United States. The storage reservoir of the dam shall not raise the level of the Kootenay River at the Canada-United States boundary above an elevation consistent with a normal full pool elevation at the dam (the elevation is indicated in feet). All benefits which occur in either country from the construction and operation of the storage accrue to the country in which the benefits occur. The United States shall exercise its option by written notice to Canada and shall submit with the notice a schedule of construction. Canada, in consideration of the benefits accruing to it, shall make available for flooding the land in Canada necessary for the storage reservoir of the dam, within a period consistent with the construction schedule. The operation of storage by the United States shall be consistent with any order of approval which may be in force from time to time relating to the levels of Kootenay Lake made by the International Joint Commission under the Boundary Waters Treaty of 1909 (art. XII).

196. *Arrangements for implementation of the Treaty.* The United States and Canada shall each designate entities and, when so designated, the entities are empowered and charged with the duty to formulate and carry out the operating arrangements necessary to implement the Treaty (art. XIV).

197. *Technical co-operation. Establishment of a Columbia Permanent Engineering Board.* A Columbia Permanent Engineering Board is established, consisting of four members, two to be appointed by Canada and two by the United States. The Treaty enumerates the functions which are performed by the Board (art. XV).

198. *Liability for damage. Exceptions.* The United States and Canada shall be liable one to the other and shall make appropriate compensation one to the other in respect of any act, failure to act, omission or delay amounting to a breach of the Treaty other than an act, failure to act, omission or delay occurring by reason of war, strike, major calamity, act of God, uncontrollable force or maintenance curtailment. Both Parties, each to the extent possible within its territory, shall exercise due diligence to remove the cause of and to mitigate the effect of any injury, damage or loss occurring in the territory of the other (art. XVIII).

199. *Settlement of differences.* Differences arising under the Treaty which cannot be resolved may be referred by either Party to the International Joint Commission for decision. If the International Joint Commission does not render a decision within three months of the referral or within such other periods as may be agreed upon by the Parties, either may then submit the difference to arbitration. Arbitration shall be by a tribunal composed of a member appointed by Canada, a member appointed by the United States and a member appointed jointly by both countries. The United States and Canada shall accept as definitive and binding and shall carry out any decision of the International Joint Commission or an arbitral tribunal. The two countries may agree on alternative procedures for settling differences arising under the Treaty, including reference of any difference to the International Court of Justice for decision (art. XVI).

200. *Termination of the Treaty. Restoration of pre-Treaty legal status.* Nothing in the Treaty and no action taken or foregone pursuant to its provisions shall be deemed, after its termination or expiration (see art. XIX), to have abrogated or modified any of the rights or obligations of the Parties under then existing international law, with respect to the uses of the water resources of the Columbia River basin. Upon termination of the Treaty, the Boundary Waters Treaty of 1909 shall, if it has not been terminated, apply to the Columbia River basin (art. XVII).

Rio Grande (United States and Mexico)

(1) *Convention[173] between the United States of America and Mexico concerning the equitable distribution of the waters of the Rio Grande for irrigation purposes, signed at Washington, 21 May 1906[174]*

201. This Convention put an end to the controversy between the United States and Mexico regarding the distribution of the waters of the Rio Grande. As early as 1895, the question of the utilization of the waters of the Rio Grande had been raised by the Government of Mexico, which protested against the irrigation works carried out by a United States company, the Rio Grande Dam and Irrigation Company, on United States territory.[175] Under the 1906

[173] This Convention entered into force on 16 January 1907, by the exchange of the instruments of ratification. The arrangement contemplated by this Convention applies only to the portion of the Rio Grande which forms the international boundary from the head of the Mexican canal down to Fort Quitman (Texas), that is, the Upper Rio Grande.

[174] See G. F. de Martens, ed., *op. cit.* (Leipzig, Librairie Dieterich, 1908), 2ème série, tome 35, p. 461. See also *Legislative Texts ...* (*op. cit.*), treaty No. 75.

[175] On that occasion, the United States Attorney-General, Mr. Harmon, made this statement: "The fact that the Rio Grande lacks sufficient water to permit its use by the inhabitants of both countries does not entitle Mexico to impose restrictions on the United States which would hamper the development of the latter's territory or deprive its inhabitants of an advantage with which nature had endowed them and which is situated entirely within its territory. To admit such a right would be completely contrary to the principle that the United States exercises full sovereignty over its national territory. . . . In my opinion, the rules, principles and precedents of international law impose no liability or obligation upon the United States." (see G. Sauser-Hall, "L'utilisation industrielle des fleuves internationaux", *Recueil des cours de l'Académie de droit international de la Haye, 1953,*

(Continued on next page.)

Convention, the United States and Mexico agreed to the equitable distribution of certain waters of the Rio Grande, "to remove all causes of controversy between them in respect thereto, and being moved by considerations of international comity".

202. *Delivery of a fixed quantity of water by the up-stream State, the United States, to the down-stream State, Mexico. Construction of a diversion dam on United States territory.* After the completion of the proposed storage dam near Engle, New Mexico, and the distributing system auxiliary thereto, and as soon as water shall be available in that system for the purpose, the United States shall deliver to Mexico a total of 60,000 acre-feet of water annually, in the bed of the Rio Grande at the point where the head works of the Acequia Madre, known as the Old Mexican Canal, now exist above the city of Juárez, Mexico (art. I).

203. *Distribution of the water by the United States. Cases of extraordinary drought or serious accident.* The delivery of the specified amount of water shall be assured by the United States and shall be distributed through the year in the same proportions as the water supply proposed to be furnished from the said irrigation system to lands in the United States in the vicinity of El Paso, Texas, according to a given schedule (art. II). In case, however, of extraordinary drought or serious accident to the irrigation system in the United States, the amount delivered to the Mexican Canal shall be diminished in the same proportion as the water delivered to lands under the irrigation system in the United States (art. II, *in fine*). The delivery shall be made without cost to Mexico, and the United States agrees to pay the whole cost of storing, conveying, measuring and delivering the water (art. III).

204. *The delivery of water by the United States does not imply recognition of Mexican claims.* The delivery of water as provided in the Convention is not to be construed as a recognition by the United States of any claim on the part of Mexico to the waters, and it is agreed that in consideration of such delivery of water, Mexico waives any and all claims to the waters of the Rio Grande (art. IV).

205. *The conclusion of the Convention does not imply that the United States concedes any general principle.* The United States, in entering into the treaty, does not thereby concede, expressly or by implication, any legal basis for any claims heretofore asserted or which may be hereafter asserted by reason of any losses incurred by the owners of land in Mexico due or alleged to be due to the diversion of the waters of the Rio Grande within the United States; nor does the United States in any way concede the establishment of any general principle or precedent by the concluding of the treaty (art. V).

(2) *Convention[176] between the United States of America and Mexico for the rectification of the Rio Grande (Rio Bravo del Norte) in the El Paso-Juárez Valley, signed at Mexico on 1 February 1933[177]*

206. By this Convention, the United States and Mexico resolve to undertake in common the necessary works to prevent the flooding of lands within the El Paso-Juárez Valley and to stabilize the boundary line in accordance with the plans prepared by the International Boundary Commission of the United States and Mexico.[178]

207. *Execution of the rectification work.* The Government of the United States and the Government of Mexico have agreed to carry out the Rio Grande rectification works provided for in Minute 129 (dated 31 July 1930) of the International Boundary Commission[179] within the limits of the river set out by the Convention. The two Governments shall carry out the material execution of the works in accordance with the terms of the Convention (art. I). The direction and inspection of the works shall be under the International Boundary Commission (art. IV).

208. *Respect for acquired rights (territorial rights and private rights).* The construction of works shall not confer on the Parties any property rights in or any jurisdiction over the territory of the other. The completed work shall constitute part of the territory and shall be the property of the country within which it lies. Each Government shall permanently retain the full title, control and jurisdiction of that part of the flood channel constructed, from the deepest channel of the running water in the rectified channel to the outer edge of such acquired right of way[180] (art. VIII).

209. *Suspension of work.* Construction shall be suspended upon the request of either Government, if it is proved that the works are being constructed outside of the conditions stipulated or fixed in the approved plan (art. IX).

210. *Claims connected with the works of rectification.* In the event of there being presented private or national claims for the construction or maintenance of the rectified channel, or for causes connected with the works of rectification, each Government shall assume and adjust such claims as arise within its own territory (art. X).

The Rio Grande and the Colorado and Tijuana Rivers
(United States and Mexico)

Treaty[181] between the United States of America and Mexico relating to the utilization of the waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico, signed at

(Footnote 175 continued)
II (Leyden, A. W. Sijthoff, 1955), tome 83, p. 511). This theory is known as the "Harmon doctrine" (see H. A. Smith, *The Economic Uses of International Rivers* (London, P. S. King, 1931), p. 41, and F. J. Berber, *Rivers in International Law* (The Library of World Affairs No. 46) (London, Stevens and Sons Ltd., and New York, Oceana Publications Inc., 1959), p. 14).

[176] The Convention came into force on 10 November 1933, by the exchange of the instruments of ratification.

[177] See W. M. Malloy, *op. cit.*, vol. IV, p. 4463. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 76.

[178] See G. F. Reinhardt, "Rectification of the Rio Grande in the El Paso-Juárez Valley", in *American Journal of International Law* (Washington, D.C., January 1937), vol. 31, p. 44.

[179] See W. M. Malloy, *op. cit.*, vol. IV, p. 4465.

[180] In an exchange of notes of 8 September 1933, the Governments of the United States and Mexico declare, with a view to facilitating its ratification, that the Convention of 1 February 1933 "does not alter the provisions of Conventions now in force as regards the utilization of water from the Rio Grande (Rio Bravo) and that, consequently, these matters remain entirely unaffected and in exactly the same status as existed before the Convention of 1 February 1933 was concluded" (*ibid.*, p. 4486).

[181] This Treaty came into force on 2 November 1945, by the exchange of the instruments of ratification.

Washington on 3 February 1944, and supplementary Protocol, signed at Washington on 14 November 1944[182]

211. By the Convention of 21 May 1906, relating to the portion of the Rio Grande which forms the international boundary from the head of the Mexican Canal down to Fort Quitman, Texas, the United States undertook to allow a fixed quantity of water to flow down to Mexico, on considerations of international comity.[183] No agreement was at that time concluded concerning the distribution of the waters of the Colorado River and other international boundary waters. It was not until this Treaty of 3 February 1944 that an agreement was finally reached between Mexico and the United States for the apportionment of all of the waters of the Colorado, Rio Grande and Tijuana Rivers. In 1927, the United States Congress had authorized the President to co-operate with Mexico in the study of the Colorado, Tijuana and Lower Rio Grande Rivers, and a commission had been formed, known as the International Water Commission, United States and Mexico. The Mexican section of the Commission is reported as arguing the right of Mexico under existing agreements[184] to navigate both the Rio Grande and the Colorado River, with the result that any modification of these rights would have to be consented to by Mexico. The American section, however, recommended that the "theory of navigability" be abandoned, since the main uses of both rivers were for irrigation. The American section further suggested that in an "equitable division" of the waters of the Colorado the United States might deliver every year 750,000 acre-feet (total flow about 20 million acre-feet), which was the maximum that Mexico had used in any one year. These proposals were presented as possible acts of comity and not as recognizing any right accruing to Mexico. Negotiations between the United States and Mexico continued on through the 1930s with some progress towards settlement. The Treaty of Washington of 3 February 1944 brought to an end over sixty years of difficulties between Mexico and the United States over their joint water resources. It is not a treaty proclaiming general principles. It is a close-knit and very technical document. The preamble states only that the two countries desire "to obtain the most complete and satisfactory utilization" of their joint water resources.[185]

212. *Provisions relating to the International Boundary and Water Commission, United States and Mexico.* The International Boundary Commission established pursuant to the Convention between the United States and Mexico signed at Washington on 1 March 1889[186] is to be known as the International Boundary and Water Commission, United States and Mexico. The Commission has the status of an international body and consists of a United States Section and a Mexican Section. The jurisdiction of the Commission extends to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries and to works located upon the common boundary, each Section of the Commission retaining jurisdiction over that part of the works located within the limits of its country. New powers and duties are vested in the Commission by the Treaty. These powers and duties are in addition to those vested in the International Boundary Commission by the Convention of 1 March 1889 and other pertinent treaties and agreements in force between the two countries (arts. 2, 24 and 25 and Protocol).

213. *Provisions relating to the Rio Grande:*

(a) *Allotment of the waters.* The waters of the Rio Grande forming the boundary between Fort Quitman, Texas, and the Gulf of Mexico are allotted to Mexico and the United States without regard to the fluvial boundary line. The allotment also covers certain tributary waters. No general principles for the allotment of the waters is advanced. The Treaty merely enumerates on an empirical basis the amounts and percentages of the waters belonging to each Party. A system is laid down for making up any deficiencies in five-year cycles in the event of extraordinary drought or serious accident which might make it difficult for Mexico to make available the run-off of some of the waters allotted to the United States (art. 4).

(b) *Construction of international dams and other works for the conservation, storage, regulation and diversion of the water.* The two Governments agree to construct jointly in the main channel of the Rio Grande, through their respective Sections of the Commission, the dams and other works required for the conservation, storage and regulation of the annual flow of the river and for its diversion. The Treaty stipulates the construction of some of these dams; the stipulated dams may be omitted, and dams other than those

[182] See United Nations, *Treaty Series*, vol. 3, p. 314. See also *Legislative Texts . . . (op. cit.)*, treaty No. 77.

[183] See para. 201 above.

[184] The Treaty of Guadalupe Hidalgo of 1848 provided for the mutual right of free navigation on the frontier section of the Rio Grande, and prohibited the construction of works which might interfere with navigation. By its terms, its application was limited to the frontier section, so that any interference with the river on United States territory was left to be governed by general principles of international law. These provisions were confirmed by the later Treaty of 1853. (See H. A. Smith, *op. cit.*, p. 41.)

[185] J. Austin, *op. cit.*, pp. 427 and 428. For the account of the negotiations and the general points raised by the conclusion of the Treaty, see also R. D. Niles, "Legal background of the Colorado River controversy", *Rocky Mountain Law Review*, 1929, vol. 1, p. 73; International Water Commission (United States and Mexico), *Report of the American section, Message from the President of the United States transmitting report submitted by the American section* (Washington, D.C., U.S. Government Printing Office, 1930); W. Hawkings, "Water rights in the United States-Mexico streams", in *Temple Law Quarterly*, 1930–1931, vol. 5, p. 193; G. H. Hackworth, *op. cit.*, p. 584; C. A. Timm, "Water Treaty between the United States and Mexico", *United States Department of State Bulletin* (Washington, D.C., 1944): K. L. Freed, "Treaty with Mexico relating to the utilization of the waters of certain rivers", in *Rocky Mountain Law Review*, 1944–1945, vol. 17, p. 251; F. E. Wilson, "The proposed Treaty with Mexico", *Dicta*, 1945, vol. 22, p. 53; Roscoe Pound, *Material on the U.S.-Mexican Treaty on utilization of the Waters of the Colorado, Rio Grande and Tia Juana River*, 1944–1945; J. Breitenstein, "Water administration under the proposed Treaty with Mexico", *American Bar Association Journal* (Chicago, February 1945), vol. 31, p. 67, and "Reply by Dean Roscoe Pound", *ibid.*, p. 69; United States of America, Senate, *Hearings before the Senate Committee on Foreign Relations on the Treaty with Mexico relating to the utilization of the waters of certain rivers, 79th Congress, 1st session, 1945* (Washington, D.C., U.S. Government Printing Office), parts 1 to 5; Mexico, Secretaría de Relaciones Exteriores, *El Tratado de Aguas Internacionales celebrado entre Mexico y los Estados Unidos el 3 de febrero de 1944* (Mexico, Oficina de Límites y Aguas Internacionales, 1947); S. Berdeja Galeama, *El Tratado de Aguas Internacionales celebrado entre Mexico y los Estados Unidos el 3 de febrero de 1944 y la Convención de 21 de mayo de 1906* (thesis) (Mexico, 1948).

[186] See para. 185 above.

stipulated may be built, as may be determined by the International Commission,[187] subject to the approval of the two Governments. The plans for the construction of the dams are prepared by the International Commission, and the construction will be carried out by the two Governments. The sharing of the costs of construction is specified in the Treaty (art. 5).

(c) *Construction of flood control works.* The International Commission reports to the two Governments regarding works for the purpose of flood control. Each Government agrees to construct at its own cost, through its Section of the International Commission, such works as may be recommended by the International Commission and approved by the two Governments (art. 6).

(d) *Construction and international operation of hydro-electric plants.* The International Commission shall prepare plans for plants for generating hydro-electric energy which it may be feasible to construct at the international storage dams on the river. Each Government agrees to construct, through its Section of the International Commission, such works as may be recommended by the International Commission and approved by the two Governments. Such hydro-electric plants shall be operated and maintained by both Governments. Each Government shall pay half the cost of the construction, operation and maintenance of such plants, and the energy generated shall be assigned to each country in like proportion (art. 7).

(e) *Storage, conveyance and delivery of the waters (common interest, the maximum use of the structures).* The two Governments recognize that it is in their common interest to conserve and store waters in the international reservoirs and to make the maximum use of these structures for the purpose of obtaining the most beneficial, regular and constant use of the waters belonging to them. The International Commission is to submit to each Government, for its approval, regulations for the storage, conveyance and delivery of the waters. The Treaty establishes a number of general rules to be followed with regard to the level of water in storage, ownership, inflows to be credited, losses, releases and discharges. Either of the two countries may avail itself, whenever it so desires, of any water belonging to it and stored in the international reservoirs, provided that the water so taken is for direct beneficial use or for storage in other reservoirs (art. 8).

(f) *Use and diversion of the waters:*

(i) *Water belonging to the country making the diversion.* Either of the two countries may, at any point on the main channel of the river from Fort Quitman to the Gulf of Mexico, divert and use the water belonging to it and may for this purpose construct any necessary works. However, the International Commission must make a finding that the water necessary for such diversion or use is available from the share of the country which proposes such diversion or use (art. 9(*b*)).

(ii) *Water not belonging to the country making the diversion (diversion without injury to the other party, temporary diversion, diversion in case of extraordinary drought).* The International Commission has the power to authorize either country to divert and use water not belonging entirely to it, when the water belonging to the other country can be diverted and used without injury to the latter and can be replaced at some other point on the river. The Committee may also authorize the temporary diversion and use by one country of water belonging to the other, when the latter does not need it or is unable to use it. It is stipulated, however, that such authorization or use shall not establish any right to continue to divert it. In case of the occurrence of an extraordinary drought in one of the two countries with an abundant supply of water in the other country, water stored in the international storage reservoirs and belonging to the country enjoying such an abundant water supply may be withdrawn, with the consent of the Commission, for the use of the country undergoing the drought (art. 9(*d*), (*e*) and (*f*)).

(iii) *Diversion of water for the purpose of generating hydro-electric power.* Each country shall have the right to divert from the main channel of the river any amount of water, including the water belonging to the other country, for the purpose of generating hydro-electric power, provided that the diversion causes no injury to the other country and does not interfere with the international generation of power and that the quantities not returning directly to the river are charged against the share of the country making the diversion. The feasibility of such diversions shall be determined by the Commission (art. 9(*g*)).

(g) *Use of the river channel for the conveyance of water.* The channel of the Rio Grande may be used by either of the two countries to convey water belonging to it (art. 9 (*a*)).

(h) *Construction and maintenance of the works necessary for recording the waters belonging to each country.* The Commission shall construct, operate and maintain on the main channel of the Rio Grande all the gauging stations and mechanical apparatus necessary for recording the waters belonging to each country. The same task is allocated to each of the Sections of the Commission with respect to the tributaries of the river (art. 9(*j*)).

214. *Provisions relating to the Colorado River:*

(a) *Division of the waters.* The Treaty divides the waters of the Colorado River between the United States, the up-stream State, and Mexico, the down-stream State. Of the waters of the Colorado River, there are allotted to Mexico a guaranteed annual quantity and an additional quantity to be delivered in the circumstances stipulated in the Treaty. In the event of extraordinary drought or serious accident to the irrigation system in the United States making it difficult for the United States to deliver the guaranteed annual quantity, the latter will be reduced in the same proportion as consumptive uses in the United States are

[187] The United States and Mexico signed at Ciudad Acuña, on 24 October 1960, an agreement to proceed with the construction of Amistad Dam on the Rio Grande to form part of the system of international storage dams provided for in the Water Treaty of 3 February 1944 (see United States of America, *United States Treaties and other International Agreements, 1960* (Washington, D.C., U.S. Government Printing Office, 1961), vol. 11, part 2, TIAS.4624; see also *Legislative Texts* . . . (*op. cit.*), treaty No. 78).

reduced (art. 10). The Treaty also specifies the terms on which the waters allotted to Mexico will be delivered to it (art. 15) and the points in the limitrophe section of the Colorado River at which the waters are to be delivered (art. 11).

(b) *Construction of diversion and protective works.* Mexico shall construct at its expense a diversion structure below the point where the northernmost part of the boundary line intersects the Colorado River. There shall simultaneously be constructed such protective works and such other works, or improvements to existing works, as in the opinion of the International Commission shall be necessary to protect lands within the United States against damage from such floods and seepage as might result from the construction, operation and maintenance of this diversion structure (art. 12 (*a*)).

(c) *Construction of a regulation dam and conveyance canals.* The United States shall construct in its own territory and at its own expense, and thereafter operate and maintain at its expense, the Davis storage dam and reservoir, a part of the capacity of which shall be used to make possible the regulation at the boundary of the waters to be delivered to Mexico. The United States shall also construct or acquire in its own territory the canals and other works that may be necessary to convey a part of the waters of the Colorado River allotted to Mexico to the Mexican diversion points on the international boundary line (art. 12(*b*) and (*c*)).

(d) *Construction of works for recording the waters delivered to Mexico.* The International Commission shall construct, operate and maintain in the limitrophe section of the Colorado River, and each Section shall construct, operate and maintain in the territory of its own country, all necessary gauging stations and other measuring devices for the purpose of keeping a complete record of the waters delivered to Mexico and of the flows of the river (art. 12(*d*)).

(e) *Construction of flood control works.* The International Commission shall prepare plans for flood control on the Lower Colorado River and shall report to the two Governments the works which should be built. The two Governments agree to construct, through their respective Sections of the Commission, such works as may be recommended by the Commission and approved by the two Governments, each Government to pay the costs of the works constructed by it (art. 13).

215. *Provisions relating to the Tijuana River:*

(a) *Investigation of plans for the distribution of the waters and the development of the river.* In order to improve existing uses and to assure any feasible further development, the International Commission shall study and investigate, and shall submit to the two Governments for their approval, recommendations for the equitable distribution between the two countries of the waters of the Tijuana River system and plans for storage and flood control to promote and develop domestic, irrigation and other feasible uses of the waters of this system (art. 16).

(b) *Construction of the proposed works.* The two Governments through their respective Sections of the Commission shall construct such of the works as are approved and shall distribute between themselves the waters of the Tijuana River system in agreed proportions (art. 16, second paragraph).

216. *Provisions common to the Rio Grande and to the Colorado and Tijuana Rivers:*

(a) *Order of preferences as between the various uses of international waters.* In matters in which the International Commission may be called upon to make provision for the joint use of international waters, the following order of preferences shall serve as a guide: (i) domestic and municipal uses; (ii) agriculture and stock-raising; (iii) electric power; (iv) other industrial uses; (v) navigation; (vi) fishing and hunting; (vii) any other beneficial uses which may be determined by the Commission (art. 3).

(b) *Sanitary measures with regard to the use of the waters.* All the uses shall be subject to any sanitary measures or works which may be mutually agreed upon by the two Governments. The two Governments agree to give preferential attention to the solution of all border sanitation problems (art. 3, second para.).

(c) *Use of the channels of the rivers for the discharge of flood waters.* The use of the channels of the international rivers for the discharge of flood or other excess waters shall be free and not subject to limitation by either country, and neither country shall have any claim against the other in respect of any damage caused by such use (art. 17).

(d) *Operation of dams in such manner as to avoid material damage to the other party.* Each Government declares its intention to operate its storage dams in such manner, consistent with the normal operations of its hydraulic systems, as to avoid as far as feasible material damage in the territory of the other (art. 17, second para.).

(e) *Use of the water surface of lakes formed by international dams.* Public use of the water surface of lakes formed by international dams shall, when not harmful to the services rendered by such dams, be common to both countries, subject to police regulations. Neither Government shall use for military purposes such water surface situated within the territory of the other country except by express agreement between the two Governments (art. 18).

(f) *Special agreements to regulate the generation and disposition of electric power at international plants.* The two Governments shall conclude such special agreements as may be necessary to regulate the generation, development and disposition of electric power at international plants, including the necessary provisions for the export of electric current (art. 19).

(g) *Construction of international dams to produce no change in the boundary line.* The construction of the international dams and the formation of artificial lakes shall produce no change in the fluvial international boundary, which shall continue to be governed by existing treaties and conventions in force between the two countries[188] (art. 21).

[188] These treaties and conventions are as follows: Treaty of Guadalupe Hidalgo of 2 February 1848 (W. M. Malloy, *op. cit.*, vol. I, p. 1107); Gadsden Treaty or Treaty of "la Mesilla" of 30 December 1853 (*ibid.*, p. 1121); The Convention concerning the dividing line where it follows the channel of the Rio Grande (Rio Bravo) and of the Colorado River of 12 November 1884 (*ibid.*, p. 1159; Boundary Convention of 1 March 1889 establishing an International Boundary Commission (see paras. 184 and 185 of the present report); Convention for the elimination of the bancos in the Rio Grande (Rio Bravo) of 20 March

(Continued on next page.)

(h) *Applicability of the provisions of the Convention for the rectification of the Rio Grande in the El Paso-Juárez Valley of 1 February 1933.*[189] The provisions of the Convention concluded between the United States and Mexico on 1 February 1933 shall apply, so far as delimitation of the boundary, distribution of jurisdiction and relations with private owners are concerned, in any places where works for the artificial channelling, canalization or rectification of the rivers are carried out (art. 22).

(i) *Recognition of the public interest attached to the works.* The two Governments recognize the public interest attached to the works required for the execution and performance of the Treaty (art. 23, first para.).

(j) *Property and jurisdictional rights.* Construction of the works built in pursuance of the provisions of the Treaty shall not confer upon either of the two countries any rights either of property or of jurisdiction over any part whatsoever of the territory of the other. These works shall be part of the territory and be the property of the country wherein they are situated (art. 23, fourth para.).

The Great Lakes (CANADA AND THE UNITED STATES)

Convention[190] *between the United States of America and Canada on Great Lakes Fisheries, signed at Washington on 10 September 1954*[191]

217. The purpose of this Convention is fishery conservation. It is also designed to advance fishery research in the Great Lakes.

218. *Establishment of a joint commission.* A joint commission is established, to be known as the Great Lakes Fishery Commission and to be composed of two national sections, a Canadian Section and a United States Section. Each Party may establish for its Section an advisory committee for each of the Great Lakes (art. II). The Convention stipulates the Commission's composition, duties and powers (articles III, IV, V and IX), the contributions to be made by the Parties towards the Commission's expenses (art. VIII), and the working arrangements which the Commission may establish with other organizations (art. VI).

219. *Obligation upon the Parties to furnish information to the Commission.* Upon the request of the Commission, either of the two Governments shall furnish such information pertinent to the questions dealt with by the Commission as is practicable. The Government concerned may, however, establish conditions regarding the disclosure of such information by the Commission (art. VII).

220. *Applicability of local laws. Limitation.* Nothing in the Convention shall be construed as preventing any of the States of the United States of America bordering on the Great Lakes or, subject to their constitutional arrangements, Canada or the Province of Ontario from making or enforcing laws or regulations within their respective jurisdictions relative to the fisheries of the Great Lakes in so far as such laws or regulations do not preclude the carrying out of the Joint Commission's duties (art. X).

The Great Lakes–St. Lawrence River (Basin) (CANADA AND THE UNITED STATES)

Exchange of notes[192] *between the Government of the United States of America and the Government of Canada constituting an Agreement regarding the development of certain portions of the Great Lakes–St. Lawrence Basin project, Washington, 14 and 31 October and 7 November 1940*[193]

221. By this exchange of notes, Canada and the United States seek to acquire an adequate supply of power to meet the needs of their defence effort.

222. *Technical co-operation for the production of power. Establishment of national committees. Concept of the river basin.* The Governments of the United States and Canada appoint two national committees to co-operate in preliminary engineering investigations for that part of the Great Lakes–St. Lawrence Basin project which is located in the International Rapids Section of the St. Lawrence River, in order to prevent the possibility of a power shortage in both countries.

223. *Immediate utilization by the Province of Ontario, Canada, of additional waters for power at Niagara Falls. Compensation by diversion of waters from the Albany River Basin, Canada.* The Government of the United States, pending the conclusion of a final Great Lakes–St. Lawrence Basin agreement, allows the immediate utilization by the Province of Ontario, Canada, of additional waters for power at Niagara Falls. The Province of Ontario, Canada, will proceed immediately with the Long Lac–Ogoki diversions of waters from the Albany River Basin, Canada, into the Great Lakes Basin, up to an amount equivalent to the quantity of additional water it will use at Niagara Falls.

Lake Memphremagog (CANADA AND THE UNITED STATES)

Exchange of notes[194] *constituting an Agreement between the United States of America and Canada regarding the level of Lake Memphremagog, Washington, 20 September, and Ottawa, 6 November 1935*[195]

224. The Governments of Canada and of the United States concur in the recommendations of the International Lake Memphremagog Board established in 1920 to report to the two Governments on the maintenance of the level of Lake Memphremagog.

(Footnote 188 continued)
1905 (W. M. Malloy, *op. cit.*, vol. I, p. 1199); Convention for the rectification of the Rio Grande (Rio Bravo) in the El Paso-Juárez Valley of 1 February 1933 (see paras. 206–210 of the present report). The Guadalupe Hidalgo and Gadsden Treaties relate only to navigation.

[189] See paras. 206–210 above.

[190] The Convention entered into force on 11 October 1955, by the exchange of the instruments of ratification at Ottawa.

[191] See United Nations, *Treaty Series*, vol. 238, p. 98. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 62.

[192] The Agreement came into force on 7 November 1940, by the exchange of notes.

[193] See League of Nations, *Treaty Series*, vol. CCIII, p. 268. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 53.

[194] The Agreement came into force on 6 November 1935, by the exchange of notes.

[195] See United States of America, Department of State, *Foreign Relations of the United States, 1935* (Washington, D.C., U.S. Government Printing Office, 1952), vol. II, p. 53. See also *Legislative Texts . . .* (*op. cit.*), treaty No. 51.

225. *Regulation of the waters under normal conditions.* The levels of the lake shall continue to be regulated in accordance with rights of regulation held and practised by the Dominion Textile Company at the time of the signing of the Boundary Waters Treaty in 1909.[196]

226. *Regulation of the waters during times of flood.* During times of flood, the sluiceways of the dam shall be sufficiently opened to ensure that the outflow from the lake shall be unobstructed by the dam.

Niagara River[197] (Canada and the United States)

(1) *Treaty[198] between the United States of America and Canada relating to the uses of the waters of the Niagara River, signed at Washington on 27 February 1950[199]*

227. This Treaty was concluded by the United States and Canada in order to provide for the most beneficial use and the equal sharing of the waters of the Niagara River for power purposes, consistent with their obligation "to preserve and enhance the scenic beauty of the Niagara Falls and River".

228. *Construction of remedial works to enhance the beauty of the Falls.* The United States and Canada agree to complete the remedial works which are necessary to enhance the beauty of the Falls by distributing the waters so as to produce an unbroken crestline on the Falls. The International Joint Commission[200] will make recommendations as to the nature and design of such works and the allocation of the task of construction as between the United States and Canada. Upon approval by the United States and Canada of such recommendations, the construction shall be undertaken pursuant thereto under the supervision of the International Joint Commission. The cost of the works shall be divided equally between the United States and Canada (art. II).

229. *Diversion of water for power purposes. Restrictions (domestic and sanitary use, navigation).* The amount of water which shall be available for power purposes shall be the total outflow from Lake Erie to the Welland Canal and the Niagara River, including the Black Rock Canal, less the amount of water used and necessary for domestic and sanitary purposes and for the service of canals for the purposes of navigation[201] (art. III).

230. *Restriction for scenic purposes on the diversion of water for power purposes.* In order to reserve sufficient amounts of water in the Niagara River for scenic purposes, no diversions of water shall be made for power purposes which will reduce the flow over Niagara Falls to less than a specified number of cubic feet per second. No diversion of the amounts of water specified to flow over the Falls shall be made for power purposes between the Falls and Lake Ontario (art. IV). All water in excess of water reserved for scenic purposes may be diverted for power purposes (art. V).

231. *Division and use of the waters available for power purposes.* The water made available for power purposes shall be divided equally between the United States and Canada (art. VI). However, until such time as there are facilities in the territory of one party to use its full share of the waters for power purposes, the other party may use the portion of that share for the use of which facilities are not available (art. VIII).

232. *Exemption from responsibility.* Neither party shall be responsible for physical injury or damage to persons or property in the territory of the other which may be caused by any act authorized or provided for by the Treaty (art. IX).

(2) *Exchange of notes[202] constituting an Agreement between the United States of America and Canada with respect to the construction of remedial works at Niagara Falls, Ottawa, 13 September 1954[203]*

233. The exchange of notes lays down the method to be followed with regard to the payment of the costs incurred by the Governments of the United States and Canada in connexion with the construction of remedial works at Niagara Falls, in conformity with the Treaty of 27 February 1950 relating to the uses of the waters of the Niagara River, mentioned immediately above.

Paraná (Apipé Falls) (Argentina and Paraguay)

Agreement[204] between the Argentine Republic and the Republic of Paraguay concerning a study of the utilization of the water power of the Apipé Falls, signed at Buenos Aires on 23 January 1958[205]

234. Both Governments, having considered the possibility of obtaining hydro-electric energy from the rapids in the River Paraná, decided, by this Agreement, upon the creation of a joint technical commission in order to make a study of the utilization of the water power of the river at the islands of Yacyretá and Apipé and, in addition, other advantageous uses of the waters and the improvement of the navigability of the river.[206]

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[196] See paras. 154–167 above.

[197] See article V of the Treaty relating to boundary waters of 11 January 1909, para. 166 above.

[198] The Treaty entered into force on 10 October 1950 by the exchange of the instruments of ratification at Ottawa.

[199] See United Nations, *Treaty Series*, vol. 132, p. 224. See also *Legislative Texts . . . (op. cit.)*, treaty No. 59.

[200] See para. 164 above.

[201] Waters which are being diverted into the natural drainage of the Great Lakes system through the existing Long Lac–Ogoki works shall continue to be governed by the notes exchanged between the Government of the United States and the Government of Canada at Washington on 14 and 31 October and 7 November 1940 and shall not be included in the waters allocated under the provisions of the Treaty (art. III) (see paras. 222 and 223 above).

[202] The Agreement came into force on 13 September 1954 by the exchange of notes.

[203] See United Nations, *Treaty Series*, vol. 236, p. 382. See also *Legislative Texts . . . (op. cit.)*, treaty No. 63.

[204] The Agreement came into force on 16 June 1958.

[205] Text provided by the Ministry of Foreign Affairs and Public Worship of the Argentine Republic. See *Legislative Texts . . . (op. cit.)*, treaty No. 37.

[206] A Protocol dealing with the improvement of navigation on the River Paraná and the utilization of the water at Apipé Falls for industrial use had been signed by the Argentine and Paraguayan Ambassadors to the United States of America, at Washington on 1 February 1926 (see Argentina, Ministry of Foreign Affairs and Public Worship, *Instrumentos internacionales de carácter bilateral suscriptos por la República Argentina* (Buenos Aires, 1950), vol. II, p. 1299). However, this Protocol was not ratified and therefore did not enter into force.

235. *Establishment of a joint technical commission. Composition.* The Agreement establishes a Joint Argentine–Paraguayan Technical Commission, composed of two representatives, one from each party, and such advisers as may be considered necessary for the accomplishment of their task.[207]

236. *Surveys to be made.* The surveys to be made by the Commission shall consist principally of determining all the technical characteristics of the water which are relevant to hydraulic utilization and the hydrographic and hydrological conditions of the River Paraná, as well as drafting a plan of the works needed for hydraulic utilization, including cost estimates, and the financing of the proposed projects, and calculating tentatively the possible consumption of electric power in the region (art. II). The surveys made shall not affect those being made by the technical agencies of both countries (art. III).

237. *Facilities (right of access).* The representatives, advisers and technical personnel employed by the Commission shall have the right to travel freely and enter the territory of the other Party. They shall also enjoy all facilities for the accomplishment of their task (art. IV).

238. *Submission of a final report (period for completion, determination of the costs).* A period of two years is fixed for the completion of all the surveys mentioned in the Agreement and for the submission by the Commission to both Governments of its final report (art. V). The Commission shall draw up a work plan and request from both Governments equal contributions for the execution of the work plan (art. VI).

Rainy Lake (Canada and the United States)

Convention[208] between the United States of America and Canada providing for emergency regulation of the level of Rainy Lake and of other boundary waters in the Rainy Lake watershed, signed at Ottawa on 15 September 1938[209]

239. The United States and Canada accept as a basis of agreement the recommendations made by the International Joint Commission established by the Treaty of 11 January 1909[210] and contained in its Final Report of 1 May 1934 concerning Rainy Lake and the boundary waters flowing into and from that lake.[211]

240. *Powers of the International Joint Commission.* The International Joint Commission is invested with special power to determine when emergency conditions exist in the Rainy Lake watershed, whether by reason of high or low water. In the event of the Commission determining that such conditions exist, it may adopt such measures of control as seem proper with respect to existing dams at Kettle Falls and International Falls, as well as with respect to any existing or future dams or works in boundary waters of the Rainy Lake watershed (art. I).

Lake St. Francis (Canada and the United States)

Exchange of notes[212] between the Governments of the United States of America and of Canada constituting an Agreement relating to the temporary raising of the level of Lake St. Francis during low water periods, Washington, 10 November 1941[213]

241. This exchange of notes constitutes a "special agreement" between the Governments of Canada and of the United States within the meaning of article 4 of the Treaty of 11 January 1909.[214]

242. *Concurrence of the United States.* The Government of the United States concurs in the Canadian proposals regarding the temporary raising of the level of Lake St. Francis during low water periods.[215] The United States Government, in so concurring, emphasizes that the agreement is temporary and "that this action shall not be deemed to create any vested . . . right".

243. *Use of the waters for the development of hydro-electric power.* The exchange of notes points out that the raising of the level of Lake St. Francis during low water periods has proved necessary in order to continue the existing export of some of the power for the use of certain enterprises in the State of New York.

Lake Titicaca (Bolivia and Peru)

(1) *Preliminary Convention[216] between Bolivia and Peru for the exploitation of fisheries in Lake Titicaca, signed at Lima on 17 July 1935[217]*

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[207] Following the exchange of views which took place between the Ministry of Foreign Affairs of Paraguay and the Special Mission of the Government of the Argentine Republic at Asunción, the following agreement was reached on 26 September 1960:

"Considering that the Government of the Republic of Paraguay has appointed its representative to the Joint Paraguayan–Argentine Technical Commission for the study of the utilization of the waterpower of the Apipé Falls, and that the Argentine delegation has likewise been appointed, it is decided that the above-mentioned Joint Technical Commission shall commence its work in the city of Buenos Aires during the second half of the month of October of this year" (joint Paraguayan–Argentine communiqué of 26 September 1960, text provided by the Ministry of Foreign Affairs and Public Worship of the Argentine Republic).

[208] The Convention entered into force on 3 October 1940, by the exchange of the instruments of ratification.

[209] See League of Nations, *Treaty Series*, vol. CCIII, p. 208. See also *Legislative Texts . . . (op. cit.)*, treaty No. 52.

[210] See paras. 154–167 above.

[211] See the preamble to the Convention. The letter of reference to the Commission is reproduced in League of Nations, *Treaty Series*, vol. XLIII, p. 260.

[212] The Agreement entered into force on 10 November 1941, by the exchange of notes.

[213] See United Nations, *Treaty Series*, vol. 23, p. 276. This Agreement was extended by the exchanges of notes of 5 and 9 October 1942 (*ibid.*, p. 280), 5 and 9 October 1943 (*ibid.*, vol. 105, p. 306, and 31 August and 7 September 1944 (*ibid.*, vol. 105, p. 310). See also *Legislative Texts . . . (op. cit.)*, treaty No. 54.

[214] See para. 163 above.

[215] Lake St. Francis is in Canada, but the raising of its level in low water periods would result in an increase in the natural levels on the United States side of the international St. Lawrence River.

[216] Approved by Peru by *Resolución Suprema No. 429* of 21 August 1935, and by Bolivia by an Act of 20 September 1938.

[217] See Bolivia, Ministry of Foreign Affairs, *Colección de Tratados Vigentes de la República de Bolivia*, vol. V, *Convenciones bilaterales* (La Paz), p. 486, and Peru, Ministry of Foreign Affairs, *Tratados y acuerdos vigentes entre el Perú y otros Estados*, I, *Instrumentos bilaterales* (Lima), p. 127. See also *Legislative Texts . . . (op. cit.)*, treaty No. 42.

244. Bolivia and Peru, considering the importance which the study and development of the fishery possibilities of Lake Titicaca may have for the economic life of their frontier regions, concluded this preliminary Convention.

245. *Establishment of a study commission.* The two Governments, by agreement and simultaneously, provide for the dispatch of a Scientific Commission to study the varieties of fish in Lake Titicaca and the possibility of establishing and developing there other species suited to industrial exploitation (art. 1).

246. *Establishment of fish hatcheries and distribution stations.* If it appears from the conclusions of the Commission that the establishment of fish hatcheries and distribution stations is desirable, the two Governments shall agree on the steps to be taken and the apportionment of the necessary expenditures (art. 2).

247. *A Convention on Fishing in Lake Titicaca to be concluded in the future (equality of rights and economic opportunities).* After the conclusions of the Commission have been adopted by the two Governments or modified by agreement between them, the two Governments shall conclude a Convention on Fishing in Lake Titicaca which shall provide for equality of rights and economic opportunities for Bolivian and Peruvian fishermen, and for a permanent régime governing the participation of the two Governments in the establishment of fish hatcheries and distribution stations and the reimbursement of whatever expenditures are incurred (art. 3).

(2) *Preliminary Convention between Peru and Bolivia concerning a study of the joint utilization of the waters of Lake Titicaca, signed at Lima on 30 July 1955*[218]

248. By this preliminary Convention, the Governments of Peru and Bolivia approve the recommendation of the Joint Peruvian–Bolivian Commission[219] to study the utilization of the waters of Lake Titicaca made at its first session, at La Paz on 28 June 1955, in order to put into practice the decision reached at that session of the Commission.

249. *Decisions of the Joint Commission incorporated in the Convention.* The Convention embodies the decisions of the Joint Peruvian–Bolivian Commission. The main provision of these decisions deals with the question of finance for the immediate execution of the programme of preliminary study and observation relating to joint utilization of the waters of Lake Titicaca and the seeking of economic assistance from appropriate national or international bodies (art. I).[220]

(3) *Agreement*[221] *between Bolivia and Peru concerning a preliminary economic study of the joint utilization of the waters of Lake Titicaca, signed at La Paz on 19 February 1957*[222]

250. This Agreement was recommended by the Joint Peruvian–Bolivian Commission[223] at its third session, which was held at La Paz from 7 to 19 February 1957.

251. *Preparation of a preliminary study on the joint utilization of the waters (hydro-electric power, irrigation). Maintenance of the existing conditions.* The Governments of Peru and Bolivia resolve to adopt a definite plan for a preliminary economic study concerning the joint utilization of the waters of Lake Titicaca in such manner as not fundamentally to alter the navigability or fishing facilities thereof or substantially to affect the volume of water diverted from the lake for industrial, irrigation or other purposes (art. 1). The study shall contain an estimate of the electricity consumption in both countries, so that the construction of one or more hydro-electric stations capable of meeting the demand efficiently and equitably can be considered in the initial stage of development. It shall also include an agricultural and economic study of the areas where there is likely to be a market for the water for irrigation purposes after it has yielded its kinetic energy (art. 4).

252. *Negotiations with a view to contracting for the preparation of the proposed studies. Recommendation of the Joint Sub-Commission for the utilization of the waters of Lake Titicaca.* The two Governments agree that they may jointly or separately initiate negotiations with responsible bodies or firms of world-wide reputation regarding the contract for the preliminary economic studies. Each country shall give notice of such negotiations to the other. The Joint Sub-Commission for the utilization of the waters of Lake Titicaca shall study and recommend acceptance and signature of the contract by the two Governments (art. 5).

253. *Approval of the preliminary study by the Joint Peruvian–Bolivian Commission.* When the preliminary economic studies provided for in the contract have been completed, the Joint Sub-Commission shall submit them to the Joint Peruvian–Bolivian Commission for consideration and approval (art. 5, second para.).

254. *Preliminary valuation of the waters drawn from the lake.* The preliminary basic values of water drawn from the lake is settled by the Agreement. These basic values, which are fixed on a preliminary basis and shall be divided equally between the two countries, shall be taken into consideration in carrying out the economic studies for the project (art. 2).

255. *Compensation for loss or reduction of economic benefits.* The payments or other compensation to be made for the losses or the reduction in economic benefits sustained by either of the two countries as a result of hydro-electric development or use of the waters for irrigation and other purposes shall be the subject of an agreement to be con-

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[218] See *Revista Peruana de Derecho Internacional* (Lima), vol. XV, January/December 1955, Nos. 47 and 48, p. 90. See also *Legislative Texts ... (op. cit.)*, treaty No. 44.

[219] See para. 296 below.

[220] On the date of signature of this Preliminary Convention, the Presidents of Peru and Bolivia made a declaration at Lima, paragraph 2 of which states: "... As regards the utilization of the waters of Lake Titicaca for industrial or other purposes, the two Governments declare that the said waters, being the joint and indivisible property of both, may be used only with the express agreement of the two parties ..." (*Revista Peruana de Derecho Internacional* (Lima), vol. XV, January/December 1955, Nos. 47 and 48, p. 87).

[221] Peru ratified the Agreement on 21 November 1957 by its *Resolución legislativa No. 12857.*

[222] See Peru, *Memoria del Ministro de Relaciones Exteriores* (Lima), 28 July 1956–31 December 1957, p. 325. See also *Legislative Texts ... (op. cit.)*, treaty No. 45.

[223] See para. 296 below.

cluded after the above-mentioned economic studies are completed (art. 3).

256. *Final studies and financing of the project.* When the preliminary studies have been approved by the Joint Peruvian–Bolivian Commission, both Governments shall invite tenders in the world market for the final studies and for the financing of the project (art. 6).

Uruguay River (Salto Grande) (ARGENTINA AND URUGUAY)

Agreement[224] between Argentina and Uruguay relating to the utilization of the rapids of the Uruguay River in the area of Salto Grande, signed at Montevideo on 30 December 1946[225]

257. The two Parties concluded this Agreement pursuant to the provisions of article 5 of the Agreement of 13 January 1938[226] dealing with the water-power of the Uruguay River. The purposes of the Agreement as laid down in the preamble are to obtain the greatest possible benefit from the natural advantages offered by the rapids of the Uruguay River in the area of Salto Grande, to improve the conditions for navigation and to utilize the waters of the river for the production of power.[227]

258. *Joint utilization of waters.* The parties declare, for the purposes of this Agreement, that the waters of the Uruguay River shall be utilized jointly on a basis of equality (art. 1).

259. *Appointment of a Joint Technical Commission.* The Parties agree to appoint and maintain a Joint Technical Commission which shall be composed of an equal number of representatives from each country and shall be responsible for dealing with all matters connected with the utilization, damming and diversion of the waters of the Uruguay River (art. 2). The Commission shall establish its own technical and administrative rules and draw up its plan of work (art. 3, first para.).

260. *Water-use priorities.* The Commission in the performance of its functions shall apply the following water-use priorities: (*a*) household use and sanitation, (*b*) navigation, (*c*) power production and (*d*) irrigation. No use shall be permitted which hampers or restricts those priorities (art. 3, sub-para. (*a*)).

261. *Fishing.* The Commission shall request the Governments to take the necessary measures for the conservation of fish resources (art. 3, sub-para. (*a*)).

262. *Projected works and studies. Estimation and apportionment of costs.* The joint works and installations consist mainly of a dam together with mechanical and electrical generating equipment. The works not constructed jointly consist mainly of access facilities, supplementary works and transmission lines. The Agreement contains provisions concerning the value and distribution of costs of works and installations and of costs of surveys and plans. The value to be assigned to the joint works and installations shall be such as will permit the production of power at a cost not exceeding that which could be obtained from a thermal station of the same power established in the same area (art. 4). The Joint Technical Commission shall arrange for such studies as have not been made at the time when it commences to function and shall draw up plans for the construction of the necessary works and installations. These plans shall be submitted to the Parties for consideration and approval. When this approval has been obtained, the Commission shall be empowered to arrange for the construction work and to take partial and full delivery of the works and installations to be constructed (art. 6).

263. *Authorizations for the use and diversion of waters to be granted after preliminary report by the Joint Technical Commission.* The use and diversion, whether temporary or permanent, of the waters of the Uruguay River and its tributaries up-stream of the dam shall be authorized by the Governments within their respective areas of jurisdiction only when a report has been received from the Joint Technical Commission (art. 5).

264. *Establishment of an inter-State agency to operate and administer the works constructed.* The Parties shall establish an inter-State agency for the purpose of operating and administering the works and installations constructed in accordance with the Agreement. Pending the establishment of this agency, these functions shall be performed by the Joint Technical Commission (art. 7).

265. *Provision of electric power at cost price.* The Parties shall make the necessary arrangements for power to be exchanged between the two Governments at cost price (art. 8).

266. *Respect for sovereign rights. Repsect for acquired rights of navigation.* The measures taken to give effect to the Agreement shall not affect any of the rights of the Parties relating to sovereignty and jurisdiction or their navigation rights on the Uruguay River (art. 10).

267. *Invitation to Brazil to take part in a tripartite conference to examine the situation created by the Agreement.* The Parties agree to invite the Government of Brazil, once the Agreement is signed, to a conference which will consider the changes brought about by the Agreement in navigation on the Uruguay River and in the river regulations, subject to the provisions of the conventions in force (art. 11).[228]

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[224] The exchange of the instruments of ratification took place on 27 August 1958.

[225] See Argentina, Ministry of Foreign Affairs and Public Worship, *Instrumentos internacionales de carácter bilateral suscriptos por la República Argentina* (up to 30 June 1948) (Buenos Aires, 1950), vol. II, p. 1409. See also *Legislative Texts . . . (op. cit.)*, treaty No. 40.

[226] See paras. 297 and 298 below.

[227] E. Cano, "Cuencas internacionales", *Jurisprudencia Argentina, serie moderna* (Buenos Aires), No. 691, 21 November 1960.

[228] Brazil was invited to attend a tripartite conference that was convened at Buenos Aires. This conference concluded its work by adopting on 23 September 1960, a Joint Declaration in which the Governments of Argentina, Brazil and Uruguay agreed upon the following: (*a*) The Brazilian Government views favourably the joint execution by the Governments of Argentina and Uruguay of the Salto Grande works, which will demonstrate the spirit of solidarity and co-operation existing in the region of the continent shared by the signatory States, and the Argentine and Uruguayan Governments take note of its attitude with satisfaction; (*b*) In accordance with international doctrine and practice, the Brazilian Government reserves, and the Argentine and Uruguayan Governments recognize, the right: (i) to claim and obtain, at any time, fair compensation for any damages which may be caused in Brazilian territory during the construction or utilization of the works, (ii) to be consulted if, in the course of their studies, the participating countries wish to make any change in the plan which will alter the con-

(Continued on next page.)

2. Bilateral treaties containing provisions relating to the utilization and use of international rivers in America

(a) Provisions of Treaties relating generally to contiguous and successive rivers in the territories of two States

Brazil and Uruguay

Convention[229] regarding the determination of the legal status of the frontier between Brazil and Uruguay, signed at Montevideo on 20 December 1933[230]

268. *Apportionment of waters.* Each of the two States shall be entitled to dispose of half the water flowing in the frontier watercourses (art. XIX).

269. *Construction of works (preliminary agreement).* When there is a possibility that the installation of plant for the utilization of the water may cause an appreciable and permanent alteration in the rate of flow of a watercourse running along or intersecting the frontier, the State desirous of such utilization shall not carry out the work necessary therefore until it has come to an agreement with the other State (art. XX).

270. *Policing of waters.* Each State shall be responsible for the water police service in its own territory, subject to the limitations specified in the various frontier régimes in force, in accordance with the international instruments applicable thereto. Should the régime adopted be that of the bed or of the joint ownership of the water, the jurisdiction of each riparian State shall extend as far as the opposite bank, but shall not include the land skirting the watercourse (art. XXI).

271. *Fishing.* Fishing rights shall be exercised by the nationals of each State in the waters under their respective areas of jurisdiction (art. XXII).

(Footnote 228 continued)
ditions at present contemplated; (c) The Governments of Argentina, Brazil and Uruguay reaffirm their mutual recognition of the right of free navigation of the Uruguay River and of non-discrimination in the use of locks by vessels flying their flags or in their service, as regards both rates and tariffs and the order in which vessels are serviced; (d) The Governments of Argentina and Uruguay recognize the Brazilian Government's right, in accordance with existing international instruments and the rules of international law, freely to carry out hydraulic works of any nature on the Brazilian reaches of the Uruguay River and its tributaries; the Brazilian Government will, in its turn, in accordance with international doctrine and practice, consult with the other riparian States before carrying out any hydraulic works which may alter the present régime of the Uruguay River; (e) The Governments of Argentina, Brazil and Uruguay declare their intention to prepare a joint regional plan for the utilization and reclamation of the entire basin of the Uruguay River and the regions adjacent thereto, in which the interests and aspirations of the frontier populations of the three friendly countries are increasingly becoming identified (Argentina, Dirección de Defensa Nacional, *Documentación de la Conferencia prevista en el artículo XI del Convenio argentino-uruguayo sobre el aprovechamiento de los rápidos del río Uruguay en la zona del Salto Grande, in fine*). (Translated from the Spanish by the Secretariat of the United Nations.)

[229] The exchange of the instruments of ratification took place on 21 July 1937). The Convention entered into force thirty days after the date of the exchange of ratifications, in accordance with article XXV.

[230] See League of Nations, *Treaty Series*, vol. CLXXXI, p. 81. See also *Lesiglative Texts . . .(op. cit.)*, treaty No. 49.

Guatemala and Honduras

Treaty[231] of free trade and economic integration between the Republics of Guatemala and Honduras, signed at Guatemala on 22 August 1956[232]

272. *Co-operation for the protection of water resources.* The two States shall co-ordinate their activities with a view to protecting water resources in the frontier regions of their respective territories (art. 19).

Guatemala and El Salvador

Treaty[233] of free trade and economic integration between the Republics of Guatemala and El Salvador, signed at San Salvador on 14 December 1951[234]

273. Article 19 of this Treaty contains a provision similar to that of article 19 of the Treaty concluded on 22 August 1956 between Guatemala and Honduras.[235]

Haiti and the Dominican Republic

Treaty[236] of peace, friendship and arbitration between the Dominican Republic and the Republic of Haiti, signed at San Domingo on 20 February 1929[237]

274. *Construction of works.* The Parties undertake neither to construct nor to permit any work likely to change the natural courses, or to affect the flow of the sources of the waters of the rivers which intersect or delimit the territories of the two States (art. 10).

275. *Utilization of waters.* The two States are entitled to use the contiguous or intersecting rivers in a just and equitable manner, within the limits of their respective territories, to irrigate their lands and for other agricultural and industrial purposes (art. 10).

(b) Provisions of treaties relating generally to contiguous rivers in the territories of two States

Brazil and British Guiana

Exchange of notes[238] between the Brazilian Government and His Majesty's Government in the United Kingdom concerning the delimitation of the riverain areas, London, 27 October and 1 November 1932[239]

[231] The Treaty came into force on 28 December 1956, by the exchange of the instruments of ratification at Tegucigalpa.

[232] See United Nations, *Treaty Series*, vol. 263, p. 66. See also *Legislative Texts . . . (op. cit.)*, treaty No. 73.

[233] The Treaty came into force on 17 May 1952, by the exchange of the instruments of ratification at Guatemala.

[234] See United Nations, *Treaty Series*, vol. 131, p. 132. See also *Legislative Texts . . . (op. cit.)*, treaty No. 71.

[235] See para. 272 above.

[236] The exchange of the instruments of ratification took place at Santo Domingo on 1 July 1929.

[237] See League of Nations, *Treaty Series*, vol. CV, p. 216. See also *Legislative Texts . . . (op. cit.)*, treaty No. 68.

[238] The agreement resulting from this exchange of notes entered into force on 1 November 1932.

[239] See League of Nations, *Treaty Series*, vol. CLXXVII, p. 128. The Agreement was also reproduced as annex 3 to the exchange of notes between Brazil and the United Kingdom of 15 March 1940 (see United Nations, *Treaty Series*, vol. 5, p. 72). See also *Legislative Texts . . .(op. cit.)*, treaty No. 47.

276. *Fishing.* The rivers shall be open to free fishing for both riparian States throughout that portion of their length which constitutes the boundary (para. 1 (vi)).

277. *Construction of works (mutual consent).* In the part of the rivers constituting the boundary, no works shall be permitted other than those intended solely to retain the river in its present course and not involving any risk of altering that course except with the mutual consent of the two Governments, and no work such as canalization, irrigation, or the development of electrical power shall be undertaken except with the consent of both riparian States (para. 1 (vi)).

Colombia and Venezuela

Statute[240] between Columbia and Venezuela regulating the frontier régime, signed at Caracas on 5 August 1942[241]

278. *Fishing.* Fishing rights may not be exercised beyond the centre line of rivers and non-navigable streams (art. 22). It shall be forbidden to divide the frontier waters by means of fixed nets or by any other device which impedes the free passage of fishing from one bank to the other. It shall equally be forbidden to fish by means of explosive, poisonous or noxious substances, or to use any means of catching fish other than fish-hooks (art. 23).

Guatemala and El Salvador

Treaty[242] for the delimitation of the boundary between Guatemala and El Salvador, signed at Guatemala City on 9 April 1938[243]

279. *Utilization of waters. Concessions.* Each Government reserves the right to utilize half the volume of water in frontier rivers, either for agricultural or industrial purposes, but in no circumstances may concessions be granted to foreign undertakings or companies (art. 2).

280. *Artificial changes in river beds.* No change in the bed of frontier rivers resulting from artificial causes such as the construction of public works, the deepening of channels for water-supply, etc., shall affect the frontier, which shall continue to be the boundary between the two countries, even though a stream may have completely abandoned its original bed (art. 2).

(c) Provisions of treaties relating to one or more specific rivers

Mahu and Tacutú Rivers (Brazil and British Guiana)

Exchange of notes[244] between the Government of the United Kingdom and the Government of Brazil approving the General Report of the Special Commissioners appointed to demarcate the boundary-line between British Guiana and Brazil (with General Report), Rio de Janeiro, 15 March 1940[245]

281. *Fishing.* In those portions of the Mahu and Tacutú Rivers which constitute the boundary, fishing is free for both riparian States, in accordance with the exchange of notes of 27 October and 1 November 1932.[246]

Maroni River[247] (French Guiana and Surinam)

Convention[248] between France and the Netherlands to determine by agreement the boundary between the colonies of French Guiana and Surinam in the portion of the boundary river between the northern extremity of the Netherlands island of Stoelman, known as Stoelmanseiland, and the southern extremity of the French island of Portal, signed at Paris on 30 September 1915[249]

282. *Construction of works. Prior agreement. Exceptions.* No public or private works capable of altering the hydrographic régime of a portion of the Maroni River determined by the Convention may be constructed without the prior consent of the two Governments. Such prior agreement, however, shall not be required for the installation on either bank or wharves, basins, docks, channels or any works intended to ensure free access to the shore. The public authorities and concessionaires shall in all cases be permitted to install such works on either bank, provided that they comply with the rules laid down by the Government of the territory to which the bank in question belongs (art. 3).

283. *Dredging concessions.* Dredging concessions shall be granted in concert by the Governments of the two territories in the same portion of the river, in such a way that the same development can take place in the French and in the Netherlands portions of the waters (art. 4). The Convention stipulates what obligations shall be imposed on concessionaires (art. 5).

284. *Settlement of disputes.* The Parties undertake to submit to the Permanent Court of Arbitration at The Hague any disputes which may arise between them concerning the application or the interpretation of the Convention and which cannot be settled through the diplomatic channel (art. 6).

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[240] The exchange of the instruments of ratification took place on 22 February 1944.

[241] See *British and Foreign State Papers, 1940–1942* (London, 1952), vol. 144, p. 1127. See also *Legislative Texts . . . (op. cit.)*, treaty No. 67.

[242] The exchange of the instruments of ratification took place at Guatemala City on 24 May 1938.

[243] See League of Nations, *Treaty Series*, vol. CLXXXIX, p. 276. See also *Legislative Texts . . . (op. cit.)*, treaty No. 70.

[244] The Agreement entered into force on 15 March 1940, by signature.

[245] See United Nations, *Treaty Series*, vol. 5, p. 72. See also *Legislative Texts . . . (op. cit.)*, treaty No. 48.

[246] See paras. 276 and 277 above.

[247] Also known as the Marowinje River

[248] The exchange of the instruments of ratification took place in Paris on 6 September 1916.

[249] See *British and Foreign State Papers, 1916* (London, 1920), vol. 110, p. 872. See also *Legislative Texts . . . (op. cit.)*, treaty No. 72.

Mauri[250] and Uchusuma Channels (CHILE AND PERU)

Treaty[251] between Chile and Peru for the settlement of the dispute regarding Tacna and Arica, signed at Lima on 3 June 1929[252]

285. *Cession of rights (easement in favour of Peru).* Chile, to which shall be allotted the territory of Arica, cedes to Peru in perpetuity all its rights over the channels of Uchusuma and Mauri, without prejudice to the sovereignty it will be entitled to exercise over such part of the aqueducts as may come within Chilean territory. In respect of both channels, Chile grants to Peru a perpetual and absolute easement over the sections which pass through Chilean territory. That easement shall include the right to widen the present channels, to change their course and to utilize all the water that may be collected in their passage through Chilean territory, except the waters that at present flow into the river Lluta and those which are used in the Tacroa sulphur mines (art. 2).

286. *Settlement of disputes.* If the Parties disagree as to the interpretation of any of the provisions of the Treaty, the dispute shall be settled by the President of the United States of America (art. 12).

Pilcomayo River (ARGENTINA AND PARAGUAY)

(1) *Supplementary Boundary Treaty[253] between Argentina and Paraguay, signed at Buenos Aires on 5 July 1939[254]*

287. *Technical co-operation in distributing the waters.* Both Governments shall proceed to appoint a technical commission composed of Paraguayans and Argentinians to study and draw up the plan of works necessary to regulate the proportional distribution of the flow of the River Pilcomayo into its two branches on the north and on the south of the frontier line (art. 6).

(2) *Supplementary Boundary Treaty[255] between the Argentine Republic and the Republic of Paraguay on the River Pilcomayo, and Protocol annexed to the Treaty, signed at Buenos Aires on 1 July 1945[256]*

288. By this Treaty, the two Governments agree on establishing the permanent boundary between the two countries in a sector of the Pilcomayo River and on the procedure for ensuring the stability of the dividing line and the utilization of the discharge of the waters of the Pilcomayo on the basis of a plan of hydraulic works. This plan was provided for in a preliminary project of the Pilcomayo Joint Technical Commission for Surveys and Hydraulic Works, established under article 6 of the Supplementary Boundary Treaty of 5 July 1939 mentioned above (para. 287).

289. *Construction of works (stability of the boundary line, utilization of waters).* For the purpose of ensuring the stability of the dividing line and the utilization of the flow of the waters, the two Governments agree to the construction of the works mentioned in the preliminary project prepared by the Pilcomayo Joint Technical Commission for Surveys and Hydraulic Works as set out in the record of 30 November 1943 and confirmed by the Final Report drawn up by the Argentine–Paraguayan Joint Frontier Commission, in accordance with article 4 of the Supplementary Boundary Treaty of 5 July 1939 (art. 3).[257]

290. *Technical co-operation:*

(a) *Establishment of a Joint Technical Commission for Hydraulic Works.* For the purpose of carrying out and financing the hydraulic works, the two Governments agree to establish a Joint Technical Commission for Hydraulic Works on the River Pilcomayo, composed of one technical expert for each country (art. 4).

(b) *Establishment of a Joint Argentine–Paraguayan Commission for the Administration and Supervision of the River Pilcomayo.* For the purpose of establishing a system for the control of the waters and for the maintenance of the works constructed and the utilization of the flow of the waters, the two Governments organize as a permanent body a Joint Argentine–Paraguayan Commission for the Administration and Supervision of the River Pilcomayo, composed of one technical expert from each country (art. 5).

(c) *Functioning of joint commissions.* For the purpose of providing the necessary finance, for awarding the contracts for the works, and for the functioning and regulation of the joint commissions provided by the Treaty, the Parties signed a Special Protocol of the same date annexed to the Treaty (art. 6 of the Treaty and articles 9 to 18 of the Special Protocol).

River Plate (ARGENTINA AND URUGUAY)

Protocol[258] between Uruguay and Argentina dealing with the question of the jurisdiction of the River Plate, signed at Montevideo on 5 January 1910[259]

291. *Utilization of waters.* The use of the waters of the River Plate will continue without alteration as up to the present, and whatever difference may arise in this connexion will be removed and resolved in the spirit of cordiality and harmony which has always existed between the two countries (para. 3).

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[250] Also known as the Azucacero.

[251] The exchange of the instruments of ratification took place at Santiago (Chile) on 28 July 1929.

[252] See League of Nations, *Treaty Series*, vol. XCIV, p. 402. See also *Legislative Texts ... (op. cit.)*, treaty No. 66.

[253] The exchange of the instruments of ratification took place at Buenos Aires on 10 November 1939.

[254] See *British and Foreign State Papers, 1939* (London, 1951), vol. 143, p. 340. See also *Legislative Texts ... (op. cit.)*, treaty No. 35.

[255] The Treaty came into force on 16 August 1945.

[256] See Argentina Ministry of Foreign Affairs and Public Worship, *Instrumentos internacionales de carácter bilateral suscriptos por la República Argentina* (up to 30 June 1948) (Buenos Aires, 1950), vol. II, p. 1181. See aslo *Legislative Texts ... (op. cit.)*, treaty No. 36.

[257] See "Conclusions and final proposals", in the *Final Report of the Argentine–Paraguayan Joint Frontier Commission* (Argentina, Ministry of Foreign Affairs and Public Worship, *Instrumentos internacionales de carácter bilateral suscriptos por la República Argentina* (up to 30 June 1948) (Buenos Aires, 1950), vol. II, p. 1189).

[258] The Protocol came into force by signature.

[259] See *American Journal of International Law* (Washington, D.C., 1910), vol. 4, *Supplement*, p. 138. See also *Legislative Texts ... (op. cit.)*, treaty No. 38.

St. Clair River and Lake St. Clair
(CANADA AND THE UNITED STATES OF AMERICA)

Exchange of notes[260] *constituting an agreement between the United States of America and Canada relating to the Saint Lawrence Seaway, Ottawa, 27 February 1959*[261]

292. *Pollution of waters.* No machine, plant, vessel, barge or operators or crews thereof employed in dredging the St. Clair River and Lake St. Clair shall be permitted to tie up or to discharge ashes, fuel oil, waste oil, etc., in a manner prejudicial to the health, well-being and activities of the owners and/or users of land or water areas. The attention of the United States Government is drawn to Canadian laws and regulations concerning the pollution of waters with special reference to the effect upon fish and migratory birds (para. *f*).

St. Lawrence River[262] (CANADA AND THE UNITED STATES OF AMERICA)

293. The agreements in force between Canada and the United States of America regarding the construction of the St. Lawrence Seaway, which contain provisions relating to the development of hydro-electric power, are confirmed by the exchanges of notes of 30 June 1952 and of 12 November 1963.[263]

(1) *Exchange of notes*[264] *constituting an agreement between the United States of America and Canada relating to the St. Lawrence Seaway Project, Washington, 30 June 1952*[265]

294. *Construction of works to provide for navigation predicated on the construction of a power project.* When all arrangements have been made to ensure the completion of the power phase of the St. Lawrence project, the Canadian Government will construct locks and canals on the Canadian side of the international boundary to provide for deep-water navigation to the standard specified in the proposed agreement between Canada and the United States for the development of navigation and power in the Great Lakes–St. Lawrence Basin, signed 19 March 1941. Canada's undertaking is conditional on the construction and maintenance by suitable entities in Canada and the United States of a sound power project in the International Rapids Section of the St. Lawrence River.

(2) *Exchange of notes*[266] *constituting an agreement between the United States of America and Canada relating to the establishment of the St. Lawrence River Joint Board of Engineers, Washington, 12 November 1943*[267]

295. *Establishment of the St. Lawrence River Joint Board of Engineers.* The International Joint Commission having approved the applications submitted by the Governments of the United States and Canada for the construction of certain works for the development of power in the International Rapids Section of the St. Lawrence River,[268] the two Governments undertake to establish a St. Lawrence River Joint Board of Engineers to ensure the construction of the said works. The Hydro-Electric Power Commission of Ontario (Canada) and the Power Authority of the State of New York (United States) will submit their plans and programmes of construction to the Board.

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[260] The Agreement came into force on 27 February 1959, by the exchange of notes.

[261] See United Nations, *Treaty Series*, vol. 341, p. 4. See also United Nations, *Legislative Texts . . . (op. cit.)*, treaty No. 64. Similar provisions are contained in the exchanges of notes of 23 July and 26 October 1956 and 26 February 1957 (Detroit River Section of the Great Lakes connecting channels) (see United Nations, *Treaty Series*, vol. 279, p. 179) and of 30 November 1956 and 8 and 9 April 1957 (St. Mary's River and St. Clair River Sections of the Great Lakes connecting channels) (*ibid.*, vol. 283, p. 218).

[262] In 1920, the Governments of the United States and Canada agreed to request the International Joint Commission, created by the Boundary Waters Treaty of 1909, to investigate what further improvements might be necessary in the St. Lawrence River in order to render it usable by deep-draft ocean-going vessels. The Commission recommended a programme of works for the development of power and of navigation. It was contemplated, however, that works which were international in character would be operated by an international board. A treaty to implement the recommendations of the International Joint Commission was concluded at Washington on 18 July 1932 (see United States of America, *Department of State Publication No. 347*; and P.C. Jessup, "The Great Lakes–St. Lawrence Deep Waterway Treaty", in *American Journal of International Law* (Washington, D.C., 1932), vol. 26, p. 814). Two years later, the Senate of the United States refused to give its consent to the ratification of the instrument. There were further inconclusive discussions between the United States and Canada in 1936–1938 and in 1940. On 19 March 1941, a new agreement was concluded, but, like the Treaty of 1932, was rejected by the United States Congress (see R. R. Baxter, ed., *Documents on the St. Lawrence Seaway—A selection of documents*, published under the auspices of The British Institute of International and Comparative Law (London–New York, 1960), p. 11). The subject of the St. Lawrence project was taken up at a meeting of Prime Minister St. Laurent and President Truman in 1951. It was formally announced at that time that Canada was prepared to undertake the construction of the Seaway as an entirely Canadian project on the Canadian side of the river, unless the United States was willing to proceed along the lines laid down by the Agreement of 1941 (see R.R. Baxter, ed. *op. cit.*, pp. 1–5; and E. Borchard, "The St. Lawrence Waterway and Power Project", *American Journal of International Law* (Washington, D.C., July 1949) vol. 43, p. 411). Some of the provisions of this Agreement are, however, being carried out by means of parallel or reciprocal legislation (in Canada, the St. Lawrence Seaway Authority Act, assented to on 21 December 1951, as amended by the Acts of 7 June 1956 and 14 August 1956; in the United States, the St. Lawrence Seaway Act, creating the St. Lawrence Seaway Development Corporation, approved 13 May 1954) (for the legislation of Canada and the United States creating agencies to construct and operate the St. Lawrence Seaway, see R.R. Baxter, ed., *op. cit.*, pp. 19–31). See also "Agreement between the Government of Canada and the Government of Ontario, signed 3 December 1951", and "Order of the Federal Power Commission of the United States in connection with the application of the State of New York for a licence to construct, operate and maintain the Power Project", 15 July 1953. (On the action of Canada and the United States with respect to the power project, see R.R. Baxter, ed., *op. cit.*, pp. 61–68).

[263] By an exchange of notes of 11 January 1952, the Governments of Canada and the United States agreed to co-operate in preparing applications to the International Joint Commission for approval of the plans to construct power facilities on the St. Lawrence in connexion with the development of an All-Canadian Seaway. The Order of Approval of the International Joint Commisison was signed on 29 October 1952. For both texts, see R.R. Baxter, ed., *Documents on the St. Lawrence Seaway . . . (op. cit.)*, pp. 33 and 36.

[264] The Agreement came into force on 30 June 1952, by the exchange of notes.

[265] See United Nations, *Treaty Series*, vol. 234, p. 200. See also *Legislative Texts . . . (op. cit.)*, treaty No. 60.

[266] The Agreement came into force on 12 November 1953, by the exchange of notes.

[267] See United Nations, *Treaty Series*, vol. 234, p. 98. See also *Legislative Texts . . . (op. cit.)*, treaty No. 61.

[268] See foot-note 263 above.

Lake Titicaca (BOLIVIA AND PERU)

Exchange of notes[269] *between Peru and Bolivia establishing a Joint Commission for Study of the Puno–Guaqui Railway Line and joint use of the waters of Lake Titicaca, La Paz, 20 April 1955*[270]

296. *Establishment of a joint commission.* A Joint Bolivian–Peruvian Commission is established for the purpose of preparing studies concerning the Puno–Guaqui Railway Line and the use of the waters of Lake Titicaca for hydro-electric and other mutually beneficial purposes. The Joint Commission shall be composed of twelve members, six from each country (paras. 1 and 2). In order to carry out the functions assigned to it, the Joint Commission shall be divided into two sub-commissions, one of which shall prepare studies concerning the use of the waters of Lake Titicaca (para. 3).

Uruguay River (ARGENTINA AND URUGUAY)

(1) *Agreement*[271] *concluded by Argentina and Uruguay concerning incidents which occurred on certain islands of the Uruguay River, signed at Buenos Aires on 13 January 1938*[272]

297. *Co-operation in projected studies.* The two Governments shall jointly make a hydrographic survey of the Uruguay River in accordance with a plan to be drawn up by their competent agencies (arts. 2 and 3).

298. *Establishment of a Joint Technical Commission to carry out a survey on the production of water-power.* As the utilization of the water-power of the Uruguay River is considered to be in their common interest, the two countries agree to arrange for the appointment of a Joint Argentine–Uruguayan Technical Commission, which shall carry out a survey and report as soon as possible to both Governments with a view to the implementation of the project (art. 5).[273]

(2) *Treaty*[274] *between the Argentine Republic and the Eastern Republic of Uruguay on the boundary constituted by the Uruguay River, signed at Montevideo on 7 April 1961*[275]

299. *Future regulation of the utilization of waters (hydrological surveys, fishing, pollution).* The Parties shall agree on a statute governing the utilization of the river, which shall cover, *inter alia*, reciprocal facilities for hydrological and other surveys relating to the river as well as provisions for the conservation of living resources and the avoidance of pollution of the waters (art. 7).

300. *Utilization of waters (domestic and industrial uses, irrigation). Policing of waters.* In the islands under Uruguayan jurisdiction,[276] the Parties shall, by mutual agreement, determine the utilization of the waters for domestic, industrial and irrigation purposes and shall establish a system of policing which shall ensure, through joint Argentine–Uruguayan co-operation, that the relevant regulations are enforced (art. 8).

River Zarumilla (ECUADOR AND PERU)

Declaration and exchange of notes[277] *concerning the termination of the process of demarcation of the Peruvian–Ecuadorian frontier, Lima and Quito, 22 and 24 May 1944*[278]

301. *Utilization of waters.* The boundary line between Peru and Ecuador shall pass through the so-called old bed of the River Zarumilla. However, Peru undertakes, by this agreement, to take the necessary steps, within three years, to guarantee the supply of water necessary for the life of the Ecuadorian villages on the right bank of the so-called old bed of the River Zarumilla.[279]

[269] The Agreement came into force on 20 April 1955, by the exchange of notes.

[270] See *Revista Peruana de Derecho Internacional* (Lima), vol. XV, January/December 1955, Nos. 47 and 48, p. 76. See also *Legislative Texts ... (op. cit.)*, treaty No. 43.

[271] This Agreement came into force on 13 January 1938, by signature.

[272] See Argentina, Ministry of Foreign Affairs and Public Worship, *Instrumentos Internacionales de carácter bilateral suscriptos por la República Argentina* (up to 30 June 1948) (Buenos Aires, 1950), vol. II, p. 1385. See also *Legislative Texts ... (op. cit.)*, treaty No. 39.

[273] An additional protocol, in force since January 1947, kept in being the Joint Argentine–Uruguayan Technical Commission set up by this Agreement. This Commission was replaced by a new Joint Technical Commission established by article 2 of the Agreement between Argentina and Uruguay relating to the utilization of the rapids of the Uruguay River in the area of Salto Grande, signed at Montevideo, on 30 December 1946 (see para. 259 above).

[274] The Treaty was ratified by the Argentine Republic on 2 October 1961. It had not yet been ratified by the Eastern Republic of Uruguay at the time the present report was drawn up.

[275] Text provided by the Ministry of Foreign Affairs and Public Worship of the Argentine Republic. See *Legislative Texts ... (op. cit.)*, treaty No. 41.

[276] Zone specified in article 1, paragraph B II, of the Treaty.

[277] The Agreement entered into force on 24 May 1944, by the exchange of notes.

[278] See *British and Foreign State Papers, 1943–1945* (London, 1953), vol. 145, p. 566. See also *Legislative Texts ... (op. cit.)*, treaty No. 69.

[279] This provision is in agreement with the formula of Oswaldo Aranha, Minister for Foreign Affairs of Brazil, resolving the differences in interpretation arising on certain points of the demarcation of the Peruvian–Ecuadorian frontier (see Ecuador, *Informe del Ministerio de Relaciones Exteriores a la Nación* (Quito, August 1944–July 1946) p. 610).

Chapter IV

ASIA

A. MULTILATERAL TREATIES

302. There are hardly any multilateral treaties on the utilization and use of Asian international rivers. The Agreement between Cambodia, Laos and Viet-Nam regulating Maritime and Inland Navigation on the Mekong and Inland Navigation on the Approach to the Port of

Saigon, which was signed at Paris on 29 December 1954 and came into force on 1 January 1955,[280] relates only to navigation. It should, however, be noted that an effort has been proceeding for some years now towards international co-operation in the development of water resources in the lower Mekong basin. This effort, which was a result of the initiative of ECAFE,[281] was subsequently given the approval of the Governments concerned.[282]

303. The result of this international co-operation was the establishment of a permanent body to promote, co-ordinate, supervise and control the planning and investigation of water resources development projects in the lower Mekong basin. In October 1957, Cambodia, Laos, Thailand and the Republic of Viet-Nam set up the Committee for Co-ordination of Investigations of the Lower Mekong Basin, in pursuance of the decision taken in March 1957 by ECAFE. At its first session at Phnom-Penh, on 31 October 1957, which was attended by plenipotentiaries of the four Governments, the Committee adopted the text of its Statute.[283] This Statute was subsequently approved by the participating Governments.[284]

304. In addition to this international co-operation concerning the Mekong River, it would be useful to mention here some multilateral treaties containing provisions relating to the utilization of the waters of Asian international rivers. Article 1 of the Turco–Persian Delimitation Protocol,[285] signed at Constantinople by the representatives of Great Britain, Russia, Persia and Turkey, on 4 (17) November 1913[286] leaves the waters of the Shatt-el-Arab, from a point determined by the Protocol as far as the sea, under Ottoman (today Iraqi) sovereignty, on condition that "the rights, usages and customs existing with regard to fishing from the Persian bank are in no way jeopardized". Article 109 of the Treaty of Peace[287] between the British Empire, France, Italy, Japan, Greece, Romania and Yugoslavia, of the one part, and Turkey, of the other part, signed at Lausanne on 24 July 1923[288] contains a general provision concerning the hydraulic systems affected by the fixing of a new frontier. This article states: "In default of any provisions to the contrary, when . . . the hydraulic system (canalization, inundation, irrigation, drainage or similar matters) in a State is dependent on works executed within the territory of another State, or when use is made on the territory of a State, in virtue of pre-war usage, of water or hydraulic power, the source of which is on the territory of another State, an agreement shall be made between the States concerned to safeguard the interests and rights acquired by each of them. Failing an agreement, the matter shall be regulated by arbitration".[289]

B. BILATERAL TREATIES

1. Bilateral treaties concerned exclusively with the utilization and use of international rivers in Asia [290]

(a) TREATIES RELATING GENERALLY TO RIVERS CONTIGUOUS TO THE TERRITORIES OF TWO STATES

Turkey and the USSR

Convention[291] and Protocol[292] between the Union of Soviet Socialist Republics and Turkey regarding the use of frontier waters, signed at Kars on 8 January 1927[293]

[280] *La documentation française* (Paris, 25 January 1955), No. 1973.

[281] See the following United Nations documents on this subject: "Technical problems relating to flood control and water resources development of the Mekong—an international river", 10 August 1952 (E/CN.11/FLOOD/8Rev./1); "Note on the possible control and utilization of water resources in the lower Mekong basin", 22 December 1955 (E/CN.11/FLOOD/13); "Development of water resources in the lower Mekong basin", 6 March 1957 (ECAFE/L.119) and *Development of water resources in the lower Mekong basin*, 1957 (United Nations publication, Sales No. 1957.II.E.8); "Programme of Studies and investigations for comprehensive development of the Lower Mekong River Basin", 22 April 1958 (TAA/AFE/3); "International co-operation with respect to water resources development: report by the Secretary-General" (*Official Records of the Economic and Social Council, Twenty-fifth Session, Annexes*, agenda item 5, document E/3071). See also United States of America, Department of the Interior, Bureau of Reclamation, *Reconnaissance Report, Lower Mekong Basin* (Washington, D.C., U.S. Government Printing Office, March 1956).

[282] At its thirteenth session, in March 1957, ECAFE endorsed the following joint statement by the delegations of Cambodia, Laos, Thailand and Viet-Nam:

"*The delegations of the lower Mekong riparian countries,*

"*Having studied* document ECAFE/L.119, entitled 'Development of Water Resources in the Lower Mekong Basin',

"*Congratulate* the Commission secretariat on this work and particularly its Bureau of Flood Control and Water Resources Development,

"*Consider* that this study is of real usefulness for their economic development,

"*Express the wish* that such studies be continued jointly with the four countries concerned, in order to determine with more detail in what measure the various projects concerning hydroelectric power, navigation, irrigation, drainage and flood control can be of use to several countries."

(*Official Records of the Economic and Social Council, Twenty-fourth Session, Supplement No. 2*, para. 277.)

[283] The text of the Committee's Statute and Rules of Procedure are given in annexes I and II of the "First Report of the Committee for Co-ordination of Investigations of the Lower Mekong Basin to ECAFE" (E/CN.11/475) of 25 February 1958. See also *Legislative Texts . . . (op. cit.)*, treaty No. 81.

[284] The Committee reported on its activities to ECAFE at its fourteenth, fifteenth, sixteenth and seventeenth sessions (see documents E/CN.11/475 of 25 February 1958, E/CN.11/500 of 11 March 1959, E/CN.11/513 of 11 January 1960 and E/CN.11/557 of 2 March 1961, respectively).

[285] The validity of this Protocol is recognized by article 1 of the Boundary Treaty between Iraq and Iran, signed at Teheran on 4 July 1937 (see League of Nations, *Treaty Series*, vol. CXC, p. 256).

[286] See C. U. Aitchison, *A Collection of Treaties, Engagements and Sanads relating to India and neighbouring countries* (Calcutta, Superintendent, Government Printing, India, 1909), vol. 13, p. 126. See also *Legislative Texts . . . (op. cit.)*, treaty No. 80.

[287] The Treaty entered into force on 6 August 1924.

[288] See League of Nations, *Treaty Series*, vol. XXVIII, p. 13. See also: *Legislative Texts . . . (op. cit.)*, treaty No. 119.

[289] As far as Asia is concerned, this provision is applicable to the frontiers of Turkey with Iraq and Syria. Identical provisions were contained in article 309 of the Treaty of Saint-Germain with Austria and in article 292 of the Treaty of Trianon with Hungary (see para. 421 below).

[290] "In 1867 and in 1910, two Agreements were reached between Her Majesty's India Government and the Sultan of Lahej and between the British Government and the Sultan of the Abdali respectively, providing for the construction in the Amir's territories of pumping and aqueduct facilities for the benefit of Aden." (See, A. M. Hirsch, "Utilization of International Rivers in the Middle East", *American Journal of International Law* (Washington, D.C., January 1956), vol. 50, 1956, p. 90.) Since Lahej and Abdali are part of the Aden Protectorate, the agreements are not dealt with in this report. For the text of these agreements see C. U. Aitchison, *op. cit.*, vol. 11, pp. 64 and 74 respectively.

[291] The Convention came into force on 26 June 1928 by the exchange of the instruments of ratification.

[292] The Protocol relates exclusively to the Araze River; it is quoted below in the part dealing with bilateral treaties relating to specific rivers (see paras. 321–324 below).

[293] See *British and Foreign State Papers, 1927* (London, 1932), vol. 127, p. 926. See also *Legislative Texts . . . (op. cit.)*, treaty No. 106

305. This Convention deals with the apportionment and use of the waters of the rivers, streams and springs at the frontier between Turkey and the Union of Soviet Socialist Republics and with the control of these waters.

306. *Apportionment of the waters.* The two Contracting Parties shall have the use of one half of the water from the rivers, streams and springs which coincide with the frontier line between Turkey and the Union of Soviet Socialist Republics (art. 1).

307. *Preservation, repair and maintenance of works existing at the time of the conclusion of the Convention.* Each Contracting Party reserves the right to preserve all the constructions for the utilization of waters, which are in existence at the time of the conclusion of the present Convention. The constructions may be repaired and restored and shall be maintained and repaired by the Contracting Party which owns them, in accordance with the requirements of the technique of water utilization (art. 2).

308. *Technical co-operation:*

(a) *Establishment of a Mixed Commission.* The Parties shall establish a Mixed Commission to determine the quantity of water supplied by the rivers and make the definitive choice of the site and type of constructions mentioned in the Convention (art. 4, first, second and fifth paras., and art. 10, first para.).

(b) *Establishment of hydrometric observation stations.* For the apportionment of water and the study of river systems, the two Parties undertake to establish hydrometric observation stations. The sites for the hydrometric observation stations shall be chosen by the Mixed Commission. The Parties shall have the right to determine the cross-sections of the river beds (art. 3).

(c) *Determination of the quantity of water supplied from the rivers.* Twice yearly, the Mixed Commission shall, from the hydrometric observation stations, determine the quantity of water supplied by the rivers and jointly draft reports on the subject. In the event of a drop in the water level of the rivers, if one of the Contracting Parties states that it is necessary to measure the supply of water at dates other than those mentioned in the Convention, the other Party shall undertake to send its representatives within fifteen days from the date of the statement. If the representatives of one of the Parties do not arrive within the time specified, the other Party shall have the right privately to determine the supply of water from the rivers, but it shall be obliged to communicate the results of the measurements to the other Party. If the other Party, on privately measuring the same quantity of water, obtains different results, it shall have the right to insist on new measurements being made (art. 4, first, third and fourth paras.).

309. *Construction of irrigation dams. Limitations.* Should it be necessary to raise the water level of the rivers and create artificial reservoirs for the construction of irrigation canals, each Contracting Party shall have the right to construct dams (art. 5). In the construction of a dam by one of the Parties, the quantity of water due to the other Party must freely pass through the dam or reservoir and a free passage of fish must also be guaranteed (art. 5, first para., sub-para. (*a*)).

310. *Right to use both banks during the construction of dams.* During the construction of dams, the Parties shall have the right to use both banks for preparatory work and for the temporary passage of water (art. 5, first para., sub-para. (*b*)).

311. *Right to erect temporary constructions during the work on dams. Limitations.* The two Parties shall have the right to erect all kinds of hydraulic works, temporary tunnels, defensive constructions, etc., during the execution of work on the dams. These additional constructions must not divert the water for more than 250 metres from the construction site (art. 5, first para., sub-para. (*b*)).

312. *Obligation to take precautions to protect the interests of the other Party. Compensation for damage.* The Party constructing the dam must take all measures to protect the interests of the other Party from damage which may be caused by the construction and must compensate for any material damage which may be caused despite the precautions taken (art. 5, first para., sub-para. (*c*)).

313. *Right to erect constructions to protect the banks. Limitations.* To prevent erosion of the banks of the rivers which constitute the frontier, each Party shall retain the right to construct breakwaters, on condition that it safeguards the other Party against any harmful effects of such constructions (art. 6).

314. *Right to erect constructions for the regulation of the water. Limitations.* The direction of the thalweg of the river may not be changed artificially. However, in the event of a deviation of the frontier rivers from their beds, both Parties shall have the right to erect regulation and repair works on both banks of the rivers, provided that the other Contracting Party is notified in time (art. 6).

315. *Construction of hydro-electric stations and mills. Limitations.* Both Parties shall have the right to construct hydro-electric stations and mills but the sites for detours and draining of water for such stations and constructions must be close to each other and placed so as not to cause damage to the other Party and so that the river sector (the free sector) used by the hydro-electric station or mill does not include the initial structures existing or projected for the construction of irrigation canals and other various constructions of the Contracting Parties provided for by the Convention (art. 8).

316. *Right to build pumps. Limitations.* Each Party shall have the right to build pumps, provided that it uses only its own portion of the water (art. 9).

317. *Utilization of the waters. (Irrigation, mills, watering, fishing.)* The nationals of both Parties shall have equal rights to use the waters forming the frontier. During the day, they may, without special authorization, use the rivers and streams coinciding with the frontier line and used for mills, irrigation, watering and fishing. During the night, they may approach the river banks only at points determined by the frontier authorities of both States. The watering points for cattle shall also be fixed by the frontier authorities of both States. Each Party shall have the right to fish from its bank, but fishing shall be forbidden at night. These provisions concerning the utilization of the waters do not apply to the following rivers and streams: Araxe, Arpa-Chai, Poskhov-Chai, Kura and Chorokh (art. 11).

(*b*) TREATIES RELATING TO ONE OR MORE SPECIFIC RIVERS

Amur and Argun Rivers (CHINA (PEOPLE'S REPUBLIC OF) AND THE USSR)

Agreement[294] between the Union of Soviet Socialist Republics and the People's Republic of China on joint research operations to determine the natural resources of the Amur River basin and the prospects for development of its productive potentialities and on planning and survey operations to prepare a scheme for the multi-purpose exploitation of the Argun River and the Upper Amur River, signed at Peking on 18 August 1956[295]

318. *Joint research to determine and develop the natural resources of the Amur River basin and prepare for the multi-purpose exploitation of the Argun River and the Upper Amur River.* The Parties shall carry out joint research operations to determine the natural resources of the Amur River basin and the prospects for the development of its productive potentialities (art. 1) and joint planning and survey operations to prepare a scheme for the multi-purpose exploitation of the Argun River and the upper Amur River (art. 2). The types of research, planning and survey operations to be carried out are indicated in annexes 1 and 2 to the Agreement.[296]

319. *Organization of technical co-operation:*

(a) *Research to determine and develop the natural resources of the Amur River basin. Creation of a joint Scientific Council. Establishment of hydrometric stations.* The Parties shall organize, through their Academies of Science, all-purpose field parties to carry out the operations. The two all-purpose field parties, using their own personnel and their own resources, shall carry out the operations in their own territories. In frontier sectors they shall carry out joint research operations with equal participation by both sides. A joint Scientific Council shall be set up to provide uniform scientific and methodological guidance for the operations, to review annual work programmes and to study and approve scientific reports. A plan for the siting and organization of a base system of hydrometric stations on the frontier sectors of the Amur River basin shall be prepared by agreement between the Soviet and Chinese hydrological institutions (art. 3).

(b) *Research to prepare for the multi-purpose exploitation of the Argun River and the Upper Amur River. Establishment of hydrometric stations.* The Soviet and Chinese organizations, using their own personnel and their own resources, shall set up survey parties, each working in its own territory. The scheme for the multi-purpose exploitation shall be prepared by the Soviet organization with the participation of the corresponding Chinese organization. For this purpose, the Chinese side shall assign a deputy chief project engineer and the necessary number of specialists by agreement with the Soviet side. The hydrometric stations necessary for operations on frontier sectors shall be organized by the Soviet side, with the participation of the Chinese side (art. 4).

320. *Provisions relating to all the research to be carried out:*

(a) *Exchange of information.* The Soviet and Chinese organizations shall, for information purposes, exchange data, reports and other documentation on research, planning and survey operations carried out before or after the conclusion of the Agreement (art. 5).

(b) *Facilities (right of access).* The members of each field party shall be entitled to enter the territory in which the other is working and to carry out operations there, within the limits of the approved programmes and plans (art. 6).

(c) *Technical assistance from one Party for the other Party.* The Soviet organizations shall provide the Chinese organizations with technical assistance in carrying out the research and survey operations by sending Soviet specialists to the People's Republic of China as well as supplying the latter with equipment, and receiving Chinese specialists in the USSR for technical training (art. 7). The Agreement contains also come provisions relating to the conditions, expenses and payments of the technical assistance contemplated in the said instrument (arts. 8 to 11).

(d) *Publication of the research results.* Each Party shall be entitled to publish only such research results as relate to its territory. The conditions for the publication of results of joint research shall be decided by mutual agreement (art. 12).

Araxe River[297] (TURKEY AND THE USSR)

Protocol annexed to the Convention concluded between the Union of Soviet Socialist Republics and Turkey regarding the use of frontier waters, signed at Kars on 8 January 1927[298]

321. This Protocol was concluded pursuant to article 5 of the Convention concluded at Kars on 8 January 1927. It lays down certain conditions to govern the construction of a dam on the Araxe River.

322. *Right of the USSR to construct an irrigation dam.* The Government of the Union of Soviet Socialist Republics is authorized to carry out the essential research on the bank of the Araxe River belonging to Turkey and the necessary work for the construction of a dam. The type of dam, the site where it is to be constructed, the radius within which the research is to be carried out and the area needed for the construction of the dam are fixed by the Protocol (arts. 1 and 2).

323. *Protection of Turkish interests. Respect for acquired rights. Compensation for damage.* For the purpose of preventing an excessive drop in the water level of the Ighdir Valley canals, the Union of Soviet Socialist Republics undertakes to ensure that, during the construction of the

[294] The Agreement came into force on the date of signature.

[295] USSR, Ministry of Foreign Affairs, *Sbornik deistvuiushchihk dogovorov, soglashenii i konventsii, zakliuchennykh SSR s inostrannymi gosudarstvami* (Treaties, Agreements and Conventions in force, concluded by the USSR with foreign countries) (Moscow, 1956), vol. XVIII, p. 323. See also *Legislative Texts . . . (op. cit.)*, treaty No. 87.

[296] *Legislative Texts . . . (op. cit.)*, treaty No. 87.

[297] Also called Araxes, Aras or Araks.

[298] See para. 305 and foot-note 292 above.

dam, the same quantity of water is let into the said canals as passed through them prior to such construction. More especially, the Union of Soviet Socialist Republics also undertakes to construct at its own expense a canal lock near the Turkish bank, so that during the dry season half of the river's water can be channelled in the direction of and along the Turkish bank. In addition, the Government of the Union of Soviet Socialist Republics is to take all measures to protect the interests of Turkey and to provide compensation for any physical damage which may be caused. Turkey reserves the right to supervise the construction of the dam (arts. 4, 5 and 6).

324. *Apportionment of the waters.* The Government of the Union of Soviet Socialist Republics grants the Turkish Government the right to divert up to 50 per cent of the water contained in the reservoir formed by the dam, through a canal to be constructed subsequently by Turkey for the purpose of irrigating the fields of the Ighdir Valley. Turkey, however, is to share the construction costs of the dam in proportion to the quantity of water utilized and to the economic benefits that the two Parties derive from the dam (art. 3).

Atreck, Babadjik Canal, Chandir, Durungar, Firuza, Karzan Chai, Kelta-Chinar, Soumbar, Tedjen and Archinian, Chaachaa, Kelat Chai, Lain-Sou and Meana Rivers and their tributaries (IRAN AND THE USSR)

Convention[299] *between the Governments of the Union of Soviet Socialist Republics and Persia regarding the mutual use of frontier rivers and waters, signed at Ashkabad on 20 February 1926*[300]

325. By this Convention, the Governments of Persia and the Union of Soviet Socialist Republics defined their respective rights to the various frontier rivers and streams between the Tedjen (Geri-Roud) and Atreck Rivers. Some of the frontier rivers were apportioned between the two countries. Several other streams were allocated entirely to one country. Most of the rivers provided for were equally divided between the two countries.

326. *Apportionment of the frontier waters of the Tedjen (Geri-Roud) River.* All the frontier waters of the Tedjen (Geri-Roud) River shall be divided into ten equal parts; three parts shall be utilized by Persia and seven parts by the Union of Soviet Socialist Republics. For the purpose of accurately dividing the water, technicians of the Contracting Parties will erect a permanent water gauge (art. I).

327. *Construction of a reservoir on the Tedjen (Geri-Roud) River.* In view of the considerable losses of water from the Tedjen (Geri-Roud) River during the spring floods, both Parties recognize the expediency of installing a reservoir on the Tedjen River, above Pul-i-Khatum, which would be capable of damming surplus waters for the use of the Contracting Parties. The Contracting Parties express their agreement to the installation of such a reservoir, to an appropriate technical examination of the region, and to the conclusion of a special agreement concerning the construction and exploitation of a reservoir, and the principles concerning the division of water therefrom (art. III).

328. *Apportionment of the waters of the Chaachaa, Meana (Kara-Tikan), Kelat Chai (Nafte), Archinian (Archangan), Lain-Sou Rivers, their respective tributaries, and the Chandir (Chandor) River.* All the waters of these rivers shall be divided into two equal parts; one for the benefit of Persia and the other shall be let into the territory of the Union of Soviet Socialist Republics (arts. IV, V, VI, VII, VIII and XIV).

329. *Apportionment of the water of the Karzan Chai (Zenginanlou) River.* All the waters of the Karzan Chai (Zenginanlou) River shall be divided into five equal parts; two for the benefit of Persia and the other three parts for the Union of Soviet Socialist Republics. Persia's quota of two fifths shall also include that amount of water which passes through the territory of the Union of Soviet Socialist Republics from the Karzan Chai River for the purpose of supplying the region of Lutfabad. The Government of the Union of Soviet Socialist Republics shall undertake to let pass, without hindrance, along the canal passing through its territory that quantity of water which Persia allocates out of its quota for the use of the Lutfabad region (art. IX, first, second and third paras.).

330. *Right of Iran to re-establish the Babadjik canal or to construct a new canal for the purpose of supplying water from the Karzan Chai River to the Lutfabad region. Right of access.* For the purpose of supplying water to the Lutfabad region, the Persian Government has extended the right to permit water to flow through the Babadjik canal, instead of through the existing canal, or else to erect a new canal on the territory of the Union of Soviet Socialist Republics. This right is extended by the Union of Soviet Socialist Republics to Persia gratis. All expenses in connexion with the re-establishment of the Babadjik canal, or the erection of a new canal, shall be the responsibility of the Persian Government. The Government of the Union of Soviet Socialist Republics agrees to let through its territory, without hindrance, Persian citizens who are supplied with appropriate identification cards and are assigned to clearing and repairing the canal which services the region of Lutfabad (art. IX, fourth and fifth paras.).

331. *Apportionment of the waters of the Durungar River.* All the water from the Durungar River and the salted springs at the river bed of the Durungar River shall pass to the full use of Persia (art. XI).

332. *Apportionment of the water of the Kelta-Chinar River. Respect for acquired rights. Right of access.* All the water of the Kelta-Chinar River shall pass to the use of Persia. The Persian Government shall undertake not to hinder the citizens of the Union of Soviet Socialist Republics who are at present using the waters of the springs found on the territory of Persia in the valley of the Kelta-Chinar River (below the Persian settlement of Keltai-Chinar), as well as to let through, without hindrance, the citizens of the Union of Soviet Socialist Republics who are provided

[299] The Convention came into force by signature, in accordance with article 12. The exchange of the instruments of ratification took place at Teheran on 24 September 1926.

[300] See L. Shapiro, *Soviet Treaty Series, 1917–1928*, vol. I (Washington, D.C., The Georgetown University Press, 1950), p. 314. See also *Legislative Texts . . . (op. cit.)*, treaty No. 103.

with the proper identification cards for the purpose of cleaning and maintaining the spring, river beds and channels leading from them (art. XII).

333. *Apportionment of the water of the Firuza (Firuzinka) River.* All the water of the Firuza (Firuzinka) River after, satisfying the needs of the inhabitants of Firuza, will pass to the use of the lower village in the Union of Soviet Socialist Republics (art. XIII).

334. *Apportionment of the frontier waters of the Soumbar River.* All the water of Soumbar River which is co-extensive with the frontier between Persia and the Union of Soviet Socialist Republics, including the water of the tributaries of the Kouloun-Kalasi-Sou and Daine-Sou Rivers, shall be divided into two equal parts (art. XV, first and second paras.).

335. *Installations to be constructed along the Soumbar River by the USSR.* If the Union of Soviet Socialist Republics should construct along the Soumbar River on its territory hydrotechnical installations for the purpose of damming the water, the Government of the Union of Soviet Socialist Republics shall undertake to let the same amount of water, during the period of irrigation, into the Atreck River as would pass on the basis of meteorological conditions and in the absence of such installations. The Union of Soviet Socialist Republics shall forewarn the Persian Government of its decision to establish these installations (art. XV, third para.).

336. *Apportionment of the frontier water of the Atreck River.* All the water of the Atreck River which is co-extensive with the frontier between the Contracting Parties shall be divided into two equal parts; one part for Persia and the other for the Union of Soviet Socialist Republics (art. XVI, first and second paras.).

337. *Installations to be constructed along the Atreck River by Persia.* If Persia should decide to erect hydrotechnical installations along the Atreck River, on its territory, for the purpose of damming the water, the Government of Persia shall undertake to let pass, during the irrigation period, to the frontier between Persia and the Union of Soviet Socialist Republics, where the division of the water of the Atreck River begins, the same quantity of water as would have been available in accordance with meteorological conditions and in the absence of such installations. Persia shall forewarn the Union of Soviet Socialist Republics of its decision to establish such installations (art. XVI, third para.).

338. *Measurement of water. Right of access.* The measurement of water mentioned in the Convention shall be made on the request of Persia or the Union of Soviet Socialist Republics jointly by technicians and mirabs of the Contracting Parties simultaneously on each separate river and on the canals diverging therefrom. Persia and the Union of Soviet Socialist Republics shall undertake to allow without hindrance on their territories the technicians and mirabs who are assigned to conduct the mission along separate rivers and who are supplied with adequate credentials which include an indication of the points of the frontier to be crossed (art. XVII). The measurement of the water on the frontier shall be made at the places most adapted for it. The technicians and mirabs of both the Union of Soviet Socialist Republics and Persia shall have equal rights in the use of hydrometrical posts (art. XVIII).

339. *Settlement of disputes.* In the case of disagreement between the mirabs of the Contracting Parties concerning any question of water utilization, such disagreement shall be referred for mutual decision to representatives of Persia and the Union of Soviet Socialist Republics. These representatives, regional hydrotechnicians and governors (or their deputies) are indicated in the Convention. If no agreement is reached, the matter shall be referred for final decision to the chief Karguzar and the consul general of the Union of Soviet Socialist Republics at Meshed (art. XIX).

340. *Policing of waters.* In case of violation by the citizens of the Contracting Parties of the quotas or procedure for the mutual use of frontier rivers and waters, the representatives indicated shall adopt the necessary measures for settling the violations which have arisen and conduct the investigation for bringing those guilty of such infringements before the law (art. XX).

Euphrates and Tigris Rivers and their tributaries (IRAQ AND TURKEY)

Protocol[301] *relative to the regulation of the waters of the Tigris and Euphrates and of their tributaries, annexed to the Treaty of Friendship and Neighbourly Relations between Iraq and Turkey, signed at Ankara on 29 March 1946*[302]

341. In order to ensure the maintenance of a regular water supply, to regulate the water flow and to avoid the danger of floods during the annual periods of high water, it had been found necessary to construct dams and permanent observation stations in Turkish territory. In this Protocol, Turkey, the up-stream State, recognizes the importance for Iraq, the down-stream State, of the construction of conservation works on the Tigris and Euphrates and their tributaries. The two Parties furthermore accept the principle that the construction of these works should as far as possible be adapted to purposes of irrigation and the production of hydro-electric power.

342. *Authorization to undertake studies with a view to controlling the rivers.* Iraq may send to Turkey groups of technical experts to make investigations and surveys, collect hydraulic and geological information needed for the selection of sites for the construction of the dams and observation stations to be constructed on the Tigris, Euphrates and their tributaries, and prepare the necessary plans to this end. The expenditure incurred shall be defrayed by Iraq (art. 1).

343. *Collaboration in carrying out the projected studies. Right of access. Provision of facilties.* The technical experts from Iraq shall collaborate with Turkish technical experts; Turkey shall authorize them to proceed to the places to be visited and shall provide them with the information, assistance and facilities necessary for the accomplishment of their task (art. 2).

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[301] The Protocol came into force on 10 May 1948, by the exchange of the instruments of ratification of the Treaty.

[302] See United Nations, *Treaty Series*, vol. 37, p. 280. See also *Legislative Texts ... (op. cit.)*, treaty No. 104.

344. *Installation of permanent observation stations.* Turkey shall install permanent observation stations and shall ensure their operation and maintenance. The cost of operation of these stations shall be defrayed in equal part by Iraq and Turkey. The levels of water observed shall be communicated by the Turkish authorities to the Iraqi authorities (art. 3).

345. *Construction of works found necessary following the studies undertaken.* The Turkish Government accepts in principle the construction of any works which may be found necessary as a result of the studies undertaken. Each work, other than the permanent observation stations, shall be the subject of a separate agreement in respect of its site, operation and maintenance, as well as its use by Turkey for purposes of irrigation and power production (art. 4).

346. *Collaboration with a view to the construction of conservation works.* Turkey shall keep Iraq informed of its plans for the construction of conservation works on the Tigris and the Euphrates or their tributaries, in order that these works may as far as possible be adapted, by common agreement, to the interests of both Iraq and Turkey (art. 5).

Gandak River (INDIA AND NEPAL)

Agreement[303] *between the Government of Nepal and the Government of India on the Gandak River Irrigation and Power Project, signed at Katmandu on 4 December 1959*[304]

347. *Works to be constructed in Nepalese territory for purposes of irrigation and development of power.* The two Governments agree to the construction, within the territory of Nepal, of a barrage, canal head regulators and other appurtenant works about 100 feet below the existing Tribeni Canal head regulator and to the establishment of canal systems for purposes of irrigation and development of power for Nepal and India.

348. *Collaboration in carrying out the projected studies. Right of access.* Nepal authorizes the officers of India to move in the area with the equipment required for the surveys and investigations in connexion with the project, before, during and after construction (clause 1).

349. *Authorization to proceed with the execution of the project.* Nepal authorizes the Government of India to proceed with the execution of the project and its operation and maintenance after its completion (clause 2).

350. *Provisions concerning irrigation. Construction of works.* Pro rata *reduction of water supplies during periods of shortage.* The Government of India shall construct the Nepal Eastern Canal and the Nepal Western Canal, including the distributory systems thereof, down to a minimum discharge of 20 cusecs for providing flow irrigation in Nepal. Nepal shall be responsible for the construction of channels below 20 cusecs capacity for irrigation in Nepal but India shall contribute such a sum of money as it may consider reasonable to meet the cost of construction (clause 7). Whenever the supply of water available for irrigation falls short of the requirements of the total area under the project for which irrigation has to be provided the shortage shall be shared on a *pro rata* basis between India and Nepal (clause 10).

351. *Provisions concerning the construction of works for the production and distribution of hydro-electric power.* The Government of India agrees to construct one power house with an installed capacity of 15,000 kilowatts in Nepal territory on the Main Western Canal and some transmission lines in order to facilitate the supply of power. Nepal will be responsible for the construction of certain transmission and distribution systems within Nepal. India shall supply power to Nepal to an aggregate maximum of 10,000 kilowatts. The Agreement also contains provisions concerning the ownership and management of the power house and the transmission systems (clause 8).

352. *Right of India to regulate the flow of water. Right of Nepal to withdraw water.* The Government of India shall be free to regulate the flow into or close to the Main Western Canal head regulator temporarily, if such works are found to be necessary in the interest of the efficient maintenance and operation of the canal or power house (clause 8 (vii)). Nepal will continue to have the right to withdraw for irrigation or any other purpose from the river or its tributaries in Nepal such supplies of water as may be required by them from time to time. However, Nepal agrees that it will not exercise this right in such a manner as is likely, in the opinion of the Parties hereto, to affect prejudicially the water requirements of the project (clause 9).

353. *Sovereign and territorial rights of Nepal.* Nothing in this Agreement shall be deemed to derogate from the sovereignty and territorial jurisdiction of Nepal in respect of lands acquired by Nepal and made available to India for the investigation, execution and maintenance of the project according to clause 3 of the agreement (clause 11).

354. *Settlement of disputes.* Any dispute or difference arising out of or in any way touching or concerning the construction, effect or meaning of this Agreement, or any matter contained therein or the respective rights and liabilities of the Parties thereunder, if not settled by discussion, shall be referred to arbitration. Each of the two Parties shall nominate an arbitrator for jointly determining such dispute or difference, and the award of the arbitrators shall be binding on the Parties. In case the arbitrators are unable to agree, the Parties will appoint an umpire, whose award shall be final and binding on them (clause 12).

Helmand River (AFGHANISTAN AND IRAN)

Terms of Reference of the Helmand River Delta Commission, agreed by conferees of Afghanistan and Iran on 7 September 1950[305]

355. Throughout the years, various efforts have been made to reach an agreement regarding the distribution and use of the waters of the Helmand River in its delta. The

[303] The Agreement entered into force on signature.

[304] See Nepal, *Trade and Information Directory, 1960–1961*, (New Delhi), p. 113. See also *Legislative Texts . . . (op. cit.)*, treaty No. 96.

[305] See the report of the *Helmand River Delta Commission, Afghanistan and Iran*, February 1951, p. 3. See also *Legislative Texts . . . (op. cit.)*, treaty No. 82. The Helmand River is a closed basin.

United States Department of State tendered its good offices in October 1947 and conversations were soon initiated between representatives of Afghanistan and Iran in Washington, D.C. In February 1948, the United States Department of State suggested that a three-man neutral technical commission be selected by Iran and Afghanistan to study the problem and recommend a basis for settlement. It was later suggested that a United States water technician be loaned to serve as engineer/fact-finder in Iran and Afghanistan and to prepare the data for the use of the neutral technical commission. This proposal being accepted by both Governments, an engineer from the United States Bureau of Reclamation was approved in January 1950 as engineer/fact-finder, and his work was soon initiated. With the full co-operation of both Governments, this engineer accomplished during the spring and summer of 1950 the preparatory work for the proposed commission. From the latter part of 1948, both Governments were considering a panel of water experts from many countries from which to select the commissioners. Three experts from Chile, the United States and Canada were formally agreed upon by both countries in March 1950, and formed a neutral commission known as the Helmand River Delta Commission. In August 1950, representatives of the two Governments initiated conferences in Washington, D.C., to define the task of this neutral Commission. The conferees completed their work on 7 September 1950, and agreed upon the terms of reference of the Helmand River Delta Commission. This Agreement deals with the purposes, organization and functions of the Commission.

Indus and its tributaries (Beas, Chenab, Jhelum, Ravi and Sutlej)
(INDIA AND WESTERN PAKISTAN)

Treaty[306] between India and Pakistan regarding the use of the waters of the Indus, signed at Karachi on 19 September 1960[307]

356. By the Indian Independence Act of 18 July 1947, the United Kingdom granted independence to two States, India and Pakistan. When, on 15 August 1947, the division of territory took effect at the same time as independence, the Punjab was divided by a political boundary which cut the Indus Basin in two. Of the thirteen canal systems which existed in the Punjab before independence, ten were allotted to Pakistan and two to India, while the remaining one was divided between the two States. From the division of certain canal systems, the result was that up-stream works and installations were situated in India, while the canals and their branches were in Pakistan. This situation gave rise to a controversy between India and Pakistan which was settled by the Treaty of 1960.[308]

357. In reality, the Treaty was the result of proposals presented by IBRD in 1954. The IBRD experts then expressed the opinion that the controversy could be settled on the basis of a basic division of the waters: those coming from the eastern part of the Indus Basin (Ravi, Sutlej, Beas) being reserved for the exclusive use of India, and those from the western part (Indus, Jhelum, Chenab) for that of Pakistan, after a transition period of five years during which Pakistan would build a system of alternative canals with the financial assistance of India. After years of negotiations, IBRD, in 1959, worked out the main lines of a plan which it presented to the Governments of India and Pakistan and which was based on both the technical aspects of dividing the waters and on international financing of the work to be done. The final negotiation required further meetings, which were held in London, New Delhi and Karachi until the Treaty was signed.

358. The Treaty consists of a preamble, twelve articles and eight Annexures[309] of a technical character. The articles include provisions of which some relate solely to the Eastern Rivers (Beas, Ravi, Sutlej), others relate solely to the Western Rivers (Indus, Jhelum, Chenab) and some relate to both the Eastern and Western rivers. The Treaty contains in addition provisions on the financing of part of the work envisaged by the Treaty, and provisions on the exchange of data and the methods of technical co-operation between the Governments of India and Pakistan. It also created a "Permanent Indus Commission" and established a detailed procedure for the settlement of differences and disputes. Finally, it provided for recourse to the good offices of IBRD in case of disagreement on the modifications of the provisions of the Treaty which would be appropriate in case Pakistan were unable, by reason of the outbreak of large-scale international hostilities, to obtain

[306] The instruments of ratification were exchanged on 12 January 1961. The Treaty entered into force upon the exchange of ratifications and took effect retroactively as at 1 April 1960 (hereafter referred to as the "effective date") in accordance with article 12 (2). As provided in Annexure A, the ratification of this Treaty brought about the extinction of the Inter-Dominion Agreement, between India and Pakistan, signed at New Delhi on 4 May 1948, on the Canal Water Dispute between the Eastern and Western Punjab (see United Nations, *Treaty Series*, vol. 54, p. 46; vol. 85, p. 356, and vol. 128, p. 300). The Treaty was also signed on behalf of IBRD for the purposes specified in articles 5 and 10 and in Annexures F, G and H.

[307] See *The Indian Journal of International Law* (New Delhi), vol. 1, October 1960–January 1961, p. 341. See also, *Legislative Texts . . . (op. cit.)*, treaty No. 98.

[308] On the general outline and the history of the negotiations which preceded the conclusion of the Treaty, see F. J. Fowler, "Some problems of water distribution between East and West Punjab", *The Geographical Review* (New York, 1950), vol. 40, p. 583, and "The Indo–Pakistan water dispute", *The Year Book of World Affairs* (London, 1955), vol. 9, p. 101; R. Williams, "The Indus Canal water problem", *The Asian Review*, 1955, No. 186, p. 137; F. J. Berber, "The Indus water dispute", *The Indian Year Book of International Affairs* (Madras, 1957), vol. 6, p. 46; J. G. Laylin, "Principles of law governing the uses of international rivers: contribution from the Indus Basin", *Proceedings of the American Society of International Law* (Washington D.C., 1957), 51st annual meeting, p. 20; S. C. Agrawal, "Legal aspects of the Indo-Pakistan water dispute", *The Supreme Court Journal: Cases determined in the Supreme Court of India* (Madras, 1958), vol. 21, p. 157; G. Fischer, "*La Banque internationale pour la reconstruction et le développement et l'utilisation des eaux du bassin d'Indus*", *Annuaire française de droit international, 1960* (Paris, 1961), vol. 6, p. 669; C. Rousseau, "*Inde et Pakistan, Conclusion du Traité du 19 septembre 1960 relatif à l'utilisation des eaux de l'Indus*", *Revue génerale de droit international public* (Paris 1961), No. 2, p. 364.

[309] The Annexures deal with the following questions: extinction of the Agreement signed at New Delhi on 4 May 1948 (Annexure A); agricultural use by Pakistan from certain tributaries of the Ravi (Annexure B); agricultural use by India from the Western Rivers (Annexure C); generation of hydro-electric power by India on the Western Rivers (Annexure D); storage of waters by India on the Western Rivers (Annexure E); appointment, functions, etc., of a neutral expert (Annexure F); Court of Arbitration (Annexure G); transitional arrangements (Annexure H). (For the complete text of these Annexures, see *Legislative Texts . . . (op. cit.)*, treaty No. 98.)

from abroad the materials and equipment necessary to complete the work on time.

359. *Provisions regarding the Eastern Rivers (Beas, Ravi, Sutlej):*

(a) *Allocation of the waters. Discharge observation stations.* All the waters of the Eastern Rivers shall be available for the unrestricted use of India except as otherwise provided in article 2 of the Treaty. All the waters, while flowing in Pakistan, of any tributary which, in its natural course, joins the Sutlej Main or the Pavi Main after these rivers have finally crossed into Pakistan shall be available for the unrestricted use of Pakistan, provided, however, that this provision shall not be construed as giving Pakistan any claim or right to any releases by India in any such tributary. If Pakistan should deliver any of the waters of any such tributary, which on the effective date joins the Ravi Main after this river has finally crossed into Pakistan, into a reach of the Ravi Main up-stream from this crossing, India shall not make use of these waters. Each Party agrees to establish such discharge observation stations and make such observations as may be necessary for the determination of the component of water available for the use of Pakistan on account of deliveries by Pakistan (art. 2, paras. 1 and 4).

(b) *Obligation of Pakistan to let waters flow through its territory. Exceptions (domestic use, non-consumptive use, and agricultural use of the waters of certain tributaries of the Ravi).* Except for domestic use and non-consumptive use, Pakistan shall be under an obligation to let flow, and shall not permit any interference with, the waters of the Sutlej Main and the Ravi Main in the reaches where these rivers flow in Pakistan and have not yet finally crossed into Pakistan. Except for domestic use, non-consumptive use and agricultural use (as specified in Annexure B), Pakistan shall also be under an obligation to let flow, and shall not permit any interference with, the waters (while flowing in Pakistan) of any tributary which in its natural course joins the Sutlej Main or the Ravi Main before these rivers have finally crossed into Pakistan. Annexure B provides that Pakistan may make agricultural use of waters of the Basantar, Bein, Tarnah and Ujh, which are tributaries of the Ravi, subject to the provisions of that Annexure (art. 2, paras. 2 and 3).

(c) *Transition period. Withdrawal and deliveries of water. Non-acquirement of rights.* During a transition period of ten years beginning on 1 April 1960 and ending on 31 March 1970, India shall limit its withdrawals from the Eastern Rivers and shall make deliveries to Pakistan from those rivers to the extent specified in Annexure H of the Treaty. The Treaty also makes provision in case the transition period should extend beyond 31 March 1970. During the transition period, Pakistan shall receive for unrestricted use the waters of the Eastern Rivers which are to be released by India in accordance with the provisions of Annexure H. After the end of the transition period, Pakistan shall have no claim or right to releases by India of any of the waters of the Eastern Rivers. In case there are any releases, Pakistan shall enjoy the unrestricted use of the waters so released after they have finally crossed into Pakistan provided that, in the event of Pakistan making any use of these waters, Pakistan shall not acquire any right, whether by prescription or otherwise, to a continuance of such releases or such use (article 2, paras. 5 to 9).

360. *Provisions regarding the Western Rivers (Indus, Jhelum, Chenab):*

(a) *Allocation of the waters. Establishment of discharge observation stations.* Pakistan shall receive for its use all those waters of the Western Rivers which India is under obligation to let flow under the provisions of article 2 (2) of the Treaty. Pakistan shall have the unrestricted use of all waters originating from sources other than the Eastern Rivers which are delivered by Pakistan into the Ravi or the Sutlej, and India shall not make use of these waters. Each Party agrees to establish such discharge observation stations and make such observations as may be considered necessary by the Commission for the determination of the component of water available for the use of Pakistan on account of deliveries by Pakistan (art. 3, paras. 1 and 3).

(b) *Obligation of India to let the waters flow through its territory. Exceptions (domestic use, non-consumptive use, agricultural use, generation of hydro-electric power).* India shall be under an obligation to let flow all the waters of the Western Rivers, and shall not permit any interference with these waters, except for domestic use, non-consumptive use, and certain agricultural uses and use for the generation of hydro-electric power. These uses are restricted to the drainage basins of the Indus, the Jhelum and the Chenab (art. 3, para. 2).

(c) *Prohibition of storage of water by India. Exceptions.* Except as provided in Annexures D and E, relating to generation of hydro-electric power and storage of water of the Western Rivers by India, India shall not store water of, or construct any storage work on, the Western Rivers (art. 3, para. 4).

361. *Provisions regarding Eastern Rivers and Western Rivers.*

(a) *Construction of a system of works for supply of water to the irrigation canals of Pakistan.* Pakistan shall use its best endeavours to construct and bring into operation, with due regard to expedition and economy, that part of a system of works which will accomplish the replacement, from the Western Rivers and other sources, of water supplies for irrigation canals in Pakistan which, on 15 August 1947, were dependent on water supplies from the Eastern Rivers (art. 4, para. 1).

(b) *Non-consumptive use.* Each Party agrees that any non-consumptive use made by it shall be so made as not to change materially, on account of such use, the flow in any channel to the prejudice of the uses on that channel by the other Party under the provisions of the Treaty (art. 4, para. 2).

(c) *Schemes of flood protection or flood control.* In executing any scheme of flood protection or flood control, each Party will avoid, as far as practicable, any material damage to the other Party, and any such scheme carried out by India on the Western Rivers shall not involve any use of water or any storage in addition to that provided in article 3 (art. 4, para. 2).

(d) *Conservation and river improvement schemes. Limitations.* Nothing in the Treaty shall be construed as having the effect of preventing either Party from undertaking schemes of drainage and river training, conservation of soil against erosion and dredging, or from removal of stones, gravel or sand from the beds of the rivers, provided that in executing any of these schemes each Party will avoid, as far as practicable, any material damage to the other Party; any scheme carried out by India on the Western Rivers shall not involve any use of water or any storage in addition to that provided in article 3; the Treaty also limits the freedom of the Parties to undertake actions to increase the catchment area of any natural or artificial drainage or drain (art. 4, para. 3).

(e) *Maintenance. Improvement of existing drainage. (Public interest).* Pakistan shall maintain in good order its portions of the Hudiara Drain, the Kasur Nala, the Salimshah Drain and the Fazilka Drain, with capacity not less than the capacities on the effective date of the Treaty. If India finds it necessary that any of these drainages should be deepened or widened in Pakistan, Pakistan agrees to undertake the work as a work of public interest, provided India agrees to pay the cost of the deepening or widening (art. 4, paras. 4 and 5).

(f) *Maintenance of the natural channels of the rivers. Avoidance of any action likely to cause material damage.* Each Party will use its best endeavours to maintain the natural channels of the rivers as at the effective date in such condition as will avoid, as far as practicable, any obstruction to the flow in these channels likely to cause material damage to the other Party (art. 4, para. 6).

(g) *Maintenance of the natural channels of the Ravi Main and the Sutlej Main in particular reaches.* Neither Party will take any action which would have the effect of diverting the Ravi Main between Madhopur and Lahore, or the Sutlej Main between Harike and Suleimanke, from its natural channels between high banks (art. 4, para. 7).

(h) *Free use of the natural channels of the rivers for the discharge of floods. Communication in advance of extraordinary discharges of water.* The use of the natural channels of the rivers for the discharge of flood or other excess waters shall be free and not subject to limitations by either Party, and neither Party shall have any claim against the other in respect of any damage caused by such use. Each Party agrees to communicate to the other Party, as far in advance as practicable, any information it may have in regard to such extraordinary discharges of water from reservoirs and flood flows as may affect the other Party (art. 4, para. 8).

(i) *Operation of dams, barrages and irrigation canals. Avoidance of material damage.* Each Party declares its intention to operate its storage dams, barrages and irrigation canals in such manner, consistent with the normal operation of its hydraulic system, as to avoid, as far as feasible, material damage to the other Party (art. 4, para. 9).

(j) *Water pollution. Criterion of reasonableness. (Customary practice).* Each Party declares its intention to prevent, as far as practicable, undue pollution of the waters of the rivers which might affect adversely uses similar in nature to those to which the waters were put on the effective date, and agrees to take all reasonable measures to ensure that, before any sewage or industrial waste is allowed to flow into the rivers, it will be treated, where necessary, in such manner as not materially to affect those uses, provided that the criterion of reasonableness shall be the customary practice in similar situations on the rivers (art. 4, para. 10).

(k) *Industrial use (non-consumptive use) and domestic use by one Party of waters of the other Party in the cases provided in the Treaty.* The use of the waters for industrial purposes shall not exceed, in the case of an industrial process known on the effective date, such quantum of use as was customary in that process on the effective date. In case of an industrial process not known on the effective date, it shall not exceed such quantum of use as was customary on the effective date in similar or in any way comparable industrial processes, or, if there was no such industrial process on the effective date, it shall not exceed such quantum of use as would not have a substantially adverse effect on the other Party. Each Party will use its best endeavours to return to the same river (directly or through one of its tributaries) all water withdrawn therefrom for industrial purposes and not consumed either in the industrial processes for which it was withdrawn or in some other domestic use. Such part of any water withdrawn for domestic use as is subsequently applied to agricultural use shall be accounted for as part of the agricultural use (art. 4, paras. 12 and 13).

(l) *Uses of waters not in accordance with the provisions of the Treaty (non-acquisition of rights).* In the event of either Party developing a use of the waters of the rivers which is not in accordance with the provisions of the Treaty, that Party shall not acquire by reason of such a use any right, by prescription or otherwise, to a continuance of that use (art. 4, para. 14).

(m) *Respect for existing territorial and property rights.* Except as otherwise required by the express provisions of the Treaty, nothing in the Treaty shall be construed as affecting territorial rights over the waters of any of the rivers or the beds or banks thereof or as affecting the existing property rights under municipal law over such waters or beds or banks (art. 4, para. 15).

(n) *Financial provisions. Aid to be supplied to Pakistan—contribution by India. Creation of an "Indus Basin Development Fund".* In consideration of the fact that the purpose of part of the system of works referred to in the Treaty is the replacement, from the Western Rivers and other sources, of water supplies for irrigation canals in Pakistan which, on 15 August 1947, were dependent on water supply from the Eastern Rivers, India agrees to make a fixed contribution of a certain sum towards the costs of these works. Each of the instalments to be paid by India to Pakistan shall be paid into an "Indus Basin Development Fund", to be established and administered by IBRD[310] (art. 5, paras. 1–3).

[310] The Indus Basin Development Fund Agreement, concluded between Australia, Canada, the Federal Republic of Germany, New Zealand, Pakistan, the United Kingdom of Great Britain and Northern Ireland, the United States of America and IBRD and signed at Karachi on 19 September 1960, creates a Fund of almost US $900 million. India will pay 62,060,000 pounds sterling, and

(Continued on next page.)

(o) *Exchange of data.* The Treaty provides for the regular exchange between the Parties of data with respect to the flow in, and utilization of the waters of, the rivers (art. 6).

(p) *Future co-operation (common interest in optimum development). Prior notification of plans of work.* The two Parties recognize they have a common interest in the optimum development of the rivers and, to that end, they declare their intention to co-operate by mutual agreement to the fullest possible extent. The Treaty provides in particular for the co-operation of the Parties in setting up hydrological and meteorological observation stations and in carrying out drainage works. In each case, the formal arrangements are to be agreed upon between the Parties. If either Party plans to construct any engineering work which would cause interference with the waters of any of the rivers and which, in its opinion, would affect the other Party materially, it shall notify the other Party of its plans and shall supply such data relating to the work as may be available. If a work would not, in the opinion of the Party planning it, affect the other Party materially, nevertheless the Party planning the work shall, on request, supply the other Party with such data regarding the nature, magnitude and effect, if any, of the work as may be available (art. 7).

(q) *Creation of a Permanent Indus Commission.* The Treaty establishes a Permanent Indus Commission, with administrative and technical functions. The purpose and functions of the Commission are to establish and maintain co-operative arrangements for the implementation of the Treaty and to promote co-operation between the Parties in the development of the waters of the rivers (art. 8).

(r) *Settlement of differences and disputes. (Preliminary examination by the Commission, mediation and arbitration).* Any question which arises between the Parties concerning the interpretation or application of the Treaty or the existence of any fact which, if established, might constitute a breach of the Treaty shall first be examined by the Permanent Indus Commission, which will endeavour to resolve the question by agreement. The Treaty provides a detailed procedure for the settlement of differences and disputes, which, in the case of differences, takes the form of decision by a neutral expert, and in the case of disputes, that of settlement by arbitration. Arbitration is to be performed by a Court of Arbitration of seven members, of whom two are appointed by India, two by Pakistan and the three others (the Chairman, an engineer, and an international lawyer) jointly by the Parties. If the Parties do not agree, the Chairman will be appointed by the Secretary-General of the United Nations or by the President of IBRD, the engineer by the President of the Massachusetts Institute of Technology or the Rector of the Imperial College of Science and Technology of London, and the legal member by the Chief Justice of the United States or the Lord Chief Justice of England (art. 9 and Annexures F and G). Except as the Parties may otherwise agree, the law to be applied by the Court is the Treaty and, whenever necessary for its interpretation or application, the following in the order listed: (*a*) international conventions establishing rules which are expressly recognized by the Parties, and (*b*) customary international law (Annexure G, para. 29).

(Footnote 310 continued)

IBRD, with the assistance of six States (Australia, Canada, the Federal Republic of Germany, New Zealand, the United Kingdom and the United States), will pay the rest in the form of donations and loans. This Fund is intended to assist Pakistan in making effective use of waters allocated to it by the Indus Waters Treaty, 1960 (see United Kingdom, Commonwealth Relations Office, *The Indus Basin Development Fund Agreement*, Cmnd. 1199 (London, H.M. Stationery Office, 1960).

Kosi River (India and Nepal)

Agreement[311] *between the Government of India and the Government of Nepal on the Kosi Project, signed at Katmandu on 25 April 1954*[312]

362. *Construction by India of a barrage in Nepalese territory for flood control, irrigation and generation of hydro-electric power.* The Agreement provides for the construction by India of a barrage, head-works and other appurtenant work about 3 miles up-stream of Hanuman Nagar Town (Nepal) on the Kosi River, with afflux and flood banks, canals and protective works for flood control, irrigation, generation of electric power and prevention of soil erosion (clause 1).

363. *Co-operation in the investigations required. Right of access. Provision of facilities.* Nepal shall authorize and give the necessary facilities to officers of India to enter upon such land as necessary with such equipment as necessary and undertake surveys and investigations required in connexion with the Kosi Project before, during and after the construction. Nepal will also authorize and give necessary facilities for investigations of storage or detention dams on the Kosi or its tributaries required for a complete solution of the Kosi problem in the future (clause 2).

364. *Authorization to proceed with the execution of the project.* Nepal will authorize India to proceed with the execution of the Project as and when the Project or a part of the Project receives the sanction of the Government of India and notice has been given by India to the Government of Nepal of its intention to commence work on the project (clause 3).

365. *Right of Nepal to withdraw water. Right of India to regulate the waters.* Without prejudice to the right of Nepal to withdraw for irrigation or any other purpose in Nepal such supplies of water as may be required from time to time, India will have the right to regulate all the supplies in the Kosi River at the barrage site and to generate power at the same site for the purposes of the project (clause 4 (i)).

366. *Right of Nepal to use the hydro-electric power generated at the barrage.* Nepal shall be entitled to use up to 50 per cent of the hydro-electric power generated at the barrage on payment of such tariff rates as may be fixed by India in consultation with the Government of Nepal (clause 4 (ii)).

[311] The Agreement entered into force on signature.

[312] See Nepal, *Trade and Information Directory, 1960–1961* (New Delhi), p. 108. See also *Legislative Texts . . . (op. cit.)*, treaty No. 95

367. *Ownership rights of India. Sovereignty and territorial jurisdiction of Nepal.* India shall be the owner of all lands acquired by Nepal which shall be transferred by it to India and of all water rights secured to it, provided that the sovereignty rights and territorial juridisction of Nepal in respect of such lands shall continue unimpaired by the transfer (clause 5).

368. *Royalty to be paid by India.* Nepal will receive royalty in respect of power generated and utilized in India at rates to be settled by agreement hereafter, provided that no royalty will be paid on the power sold to Nepal (clause 6).

369. *Timber rafts.* The use of timber rafts within two miles of the barrage shall not be allowed except by special licence under special permits to be issued by the Executive Engineer of the barrage (clause 10).

370. *Fishing.* All the fishing rights in the Kosi River in Nepal, except within two miles of the barrage, shall vest in the Government of Nepal. No fishing shall be permitted within two miles of the barrage (clause 11).

371. *Administrative functions of India.* India shall carry out, inside the project areas in the territory of Nepal, functions such as the administration of water supply, electricity and drainage (clause 13). If so desired by India, Nepal agrees to establish special courts in the project area to ensure the expeditious disposal of cases arising within that area (clause 15).

372. *Consent of Nepal to the adoption of measures whose necessity is indicated by further investigations.* If further investigations indicate the necessity of storage or detention dams and other soil conservation measures on the Kosi and its tributaries, Nepal agrees to grant its consent to them on conditions similar to those mentioned in the Agreement (clause 16).

373. *Settlement of disputes.* If any question arises connected directly or indirectly with this Agreement or the meaning or operation of any part thereof or the rights, duties or liabilities of either party, every such matter shall be referred for arbitration to two persons, one to be appointed by Nepal and the other by India, whose decision shall be final and binding. In the event of disagreement between the two artibrators, they will refer the matter for decision to an umpire to be jointly appointed by the two arbitrators (clause 17).

374. *Co-operation in the execution of the Project: establishment of a Co-ordination Committee.* In order to expedite decisions for the early completion of the Kosi Project, it is agreed between Nepal and India to set up a Co-ordination Committee. The Committee will consist of three representatives from each country, to be nominated by the respective Governments (annex).

Yarmuk River (JORDAN AND SYRIA)

Agreement[313] *between the Republic of Syria and the Hashemite Kingdom of Jordan concerning the utilization of the Yarmuk waters, signed at Damascus on 4 June 1953*[314]

375. As indicated in its preamble, the aim of this Agreement is to regulate the efficient use of the waters of the Yarmuk Basin for the irrigation of arable lands and the generation of electric power. For this purpose, it provides for the execution of a scheme concerning the waters of this river.

376. *Construction of joint installations for irrigation and the generation of electric power.* The two Governments agree to construct on the Yarmuk River a joint dam, reservoir and station for the generation of electric power. The dam is for the collection of the river flow. The purpose of the reservoir, situated in the territories of Syria and Jordan near the Maqarin generating station (Syria), is to ensure a constant average flow. The water thus collected and regulated is to be utilized for the generation of electric power, for the irrigation of lands in Jordan and for other Jordanian schemes, in addition to the waters collected from the river Jordan and from other sources. The Agreement also provides for the construction of a second generating station at Adasiya and of a canal to supply the Jordanian irrigation network (art. 2).

377. *Apportionment of the costs of investigations, studies and execution of the scheme. Granting of facilities.* Jordan shall in principle assume responsibility for the cost of investigations and studies for the execution of the Yarmuk scheme; it shall have the right to engage and employ such technicians, experts, workers and other persons and agencies as may be necessary to ensure the thorough and speedy execution of the work and economy in expenditure. Syria shall undertake to furnish the necessary assistance and facilities to enable personnel employed on the scheme to enter Syrian territory and to carry out their duties until the completion of the work. The two States shall agree, each in its own territory, to provide the necessary communications for the purpose of ensuring the speedy and co-ordinated completion of the scheme and its subsequent operation (articles 3 and 9).

378. *Establishment of a Joint Commission.* The Agreement provides for the establishment of a Joint Syro-Jordanian Commission, composed of nationals of the two States. This Commission is responsible for the application of the provisions of the Agreement, the regulation and exercise of the rights and obligations which the two Governments have assumed thereunder and supervision over the settlement of all questions to which its application may give rise (art. 10).

379. *Recommendations of the Joint Commission for the maintenance of the joint reservoir at the optimum level.* The two contracting States shall undertake, each within its own territory, to comply with recommendations of the Joint Commission regarding measures to prevent or reduce silting in the joint reservoir (art. 11).

380. *Recommendations of the Joint Commission regarding the construction of dams not specified in the Agreement.* The Joint Commission may recommend the construction of dams not specified in the Agreement for the conservation and diversion of water located on the Yarmuk River or its tributaries above the joint dam. However, such recommendations must be approved by both Governments (art. 2, sub-para. (*f*)).

[313] The Agreement entered into force on 8 July 1953 by the exchange of the instruments of ratification.

[314] See United Nations, *Treaty Series*, vol. 184, p. 24. See also *Legislative Texts . . . (op. cit.)*, treaty No. 105.

381. *Right of access.* Employees and representatives of the two States, members of the Joint Commission and officials of the technical bodies working on the scheme, who have been duly authorized by the Joint Commission, shall have the right to travel in the areas in which the Maqarin installations are situated and in neighbouring areas, access to which the Joint Commission deems essential to the work (art. 6).

382. *Apportionment of the waters.* Syria retains the right to the use of the waters of springs rising within its territory in the basin of the Yarmuk. It also retains the right to use water from the river and its tributaries below the dam for the irrigation of Syrian land in the lower Yarmuk basin and eastward of Lake Tiberias or for other Syrian schemes (art. 8 (*a*)). Jordan has the right to use the overflow from the reservoir and joint generating station at Maqarin for the generation of electric power at the Adasiya station, the irrigation of the Jordanian lands and other Jordanian schemes. Similarly, it has the right to use water superfluous to Syrian needs for its own purposes within its frontiers (art. 8 (*b*)).

383. *Apportionment and sale of the electric power generated by the joint station.* The electric power generated by the Maqarin station is to be divided between Syria and Jordan in the proportion of 75 per cent to Syria and 25 per cent to Jordan. The Agreement specifies a minimum share of power for Syria (art. 8 (*c*) and (*d*)).

384. *Precedence of the Agreement over private rights.* The rights of the two States to the use of the water of the Yarmuk Basin shall take precedence over all private rights and each State shall be responsible in accordance with its own laws, and independently of the other State, for the settlement of all claims arising in this connexion within its territory in consequence of the Agreement (art. 12).

385. *Settlement of differences (arbitration).* If the Parties are unable to settle any differences relating to the execution of the scheme, they shall submit such differences to an arbitration committee composed of three arbitrators. Each Party shall appoint one arbitrator and an umpire shall be appointed by agreement between the two States (art. 10, *in fine*).

2. Bilateral treaties containing provisions concerning the utilization and use of international rivers in Asia[315]

(*a*) Provisions of treaties relating generally to rivers contiguous to the territories of two States

Afghanistan and the USSR

Treaty[316] between the Government of the Union of Soviet Socialist Republics and the Royal Government of Afghanistan concerning the régime of the Soviet-Afghan State frontier, signed in Moscow on 18 January 1958[317]

386. *Use of frontier waters and of rivers which flow to the frontier or into frontier waters.* The Contracting Parties shall take measures to ensure that in the use of frontier waters, and of rivers which flow to the frontier or into frontier waters, the provisions of the Treaty and the special agreements between the Government of the USSR and the Government of Afghanistan are observed and their mutual rights and interests are respected (art. 7, para. 2).

387. *Internal waters.* "National internal" waters are covered by the national legislation of each State, in accordance with the general principles of international law (art. 7, para. 3).

388. *Operations to prevent changes in the courses of frontier rivers.* The competent authorities of the Contracting Parties shall jointly take the necessary measures to remove such obstacles as may cause changes in the courses of frontier rivers, streams or canals or impede the flow of water along them. Where joint operations are undertaken by common consent of both Parties, the competent authorities of the two Contracting Parties shall decide the programme of work and the sharing of the cost. The banks must be strengthened wherever the competent authorities of the Contracting Parties jointly consider it necessary. Neither Contracting Party shall cause an artificial displacement of river beds. Should the bed of a frontier river be displaced as a result of natural phenomena, the Contracting Parties shall correct the bed by joint action (art. 9).

389. *Protection of the banks of frontier rivers. Compensation for material damage.* The Contracting Parties shall take measures to prevent deliberate damage to the banks of a frontier river. Where one Party occasions material loss to the other Contracting Party, compensation for that loss shall be paid by the Party responsible therefor (art. 11).

390. *Cleaning of frontier watercourses.* Frontier watercourses shall be cleaned out on the sectors where such work is jointly considered essential by the Parties. In cleaning out frontier waters, the objects removed shall be thrown out to such a distance from the bank as to avoid any danger that the banks might fall in or the river bed be polluted, and so as to prevent the flow of water from being obstructed in time of flood (art. 12).

391. *Exchange of information concerning the level and volume of water in frontier rivers.* The Parties shall exchange as regularly as possible such information concerning the level and volume of water in frontier rivers and also concerning precipitation in the interior of the territory of the two Parties as might avert danger or damage from flooding (art. 17).

392. *Erection of structures for the collection and diversion of water that has overflowed the banks.* No structures may be erected by or near a river which, in time of flood, would obstruct or impede, to the detriment of the other Party, water that has overflowed the banks from returning by natural drainage to the main river bed. The Parties shall

[315] Some publications relating to the utilization of international rivers quote the exchange of notes between the United Kingdom Government and the Government of India on the one hand, and the Government of Siam on the other, regarding the boundary between Burma (Tenasserim) and Siam of 1 June 1934 (see League of Nations, *Treaty Series*, vol. CLIV, p. 374). This exchange of notes contains provisions relating to the River Pakchan. However, these provisions deal only with modifications in the frontier line resulting from the natural change in the course of this river.

[316] The Treaty came into force on 5 October 1958, the date of the exchange of the instruments of ratification at Kabul.

[317] See United Nations, *Treaty Series*, vol. 321, p. 166. See also *Legislative Texts . . . (op. cit.)*, treaty No. 86.

agree on a system of drainage into frontier waters and on the diversion of water (art. 18).

393. *Preservation and use of existing structures.* Existing dams, dikes and other similar structures on frontier watercourses shall be preserved and may be used (art. 19, para. 1).

394. *Erection of new structures.* Dams and other similar structures likely to influence the flow of water, dikes which might affect the flow of water and the state of the banks and installations that might change the water level of the river may not be erected on frontier watercourses except by agreement between the Parties (art. 19, paras. 1, 2 and 3).

395. *Use of waters.* Both Parties shall be allowed free use of frontier waters up to the frontier line (art. 8, para. 1). Questions concerning the use of frontier waters shall be governed by special agreement between the Parties (art. 16).

396. *Watering.* Nationals of the two Parties shall be entitled to water their livestock at frontier rivers (art. 14).

397. *Fishing.* Nationals of the two Parties may fish in frontier waters up to the frontier line in accordance with the regulations in force in their respective territories, but are prohibited from: (*a*) using explosive, poisonous or narcotic substances and (*b*) fishing at night. Matters relating to the preservation and breeding of fish in frontier waters and other economic measures concerning fishing may be regulated by special agreement between the Parties (art. 22).

398. *Protection of waters (pollution).* The Parties shall take the necessary measures to protect the frontier waters from pollution by acids and waste products and from fouling by any other means (art. 13).

India and Pakistan (East)

Indo-Pakistan Agreement[318] *on East Pakistan border disputes, signed at New Delhi on 23 October 1959*[319]

399. *Consultations in regard to utilization of water resources of common rivers.* The need for evolving some procedures for the purpose of mutual consultations in regard to utilization of water resources of common rivers was recognized by both sides (clause 7, first para.).

400. *Construction of the Karnafuli dam (East Pakistan). Consent of India. Claims regarding loss caused in Indian territory.* India gave an assurance that it would raise no objection to the development activities in connexion with the Karnafuli dam project in East Pakistan on the grounds that they might lead to the submergence of some area in India. Steps should be taken for the demarcation of that portion of the boundary where some area might be permanently flooded when the Karnafuli dam in East Pakistan was raised to its full height, so that the Governments of Pakistan and India, taking into consideration the area so flooded, might discuss how the claims of the Government of India regarding the loss, if any, caused by the flooding of the Indian territory should be settled (clause 7, second para.).

401. *Limitation on the training of border rivers.* Neither Party shall train its border rivers so as to cut into the territory of the other (clause 9).

Iran and the USSR

Treaty[320] *of friendship between Persia and the Russian Socialist Federal Soviet Republic, signed in Moscow on 26 February 1921*[321]

402. *Use of the waters.* The Parties shall have equal rights of usage over the Atreck River and the other frontier rivers and waterways (art. 3).

403. *Settlement of disputes.* In order finally to solve all disputes concerning frontiers, a Commission, composed of Russian and Persian representatives, shall be appointed (art. 3).

Syria and Turkey

Protocol[322] *between France and Turkey concerning the surveillance of the frontier, the frontier régime, the fiscal regulations applicable to flocks and herds crossing the frontier and the control of nomads, concluded pursuant to the Agreement of friendship and good neighbourly relations of 30 May 1926, Ankara, 29 June 1929*[323]

404. *Protection of existing rights (watering).* Settled or semi-settled inhabitants who, on the date of signature of the Protocol, have watering rights on one or the other side of the frontier shall continue to enjoy their rights as in the past.

Turkey and the USSR

Convention[324] *between the Union of Soviet Socialist Republics and the Turkish Republic concerning the procedure for the investigation and settlement of frontier incidents and disputes, and Protocols, signed at Moscow on 15 July 1937*[325]

405. *Settlement of disputes.* The frontier commissioners are required to investigate and settle any incident and dispute which may arise in connexion with the application of the Convention regarding the use of frontier waters, concluded on 8 January 1927[326] and in particular of article 7 thereof, which prohibits the artificial changing of the direction of the thalweg (art. 2 (*n*) and protocol No. 2).

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[318] The Agreement came into force on 23 October 1959 by signature.

[319] See United Nations, *Treaty Series*, vol. 362, p. 4. See also *Legislative Texts . . . (op. cit.)*, treaty No. 97.

[320] The Treaty came into force upon signature, in accordance with article 22. The exchange of ratifications took place at Teheran on 26 February 1922.

[321] See League of Nations, *Treaty Series*, vol. IX, p. 401. See also *Legislative Texts . . . (op. cit.)*, treaty No. 102.

[322] The Protocol came into force on the date of its signature.

[323] See France, *Rapport à la Société des Nations sur la situation de la Syrie et du Liban*, année 1929, annexe 3, p. 143.

[324] The exchange of the instruments of ratification took place at Ankara, on 5 April 1939.

[325] USSR, Ministry of Foreign Affairs, *Sbornik deistvuyushchikh dogovorov, soglasheny i konventsy, zaklyuchennykh SSR s inostrannymi gosudarstvami* (Moscow, 1955), vol. X, pp. 32–55. See also *Legislative Texts . . . (op. cit.)*, treaty No. 107.

[326] See para. 314 above.

(*b*) PROVISIONS OF TREATIES RELATING TO ONE OR MORE SPECIFIC RIVERS

Arnawai Khwar (AFGHANISTAN AND PAKISTAN)

Exchange of notes[327] *between the Government of Afghanistan and His Majesty's Government in the United Kingdom and the Government of India in regard to the boundary between Afghanistan and India in the neighbourhood of Arnawai and Dokalim, Kabul, 3 February 1934*[328]

406. *Use of waters for irrigation.* The people of Dokalim (Afghanistan) shall be allowed to take water required for the irrigation of their lands in Dokalim from the Arnawai Khwar above the boundary (para. 2 (*a*)). However, without the consent of the local British authorities, no new water channel shall be constructed above the boundary (para. 3).

407. *Use for floating wood.* The people of Arnawai (Pakistan) may be allowed to float wood required for local use down that portion of the Arnawai Khwar which forms the international boundary (para. 2 (*b*)).

Shatt-el-Arab (IRAQ AND IRAN)

Boundary Treaty[329] *between the Kingdom of Iraq and the Empire of Iran, and Protocol, signed at Teheran on 4 July 1937*[330]

408. *Utilization of waters.* The circumstance that the frontier in the Shatt-el-Arab sometimes follows the lower water mark and sometimes the thalweg or *medium filum aquae* shall not in any way affect the two Contracting Parties' right of user along the whole length of the river (art. 4 (*c*)).

Euphrates and Kuveik[331] (SYRIA AND TURKEY)

(1) *Agreement*[332] *between France and Turkey with a view to promoting peace, signed at Angora on 20 October 1921*[333]

409. *Distribution and removal of waters.* The waters of Kuveik shall be shared between the city of Aleppo and the district to the north remaining Turkish, in such a way as to give equitable satisfaction to the two Parties. The city of Aleppo may also organize, at its own expense, a water supply from the Euphrates in Turkish territory in order to meet the requirements of the district (art. XII).

(2) *Convention*[334] *of friendship and good-neighbourly relations between France and Turkey, signed at Angora on 30 May 1926*[335]

410. *Establishment and execution of irrigation schemes.* In application of article XII of the Agreement of 20 October 1921, investigations will be undertaken by the Office of the French High Commissioner, at the cost of Syria, in order to establish a scheme for supplying the requirements of the districts irrigated by the waters of the Kuveik and the requirements of the town of Aleppo, either by increasing the supply from the Kuveik, or by taking water from the Euphrates in Turkish territory, or by a combination of these two methods. The Turkish Government, for its part, will lend its full co-operation for the purpose of these investigations and undertakes to regard the work required to carry out the scheme in question as being of public utility (act XIII).

Gangir and Gunjan Cham Rivers (IRAQ AND IRAN)

Proceedings of the meetings of the Turco–Persian Delimitation Commission of 1914[336]

411. *Distribution and utilization of waters.* The proceedings of the Turco–Persian Boundary Delimitation Commission of 1914 employed various principles regarding questions concerning the waters of the Gangir River and the Gunjan Cham. In the case of the Gangir River, it ascertained the total flow of that stream and then specified an amount of water, which it considered surplus to the water requirements of the Persian localities watered by that stream, which was to flow on to the then Ottoman area on the other side of the boundary. In the case of the Gunjan Cham, another small stream, it provided simply that whatever water was not used in Persia was to be directed down-stream for the benefit of the then Ottoman village of Zurbatiya.[337]

Kabul and Landi Khana Rivers (AFGHANISTAN AND PAKISTAN)

Treaty[338] *between the Government of Afghanistan and His Britannic Majesty's Government for the establishment of neighbourly relations, signed at Kabul on 22 November 1921*[339]

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[327] The Agreement entered into force on 3 February 1934 by the exchange of notes.

[328] See League of Nations, *Treaty Series*, vol. CLIV, p. 350. See also *Legislative Texts . . . (op. cit.)*, treaty No. 84.

[329] The Treaty came into force on 20 June 1938 by the exchange of the instruments of ratification.

[330] See League of Nations, *Treaty Series*, vol. CXC, p. 242. See also *Legislative Texts . . . (op. cit.)*, treaty No. 100.

[331] The Kuveik is a closed basin.

[332] This Agreement was concluded between Mr. Franklin-Bouillon (France) and Mr. Youssouf Kemal Bey (Turkey) and approved by the French Government on 28 October 1921. The approbation of the French Government entailed that of the Turkish Government (see League of Nations, *Treaty Series*, vol. LIV, p. 178).

[333] *Ibid.* See also, *Legislative Texts . . . (op. cit.)*, treaty No. 91.

[334] The exchange of the instruments of ratification took place at Ankara, on 12 August 1926.

[335] See League of Nations, *Treaty Series*, vol. LIV, p. 196. See also *Legislative Texts . . . (op. cit.)*, treaty No. 92.

[336] The proceedings of the meetings of the 1914 Delimitation Commission have been deemed valid and binding by article 1 of the Boundary Treaty between the Kingdom of Irak and the Empire of Iran, signed at Teheran on 4 July 1937 (see League of Nations, *Treaty Series*, vol. CXC, p. 242).

[337] See A. M. Hirsch, "Utilization of international rivers in the Middle East: a study of conventional international law", in *American Journal of International Law* (Washington, D.C., January 1956), vol. 50, p. 87 and note 24. The information given is based on appendix III (D) to the "Request of the Iraqi Government under Article 11, paragraph 2, of the Covenant of the League of Nations" (see *League of Nations, Official Journal*, 16th year, No. 2 (February 1935), p. 213, and document No. C.531 (1). M.242(1).1934.VII).

[338] The exchange of the instruments of ratification took place at Kabul on 6 February 1922.

[339] See League of Nations, *Treaty Series*, vol. XIV, p. 48. See also *Legislative Texts . . . (op. cit.)*, treaty No. 83.

412. *Utilization of waters. Protection of existing rights (irrigation).* The British Government agrees that the Afghan authorities shall be permitted to draw water in reasonable quantities through a pipe which shall be provided by the British Government from Landi Khana for the use of Afghan subjects at Tor Kham, and the Government of Afghanistan agrees that all existing rights of irrigation from the Kabul River between Shilman Khwala, Banda and Palosai shall continue to be enjoyed by British subjects (art. 2).

Kushka and Murghab Rivers[340] (AFGHANISTAN AND THE USSR)

Frontier Agreement[341] (with protocol and exchange of notes) between Afghanistan and the Union of Soviet Socialist Republics, signed at Moscow on 13 June 1946[342]

413. *Utilization of waters.* The Soviet Government agrees to cancel the order prohibiting Afghanistan from using water from the river Kushka north of Chihil Dukter, as was provided in the documents of the Anglo-Russian Demarcation Commission of 1885–1888.[343] Nevertheless, Afghanistan shall not increase the quantity of water taken from the river Kushka in this area and shall observe the *status quo* in this respect (note No. III of the exchange of notes annexed to the Agreement).

414. *Construction of dams.* The Soviet Government waives the right to construct a dam on the river Murghab and to utilize the Afghan bank of the river for this purpose, on the condition that the Afghan Party does not construct such a dam on its territory in the frontier sector as would diminish the flow of water from this river on to Soviet territory (*ibid.*).

Kozlu, Salep, and Yukari Yarim Kaya Rivers and Lake Barolan (IRAN AND TURKEY)

Agreement[344] between Persia and Turkey on the fixing of the frontier, with exchange of notes, signed at Teheran on 23 January 1932[345]

415. *Utilization of waters (domestic uses).* The frontier guard stations of the two Parties shall be entitled equally to use the waters of the sources of Lake Barolan, the prairies lying south and west of the frontier in the region of that Lake and the waters of the sources of Salep, Kozlu and Yukari Yarim Kaya (exchange of notes annexed to the Agreement).

River Tigris (SYRIA AND TURKEY)

Final Demarcation Protocol[346] of the Commission on the Demarcation of the Turco–Syrian Frontier, Aleppo, 3 May 1930[347]

416. *Utilization of waters.* The joint use of the Tigris, imposing special obligations on the riparian population, necessitates the formulation of rules concerning the rights of Syria and Turkey. The settlement of all questions relating to fishing and to the industrial or agricultural utilization of the waters shall be based on the principle of complete equality and shall form the subject of uniform agreements prepared by the Standing Commission on Turco–Syrian Frontiers (clause II).

[340] The Murghab is a closed basin.

[341] The Agreement came into force on 17 January 1947 by the exchange of the instruments of ratification.

[342] See United Nations, *Treaty Series*, vol. 31, p. 152. See also *Legislative Texts . . . (op. cit.)*, treaty No. 85.

[343] See *British and Foreign State Papers, 1886–1887* (London, 1894), vol. 78, p. 209, "Protocol No. 4 of 14 (26) December 1885", *in fine*, and G. F. de Martens, ed., *op. cit.* (Göttingen, Librairie Dieterich, 1889), 2ème série, tome XIV, p. 180, "Protocole du 10 (22) juillet 1887", para. III.

[344] The instruments of ratification were exchanged at Ankara on 5 November 1932.

[345] See *British and Foreign State Papers, 1932* (London, 1937), vol. 135, p. 671. See also *Legislative Texts . . . (op. cit.)*, treaty No. 101.

[346] This Protocol does not entail ratification.

[347] See France, *Rapport à Société des Nations sur la situation de la Syrie et du Liban*, année 1930, annexe 1, p. 177. See also *Legislative Texts . . . (op. cit.)*, treaty No. 94.

Chapter V

EUROPE

A. MULTILATERAL TREATIES

417. The multilateral treaties concerning European international rivers concluded at the congresses or conferences held by the Powers of the Concert of Europe during the nineteenth century sought to ensure freedom of navigation and equal treatment. At the time, no distinction was made between treaty law relating to international rivers and treaty law governing river navigation. After the French Revolution, the principle of freedom of navigation of international rivers began to be proclaimed and implemented in Europe by an increasing number of multilateral treaties.[348]

[348] "The question of the opening up of international rivers arose in Europe at the end of the eighteenth century. Article XIV of the Treaty of Münster (1648) had forever closed the Scheldt to the Belgic provinces. Joseph II made an effort to put an end to this iniquity, but in vain. [Joseph II's controversy with the Dutch States-General is related by K. von Martens in his *Causes célèbres du droit des gens* (Leipzig, Brockhaus, and Paris, Ponthieu et Cie., 1827), tome 2, Cause viii.] The French Revolution proved more irresistible than the will of the enlightened despot, and, by a decree of 16 November 1792, the Scheldt and the Meuse were declared open in the name of the Law of Nature. Nor did the French stop there; for in 1797–1798, at the Congress of Rastatt, not content with the application of their doctrine to the Rhine, they startled the German diplomatists by stating the principle of admission of foreign flags with the consent of the contracting parties and by expressing the wish that the tributaries of the Rhine, as well as the other great rivers of Germany, should be open to French vessels. This Congress, however, bore no direct fruits. But in 1804, when France acquired the left bank of the Rhine, it became necessary to organize the navigation for the common benefit of both Powers and to provide for a system of collection of tolls less burdensome than the existing one. A 'Convention on the Tolls of the Navigation of the Rhine' was accordingly signed in Paris on 15

(Continued on next page.)

418. The Treaty of Paris of 30 May 1814,[349] the Final Act of the Congress of Vienna of 9 June 1815,[350] the Convention of Mainz of 31 March 1831,[351] the Treaty of Paris of 30 March 1856,[352] the Navigation Act of 7 November 1857,[353] the Convention of Mannheim of 17 October 1868,[354] the Treaty of London of 13 March 1871,[355] the Treaty of Berlin of 13 July 1878[356] and the Treaty of London of 10 March 1883[357] are among the principal instruments governing matters relating to the navigation of international European rivers.

419. The establishment of new rules under the international law on rivers has been closely linked with the development of the rules governing certain specific rivers and, in particular, with the political history of the Rhine and the Danube.[358] It should be noted, however, that the Final Act of the Congress of Vienna of 1815 also contains general provisions intended to be applied to the navigation of any navigable international river. The signatory Powers of that Act undertook that if their countries should be separated or traversed by the same navigable river they would in every case "regulate, by common consent, all that regards its navigation". All those conventions were to be based on the principles laid down in articles 109–116 of the Final Act. They were guiding principles which would have to be translated into special conventions at a later stage. They were thus a *pactum de contrahendo*. Sometimes many years were to elapse before a convention based on the general principles of the Final Act of the Congress of Vienna regulated navigation on a European navigable waterway between the riparian States or between the riparian States and other Powers. Frequently, even those principles remained a dead letter, but their impact on the subsequent development of the international law on rivers both in Europe and throughout the world[359] is generally recognized.

420. The multilateral treaties concluded at that time among the European Powers sought to settle the questions relating to freedom of navigation and equality of treatment on the one hand, and the territorial sovereignty of States on the other. Moreover, those treaties endeavoured to introduce the principle of the international administration of navigable waterways by establishing international river commissions.[360] The regulation of navigation by multilateral treaties soon entailed provisions dealing with related questions. Those provisions were generally aimed at removing the obstacles to navigation, but they constitute the basis of European treaty law concerning the utilization and use of international rivers for purposes other than navigation.[361] In the second half of the nineteenth century, multilateral conventions began to be signed in Europe concerning river fishing, particularly in the Rhine and Lake Constance.[362]

421. In the twentieth century, the peace treaties signed following the First World War mark a new phase in the development of the European law on rivers.[363] While most of their provisions concerning international rivers have to do with navigation, they also regulate other uses. Thus, the Treaty of Versailles between the Allied and Associated Powers and Germany of 28 June 1919 provides that France shall have the right to take water and to produce hydro-electric power on the whole course of the Rhine which forms the frontier with Germany.[364] Article 337 of the Treaty of Versailles, which was inserted in the chapter containing the clauses relating to the Elbe, the Oder, the Niemen and the Danube,[365] is more interesting from the standpoint of the development of rules concerning the utilization and use of international rivers. According to that article, in the event of a riparian State undertaking any works of a nature such as to impede navigation in the international section of the river, the Permanent Court of International Justice, at the request of another riparian State or a State represented on the competent River Commission, could enforce the suspension or suppression of such works. The Court was to make due allowance, in its

(Footnote 348 continued)

August 1804. It considered the Franco-German part of the Rhine as common to both Empires in matters relating to navigation and commerce, and constituted a common administration for the collection of the tolls, the police of navigation, etc." (see G. Kaeckenbeeck, *International Rivers* (London, H.M. Stationery Office, 1920), p. 16). In America, the controversy between the United States of America and Spain has led to the Treaty of San Lorenzo el Real on 27 October 1795 (see *British and Foreign State Papers, 1820–1821* (London, 1851), vol. 8, p. 540), providing for freedom of navigation for the Mississippi. But in 1819 the Mississippi passed entirely under American jurisdiction.

[349] Article 5 deals with freedom of navigation of the Rhine (see G. F. de Martens, ed., *Nouveau Recueil de traités, 1814–1815* (Göttingen, Librairie Dieterich, 1887), tome II, p. 1.

[350] Articles 108–116 deal with the navigation of rivers traversing different States (*ibid.*, p. 379).

[351] This Convention concerned the Rhine (see G. F. de Martens, ed., *op. cit., 1827–1831* (Göttingen, Librairie Dieterich, 1833), tome IX, p. 252).

[352] Articles 15–17 concerned the Danube (see G. F. de Martens, ed., *Nouveau Recueil général de traités, jusqu'a l'année 1857* (Göttingen, Librairie Dieterich, 1857), tome XV, p. 770).

[353] This Act concerned the Danube (see G. F. de Martens, ed., *op. cit., 1860*, partie II, tome XVI, p. 75).

[354] The Convention concerned the Rhine (see G. F. de Martens, ed., *op. cit., 1875*, tome XX, p. 355).

[355] This Treaty concerned the Black Sea and the Danube (see G. F. de Martens, ed., *op. cit., 1873*, tome XVIII, p. 303).

[356] Article 52 and 53 concerned navigation on the Danube (see G. F. de Martens, ed., *op. cit., 1878*, 2ème série, tome III, p. 449).

[375] This Treaty concerned navigation on the Danube (see G. F. de Martens, ed., *op. cit., 1884*, 2ème série, tome IX, p. 392).

[358] For a summary of the régime of the Rhine and Danube see United Nations, ECE, Committee on Electric Power, "Legal aspects of hydro-electric development of rivers and lakes of common interest" (E/ECE/136-E/ECE/EP/98/Rev.1), January 1952, annex 9.

[359] The General Act of the Conference (or Congress) of Berlin of 26 February 1885 extended the general principles stated in articles 108–116 of the Final Act of the Congress of Vienna of 1815 to the Congo and the Niger (see para. 83 above).

[360] As, for example, the Central Rhine Navigation Commission and the European and Riparian Danube Commissions.

[361] See, for example, the Convention of Mannheim of 17 October 1868 (see paras. 482 and 483 below).

[362] See paras. 430–434 and 453–463 below.

[363] As pointed out by B. Winiarski, in "General principles of the law of international rivers", *Recueil des cours de l'Académie de droit internationale de la Haye, 1933*, III (Paris), vol. 45, pp. 185 and 186: "... and yet, technological advances were working against the use of international rivers exclusively for navigation purposes in two ways: first, by developing other ways and means of transport which greatly reduced the importance of navigable waterways; secondly, by opening up prospects of ways of utilizing waterways."

[364] See paras. 484–487 below.

[365] For article 337 of the Treaty of Versailles, see G. F. de Martens, ed., *op. cit.* (Leipzig, Theodore Weicher, 1922), 3ème série, tome XI, p. 323.

decisions, for all rights in connexion with irrigation, water-power, fisheries and other national interests which, with the consent of all the riparian States or of all the States represented on the International Commission, would have priority over the requirements of navigation. Moreover, the Treaty of Saint-Germain-en-Laye with Austria of 10 September 1919,[366] the Treaty of Trianon with Hungary of 4 June 1920[367] and the Treaty of Lausanne with Turkey of 24 July 1923[368] contain general provisions concerning the régime of the waters of international rivers.[369]

422. The peace treaties signed after the Second World War have no general provisions concerning the régime of waters of international rivers.[370] However, the Treaty of Peace with Italy of 10 February 1947 regulates the working of certain water-power resources on the French–Italian border, as well as the water supply of Gorizia on the Italian–Yugoslav border.[371]

423. The treaties or provisions of multilateral treaties concerning the utilization and use of European international rivers for purposes other than navigation deal mainly with fishing, the production of hydro-electric power, the flow of water and the safeguarding of water against pollution. All multilateral treaties concerning pollution were signed after the Second World War.

1. Multilateral treaties concerned exclusively with the utilization and use of international rivers in Europe

(*a*) Treaties relating generally to contiguous and successive rivers in the territories of the States parties to such treaties

Belgium, France and Luxembourg

Protocol[372] between Belgium, France and Luxembourg to establish a tripartite standing committee on polluted waters, signed at Brussels on 8 April 1950[373]

424. At a meeting held at Brussels in April 1950, the Tripartite Belgian–French–Luxembourg Committee on classified establishments decided to assume the title of "Tripartite Standing Committee on Polluted Waters" with a view to making a detailed technical study of the problem of water pollution.

425. *Establishment of joint technical sub-committees.* With a view to defining the origin and degree of intensity of pollution, collecting technical opinions and assessing each State's share of responsibility for the pollution, the Tripartite Standing Committee on Polluted Waters set up a joint technical sub-committee for the Espierre[374] and reserved the right to set up further technical sub-committees when taking up the study of the pollution of other waterways.

(*b*) Treaties relating to one of more specific rivers

Lake Constance (Austria, Germany and Switzerland)

(1) *Convention[375] between the delegates of the States bordering on Lake Constance, Baden, Bavaria, Austria, Switzerland and Württemberg concerning regularization of the flow of the waters of Lake Constance in the vicinity of Konstanz, concluded on 31 August 1857.[376]*

426. *Regularization of the flow of the waters to prevent damage (removal and prohibition of constructions, compensation for costs).* With a view to preventing damage from high waters by the future lowering of the level of Lake Constance, the Convention provides that the remaining mill buildings on the Rhine near Konstanz and dams forming a part thereof shall be removed. Hydraulic installations of this kind are not to be permitted in the future (art. 1). The Government of the Grand Duchy of Baden, which undertakes to remove the buildings in question, is to be compensated for the costs of this operation (art. 2).

427. *Renunciation of acquired mill and water rights (compensation).* The Commune of Konstanz renounces all its existing mill and water rights, of whatever nature. A sum specified in the Convention is granted to it by way of compensation (art. 3).

428. *Construction of dams, if required, to maintain the water level of the lake (sharing of cost of initial installation).* The lowering of the level of the lake must be prevented by means of dams designed to maintain its contour line. The cost of the original installation of these dams is to be borne by all the riparian States (art. 5).

429. *Sharing of expenses.* The Convention specifies the contribution to be made by each of the riparian States concerned for the purpose of covering the anticipated expenses (art. 6).

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[366] See article 309 of this Treaty (*ibid.*, p. 691).

[367] See article 292 of the Treaty of Trianon (see G. F. de Martens, ed., *op. cit.* (Leipzig, Theodore Weicher, 1924), 3ème série, tome XII, p. 423).

[368] See article 109 of the Treaty of Lausanne (League of Nations, *Treaty Series*, vol. XXVIII, p. 12).

[369] See para. 304 and foot-note 289 above and para. 468 below.

[370] Article 34 of the Treaty of Peace with Bulgaria, article 36 of the Treaty of Peace with Romania and article 38 of the Treaty of Peace with Hungary, signed on 10 February 1947, deal only with freedom of navigation and conditions of merchant shipping on the Danube (see United Nations, *Treaty Series*, vol. 41, pp. 51 and 169, and vol. 42, p. 35). The same applies to the Treaty of State restoring an independent and democratic Austria of 15 May 1955 (see United States of America, *United States Treaties and other International Agreements, 1955* (Washington, D.C., U.S. Government Printing Office, 1956), vol. 6, part 2, TIAS 3298, p. 2369).

[371] See paras. 490–492 below.

[372] The Protocol entered into force on 8 April 1950.

[373] See United Nations, *Treaty Series*, vol. 66, p. 286. See also *Legislative Texts . . . (op. cit.)*, treaty No. 122.

[374] The joint technical sub-committee for the Espierre is composed of French and Belgian authorities but any member of the Tripartite Standing Committee on Polluted Waters is entitled to take part in its work. The Protocol also empowers the sub-committee for the Espierre to deal in the same way with the problems raised by the pollution of the waters of the Haine, Escaut (Scheldt) and Lys canals. The sub-committee is to report to the Committee on measures to be recommended.

[375] Ratifications exchanged between all the Contracting States in 1858.

[376] See Switzerland, Federal Chancellery, *Recueil systématique des lois et ordonnances 1848–1947* (Berne, 1953), vol. 12, p. 526. See also *Legislative Texts . . . (op. cit.)*, treaty No. 109.

(2) *Convention*[377] *between Austria–Hungary, Baden, Bavaria, Liechtenstein, Switzerland and Württemberg laying down uniform provisions concerning fishing in Lake Constance, with Protocol, concluded at Bregenz on 5 July 1893.*[378]

430. The purpose of the Convention is to conserve and increase the stocks of valuable species of fish in the part of Lake Constance known as the Upper Lake, including the Überlingensee, and to protect those stretches of the lakes on the tributaries of Lake Constance in which they habitually spawn. It is further stipulated that Baden and Switzerland shall not enact for fishing in the part of Lake Constance known as the Lower Lake provisions less strict than those laid down in the Convention for all the other parts of Lake Constance.

431. *Regulations concerning fishing methods, gear and trammel nets and fish the capture of which is prohibited.*

(a) *Prohibition of certain methods of fishing.* The Convention prohibits the following: (*a*) the use of explosives or other harmful materials; (*b*) the use of fish-spears and harpoons, firearms and other similar fishing gear; (*c*) active night fishing (art. 4).

(b) *Prohibition of certain fishing gear.* Fishing gear of any kind or denomination the mesh of which is smaller than the dimensions specified by the Convention is prohibited. Nets with a smaller mesh may be permitted for catching fish which are to be used for feeding purposes in fish hatcheries (art. 2).

(c) *Distance at which trammel nets are to be placed.* The Convention also specifies the minimum distance at which trammel nets are to be placed (art. 3).

(d) *Prohibition of sale of fish the capture of which is prohibited.* Fish whose capture is prohibited either because they are not of the specified length (art. 5) or because they have been placed under protection for a certain period (art. 6) may not be peddled, sold or shipped (art. 9).

(e) *Exceptions authorized for scientific purposes.* The control authorities may, for scientific purposes, make certain exceptions to the rules concerning size of mesh, size of fish and closed seasons (art. 10).

432. *Industrial uses of the water (in the interests of fishing).* The Contracting States shall settle questions relating to hydraulic installations or other industrial uses of the water in conformity with their laws and in the interests of fishing (art. 12).

433. *Introduction of new species of fish (subject to previous consent).* It is considered desirable that the Governments concerned should prohibit the introduction into Lake Constance and its tributaries of new species of fish without having previously notified the authorities thereof and received due authorization. Such authorization should not be granted until the advantages which might result from such a measure have been considered and only after agreement has been reached between all the Governments which are parties to the Convention (Final Protocol, IV).

434. *Co-operation among the States concerned.* Each of the Governments concerned appoints one or more commissioners, who are to keep each other informed of the steps taken by their respective Governments to put the Convention into effect. In addition, they are to meet from time to time to discuss steps to be taken in the interests of fishing (art. 14).

(3) *Convention*[379] *between the Land of Baden-Württemberg, the Free State of Bavaria, the Republic of Austria and the Swiss Confederation on the protection of Lake Constance against pollution, concluded at Steckborn on 27 October 1960*[380]

435. In this Convention, the States bordering on Lake Constance[381] undertake to co-operate in the protection of the waters of the lake against pollution.[382]

436. *Prevention of pollution and improvement of the condition of the waters (application of national laws, previous notice of contemplated utilization of the waters).* The riparian States are to take within their respective territories the necessary steps to prevent increased pollution of the lake and to improve the condition of its waters from the standpoint of health. For this purpose, they shall, so far as Lake Constance and its tributaries are concerned, scrupulously apply the provisions for the protection of the waters which are in force in their respective territories. In addition, the riparian States are to inform each other, in good time, of any contemplated utilization of the water that might prejudice the interest of another riparian State in maintaining the salubrious condition of the water. Such contemplated measures shall not be put into effect until they have been discussed jointly by the riparian States, unless delay entails a danger or the other States have expressly consented to their being carried out immediately (art. 1, paras. 2 and 3).

437. *Establishment of a Standing International Committee.* A Standing International Committee for the Protection of the Waters of Lake Constance is set up to ensure co-operation among the riparian States[383] (art. 3, para. 1). The Convention prescribes the composition (art. 3, paras. 2–5), tasks (art. 4) and voting procedure (art. 5) of the Committee.

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[377] The Convention entered into force on 22 December 1893.

[378] Switzerland, Federal Chancellery, *op. cit.* (Berne, 1953), vol. 14, p. 212. See also *Legislative Texts ... (op. cit.)*, treaty No. 114.

[379] The Convention came into force on 10 December 1961.

[380] See Switzerland, *Feuille fédérale de la Confédération suisse, 113th year, 1961* (Berne, 1962), vol. I, p. 1171. See also *Legislative Texts ... (op. cit.)*, treaty No. 127.

[381] For the purposes of this Convention, Lake Constance is understood to mean the Upper Lake and the Lower Lake (art. 2). International agreements on navigation and fishing in Lake Constance are not affected by this Convention (art. 8, para. 1).

[382] See F. Kolb, "Intergovernmental Agreements concerning the Protection of Water Resources between Germany and its Neighbouring States", *Conference on Water Pollution Problems in Europe, Documents*, vol. II, 1961 (United Nations publication, Sales No.: 61.II.E/Mim.24), p. 398.

[383] In the spring of 1948, France, the Federal Republic of Germany, Luxembourg, the Netherlands and Switzerland established through the diplomatic channel an International Commission for the Protection of the Rhine against Pollution (see International Commission for the Protection of the Rhine against Pollution, *Report of the Expert Committee on physiochemical analyses of the water of the Rhine* (first series, June 1953 to June 1954), (Basel and Stuttgart, 1956), preface).

438. *Obligations of riparian States with regard to water protection measures recommended by the International Committee.* The riparian States undertake to consider the water protection measures recommended by the Committee and affecting their respective territories and to carry them out to the extent permitted by their domestic legislation. They may declare a recommendation of the Committee to be binding in so far as it concerns them (art. 6).

Danube (BULGARIA, ROMANIA, THE USSR AND YUGOSLAVIA)

Convention[384] *between the Governments of the Romanian People's Republic, the People's Republic of Bulgaria, the Federal People's Republic of Yugoslavia and the Union of Soviet Socialist Republics concerning fishing in the waters of the Danube, signed at Bucharest on 29 January 1958*[385]

439. In this Convention, Romania, Bulgaria, the USSR and Yugoslavia recognize the need for co-operation in the rational utilization and expansion of the stocks of fish in the river Danube, including its mouth, in its tributaries up to the maximum extent of its flood waters, and in lakes, estuaries and pools permanently or temporarily connected with the Danube, in the Danube flood-basin.[386] At the same time, the Parties agree to put into effect and apply the regulations[387] governing fishing annexed to the Convention.

440. *Exercise of the right of fishing.* Each Party is to exercise the right of fishing in the Danube in its own waters bounded by the State frontier (art. 2).

441. *Improvement works to increase stocks of fish.* The Parties agree to carry out improvement works aimed at ameliorating the natural conditions for the breeding of and normal increase of stocks of fish of economic importance (art. 5, first para.).

442. *Establishment of stations for artificial fish breeding.* In order to increase the stocks of economically valuable species of fish, provision is made for the establishment of stations for the artificial breeding of such species (art. 6).

443. *Action to safeguard the migratory movements of fish and to encourage their breeding in the event of the erection of water engineering works.* In the event of the erection of water engineering works, in particular dams, which may change the hydrological and hydrobiological régime of the river, the States which construct and use the said works are to prepare in advance and apply jointly a plan of action to safeguard the normal migratory movements of fish. At the same time, these States are to carry out such piscicultural operations as will safeguard the normal breeding and development of economically valuable species of fish, in the sections of the river situated above and below the said works, under the new environmental conditions created by the erection of those works (art. 5, second and third paras.).

444. *Measures to prevent pollution of the waters (sewage, waste and blasting operations).* The Parties are to work out and apply measures to prevent the pollution of the waters by unclarified sewage and other waste from industrial and municipal undertakings which are harmful to fish, as also measures to regulate blasting operations (art. 7).

445. *Scientific and technical co-operation:*

(a) *Exchange of information.* In the interests of rational fishing the Parties are to communicate to one another, in good time, information on the catches and migratory movements of fish (art. 8).

(b) *Mutual assistance.* The Parties are to co-operate with one another under the appropriate scientific and technical agreements, with a view to strengthening scientific and technical collaboration in matters of fishery economy, fish breeding and hydrobiology in the Danube basin (art. 9).

(c) *Establishment of a Mixed Commission.* A Mixed Commission is established with a view to working out and co-ordinating measures for the application of the Convention (art. 11). Its duties include working out measures for the regulation of fishing, presenting proposals to the Parties with a view to amending or supplementing the Fishing Regulations annexed to the Convention[388] and taking decisions on questions which it is authorized under the Fishing Regulations to solve (art. 12). In addition, it may make recommendations to the Parties on the matters within its competence (art. 13).

(d) *Joint experimental fishing operations.* Experimental fishing operations may be organized jointly in the Danube for the purposes of scientific research in the territory of any one of the States Parties to the Convention, on the basis of the Commission's recommendations and, in each case, by agreement among the countries concerned (art. 10).

446. *Conclusion of bilateral agreements. Limitations.* Bilateral agreements on matters relating to fishing in the Danube may be concluded, either between any two Contracting Parties or between a Contracting Party and any other Danubian State, provided that such agreements do not conflict with the interests of the conservation of stocks of fish or with the Fishing Regulations annexed to the Convention (art. 15).

Lake Inari and the river Paatsjoki (FINLAND, NORWAY AND THE USSR)

Agreement[389] *between the Government of the Union of Soviet Socialist Republics, the Government of Norway and the Government of Finland concerning the regulation of Lake Inari by means of the Kaïtakoski hydro-electric power station and dams, signed at Moscow, on 29 April 1959.*[390]

[384] The Convention entered into force on 20 December 1958.

[385] See United Nations, *Treaty Series*, vol. 339, p. 58. See also *Legislative Texts . . . (op. cit.)*, treaty No. 125.

[386] Article 14 provides that other Danubian States may adhere to the Convention.

[387] The regulations contain detailed provisions concerning prohibited places and times for fishing, prohibited tackle and methods of fishing, size of mesh of fishing nets, size of fish, crayfish and molluscs which may be taken, acclimatization and breeding of new species of fish, penalties for violation of the regulations, certain rights of the Mixed Commission established by the Convention and discontinuation of the use of existing fishing devices harmful to the stocks of fish.

[388] See para. 439 and foot-note 387 above.

[389] The Agreement came into force on 29 April 1959 by signature, in accordance with article 9. This Agreement supersedes the Agreement concluded between the USSR and Finland on 24 April 1947, the Protocol for the application thereof, dated 29 April 1954 and the Protocol concerning amendments concluded between the USSR, Finland and Norway on 24 February 1956 (art. 8).

[390] See United Nations, *Treaty Series*, vol. 346, p. 192. See also *Legislative Texts . . . (op. cit.)*, treaty No. 126.

447. This Agreement was concluded by the USSR, Finland and Norway with a view to replacing the Niskakoski dam by the Kaïtakoski hydro-electric power station and dam as the control installation for Lake Inari.

448. *Regulation of Lake Inari—discharge of the waters.* The Government of the USSR has the right to regulate Lake Inari by means of the Kaïtakoski hydro-electric power station and dam, in conformity with the regulations[391] which constitute an integral part of the Agreement. For its part, the Government of the USSR undertakes to ensure that the hydro-electric power station and dam and the course of the river Paatsjoki between Lake Inari and the hydro-electric power station are in such condition that the discharge of water from Lake Inari may proceed at all times in accordance with the aforesaid regulations (articles 1 and 2).

449. *Prohibition of measures likely to affect the régime of Lake Inari or of the river Paatsjoki.* The Government of Finland undertakes not to carry out and not to authorize any other entity to carry out any measures likely to affect the régime of Lake Inari or of the river Paatsjoki (art. 4).

450. *Amendments to the annexed regulations necessitated by the operation of the installations (inter-Ministerial agreement).* If, in the light of experience in the operation of the hydro-electric power station and dam or in timber-floating, or in connexion with the construction and operation of any new electric power stations or dams on the river Paatsjoki, it is found necessary to amend the regulations annexed to the Agreement, amendments are to be made by agreement between the competent Ministries of the USSR, Finland and Norway (art. 3).

451. *Technical co-operation with a view to implementation of the Agreement (right of access).* The competent Ministries of the Parties shall each appoint a representative authorized to act in matters relating to the application of the Agreement. The Norwegian and Finnish representatives shall have access to the Kaïtakoski area in Soviet territory and the representatives of the USSR and Norway shall have access to the water-level observation post at Nellimvuono in Finnish territory (articles 5 and 6).

452. *Settlement of disputes (Mixed Commission, diplomatic channel).* Any dispute concerning the application of the Agreement shall be settled by a Mixed Commission composed of six members, of whom two shall be appointed by each of the Parties. If agreement is not reached in the Mixed Commission, the dispute is to be settled through the diplomatic channel (art. 7).

Rhine and its tributaries (GERMANY, THE NETHERLANDS AND SWITZERLAND)

Convention[392] between Switzerland, Germany and the Netherlands for the regulation of salmon fishing in the Rhine basin, with Protocol, signed at Berlin on 30 June 1885.[393]

453. This Convention establishes uniform provisions for salmon fishing in the Rhine, with a view to conserving and increasing the stocks of salmon by the appropriate use of artificial fish-breeding. The Convention relates exclusively to fishing and in no way affects the internal right of possession of each State, thus implicitly recognizing the rights of sovereignty of the Contracting Parties over those portions of the river which are situated within their respective territories. It is, however, of special importance in that it opens the way to claims by States concerning fishing in foreign territory, whether up-stream or down-stream, while at the same time recognizing a right of pursuit, as it were, for the protection of fish as game (*res nullius*).[394]

454. *Regulations concerning fishing devices and tackle and periods during which fishing is forbidden:*

(a) *Prohibition of certain fishing devices (acquired rights, determination of the width of the river).* The use of permanent fishing tackle or of fishing tackle secured to the bank or in the bed of the river or anchored, or of any object which will obstruct the passage of fish over more than half the width of the river, is prohibited. The permanent fishing tackle in the tributaries of the Rhine is not subject to this prohibition if it has been installed under a fishing right granted for this particular method of fishing (art. I). The width of the river is measured at normal low water along the shortest straight line from one bank to the other (art. I, first para., *in fine*).

(b) *Prohibition of certain fishing devices (exchange of information).* The Convention prohibits the use of certain types of drift-net (art. II) and, for two months of the year, any salmon fishing with drag-nets (art. III). The Governments shall make known to each other the steps taken (art. III, fourth para.).

(c) *Prohibition of fishing during certain times of the year. Protection of salmon spawn. Exceptions permitted.* Fishing for salmon and shad with any kind of tackle is suspended for twenty-four hours every week (art. IV). In those portions of the tributaries of the Rhine in which there are

[391] The regulations specify the obligations of the Parties with respect to the discharge and volume of the water and the water-level of the lake, with a view to the production of hydro-electric power and the floating of timber. They also contain provisions concerning pluviometric surveys and fish-breeding measures required for the conservation of the stocks of fish.

[392] The Convention came into force on 6 June 1886.

[393] Switzerland, Federal Chancellery, *op. cit.*, p. 256. See also *Legislative Texts . . . (op. cit.)*, treaty No. 112.

[394] See G. del Péré de Cardaillac de Saint-Paul, *La pêche dans les cours d'eau* (Toulouse, 1904). The provisions of the Convention apply to the course of the Rhine from the falls of Schaffhausen downstream and in all channels thereof through which water can flow into the sea from the undivided Rhine at Lobith. However, it is applicable to such portions of the tributaries of the Rhine as constitute the frontier of a State which is not a party to the Convention only so far as a similar regulation is in force in that State (art. I). Also, the provisions concerning prohibition of the use of certain fishing gear and tackle (articles I, II and III) and the prohibition of fishing during certain times of the year (articles IV and V) are not applicable to the Moselle from the point where it leaves Alsace-Lorraine up to Trèves or to any of the tributaries of the Moselle on its left bank which run along Prussian and Luxembourg territory. It is reserved to the Prussian Government to make regulations concerning fishing in these watercourses, in keeping with the provisions of the Convention, through an agreement with the Government of the Grand Duchy of Luxembourg (see para. 564 and foot-note 487 below for the Convention between the Grand Duchy of Luxembourg and Prussia for the regulation of fishing in frontier waters, signed at Luxembourg on 5 November 1892) (art. VI). Finally, the provisions of the Convention are likewise not applicable to fishing of any kind in the unused branches of the Rhine so far as such side branches are not connected at both ends with the main stream (Final Protocol, I).

suitable spawning-grounds for salmon and in the Upper Rhine itself, above Mannheim-Ludwigshafen, salmon fishing during a period of at least six weeks, at a time of the year stipulated by the Convention, may be carried on only with express permission. Such permission is granted only if the elements of propagation of the fish captured during spawning have been secured for artificial fish-breeding (art. V).

455. *Measures to be taken to increase stocks of salmon (river basin). Prohibition of the sale of fish the capture of which is prohibited.* With the object of increasing the stocks of salmon in the Rhine basin, the natural spawning-grounds in the tributaries of the Rhine are to be made accessible to the salmon at the time of their ascent and the elements of propagation of the captured salmon are to be used as far as possible for artificial fish-breeding (art. VII). The Governments of the riparian States concerned shall, each with respect to its own territory, fix the minimum measurement below which salmon may be neither caught nor brought to market (art. VIII).

456. "Jus edicendi" *of the riparian States concerned (laws and regulations governing enforcement). Fishery police.* The Governments of the riparian States concerned shall issue the necessary regulations for the application of the Convention, establish suitable penalties for contraventions of the regulations and appoint the necessary enforcement officers for the application thereof. The Convention does not prevent individual States from adopting severer measures for their territory in order to protect the fish (art. 9).

457. *Co-operation between the States concerned.* The Convention contains a provision similar to that in the Convention between Austria–Hungary, Baden, Bavaria, Liechtenstein, Switzerland and Württemberg on fishing in Lake Constance, signed at Bregenz on 5 July 1893.[395]

The Rhine and its tributaries, including Lake Constance (Germany, France and Switzerland)

Convention,[396] with Protocol, between Switzerland, the Grand Duchy of Baden, and Alsace-Lorraine[397] to establish uniform provisions regarding fishing in the Rhine and its tributaries, including Lake Constance, signed at Lucerne on 18 May 1887[398]

458. This Convention applies to Lake Constance and the Rhine down-stream from its outlet from Lake Constance. Certain articles dealing with migratory fish (salmon and shad) also apply to tributaries of the Rhine. This Convention contains provisions on the prohibition of certain types of fishing gear (art. 1, first para.), the method of measuring the width of the river (art. 1, first para., *in fine*), and co-operation between riparian States (art. 11), which are identical with those contained in the Convention of 30 June 1885 between Switzerland, Germany and the Netherlands for the regulation of salmon fishing in the Rhine basin.[399]

459. *Rules concerning fishing methods, gear and equipment and fish which it is forbidden to take:*

(a) *Prohibition of certain methods of fishing.* The following are prohibited under the Convention: (*a*) the use of explosives or other harmful substances; (*b*) the use of traps, harpoons, firearms and other fishing equipment of the kind; (*c*) the setting up of new fixed fisheries; (*d*) the use of fish-traps for catching salmon during a fixed period each year; (*e*) the draining of watercourses for the purpose of fishing, and (*f*) fishing at night by direct human action (art. 4).

(b) *Prohibition of certain types of fishing gear.* No fishing gear shall be used if its mesh is not at least as large as that specified for each species of fish by the Convention (article 2). Drift-nets shall not be stretched nor fixed in the water in such a way as to remain stationary or attached to any object (art. 3).

(c) *Distance to be maintained between fishing appliances.* The distance between two permanent fixed fishing appliances or between two fixed nets shall not be less than twice the length of the appliance or net, as the case may be (art. 1, third para).

(d) *Prohibition of sale of fish the capture of which is forbidden. Exceptions authorized (in unusual circumstances or as a result of* force majeure*).* Fish which it is forbidden to catch, either because they are not of the specified length (art. 5), or because they are under protection for a specified period (art. 6), shall not be peddled, sold, or dispatched to any destination. In unusual cases such as those of the forced catching of fish in ponds as the result of certain phenomena, or other cases of *force majeure* such as the diversion of watercourses, however, the competent authorities may authorize the sale and dispatch of such fish. Similar authorization may be given for fish intended for artificial pisciculture (art. 9).

460. *Prohibition of the pollution of waters containing fish.* It is forbidden to empty or to allow to drain into waters containing fish any factory wastes or other substances which, by their nature or quantity, might harm fish or drive them away. The competent authorities shall likewise decide to what extent existing agricultural and industrial effluents shall be subject to this rule (art. 10).

461. *Temporary complete prohibition of fishing.* The temporary complete prohibition of fishing in a watercourse shall be considered to be permissible and authorized if, as a result of the diversion of water containing fish, the lack of water, or other contingencies, there is a risk that the stock of fish may be completely annihilated (Final Protocol, I).

462. *Introduction of new species of fish (subject to previous agreement).* It is considered desirable that no new species of fish should be introduced without previous agreement

[395] See paras. 430–434 above.

[396] This Convention came into force on 19 October 1887.

[397] By its note of 31 July 1920, France declared its willingness to allow this Convention to continue to be applied in fact until new agreements could be concluded between France and Switzerland on fishing in the Rhine (See Switzerland, *Feuille fédérale de la Confédération suisse*, 72nd year (Berne, 1920), vol. IV, p. 378).

[398] Switzerland, Federal Chancellery, *op. cit.*, p. 248. See also *Legislative Texts . . . (op. cit.)*, treaty No. 113.

[399] See paras. 453–457 above. For fishing in the Rhine and Lake Constance, see A. Lederle, *Das Recht der internationalen Gewässer unter besonderer Berücksichtigung Europas* (Mannheim, J. Bensheimer 1920) pp. 216 and 221.

between the Governments of the riparian States (Final Protocol, VI).

463. "Jus edicendi" *of the Contracting States (laws and regulations governing enforcement)*. The Governments of the Contracting States undertake to incorporate the provisions of the present Convention as much as possible into their laws and regulations on fishing. The Convention does not deprive the States of the right to adopt severer measures for their territory in the interests of fishing (art. 12).

2. Multilateral treaties containing provisions respecting the utilization and use of international rivers in Europe

(*a*) PROVISIONS OF TREATIES RELATING GENERALLY TO CONTIGUOUS AND SUCCESSIVE RIVERS IN THE TERRITORIES OF THE STATES PARTIES TO SUCH TREATIES

Federal Republic of Germany, Belgium, France, Italy, Luxembourg and the Netherlands

Treaty[400] *between Belgium, Federal Republic of Germany, France, Italy, Luxembourg and Netherlands establishing the European Atomic Energy Community (EURATOM), done at Rome on 25 March 1957*[401]

464. *Protection of waters against radioactivity*. This Treaty contains provisions regarding the protection of waters against the effects of radioactivity (articles 35–39). These provisions are applicable both to the waters of national rivers and those of international rivers. It should be noted that each Member State of EURATOM is bound to submit to a Commission set up under the Treaty such general data concerning any plan for the disposal of any kind of radioactive waste as will enable the Commission to determine whether the implementation of such a plan is likely to involve radioactive contamination of the water of another Member State. The Commission, after consulting a group of experts, shall give its opinion within a period of six months (art. 37).

(*b*) PROVISIONS OF TREATIES RELATING GENERALLY TO CONTIGUOUS AND SUCCESSIVE RIVERS IN THE TERRITORIES OF CERTAIN OF THE STATES WHICH ARE PARTIES TO SUCH TREATIES

Germany and Belgium

Provisions[402] *relating to the common frontier between Belgium and Germany, drawn up by a Boundary Commission made up of representatives of the British Empire, France, Italy, Japan, Belgium and Germany under the terms of the Treaty of Versailles of 28 June 1919 concerning that frontier, done at Aix-la-Chapelle on 6 November 1922.*[403]

465. *Successive rivers:*

(a) *Régime of watercourses. Conditions attaching to their use (respect for acquired rights)*. Belgium and Germany undertake not to permit any deterioration of the present régime of the watercourses which cross their common frontier and to recognize the obligations to which they are subject in respect of the use of the water of such watercourses (III, art. 4).

(b) *Water supply pipes*. A number of provisions are designed to ensure the protection of the water supply pipes which cross the frontier at certain points (the railway between Raeren and Kalterherberg; Montjoie; Loshiem–Herbergerg–Krewinkel and Elynatten–Raeren). Before making any changes in the condition of the pipes which might have an adverse influence on the quantity or quality of the water, Germany and Belgium undertake to come to an agreement on the measures to be taken. The Party responsible for the supervision and maintenance of the said pipes shall be duly specified (II, art. 8 and III, articles 1 and 3).

466. *Special provisions regarding the water conditions in the basins of the Dreilägerbach and Vesdre and the water supply for Lammersdorf:*

(a) *Prevention of water pollution (previous agreement)*. No construction, establishment or factory which might pollute the water of the basins with its effluents shall be permitted. Before any installation which might have an adverse influence on the nature of the water is erected, Germany and Belgium shall come to an agreement to take the necessary protective measures. It is forbidden, in all circumstances, to allow water harmful to public health to flow into the streams (III, art. 2).

(b) *Diversion of water (prior agreement)*. Neither State shall permit any diversion of watercourses which might adversely affect the supply of water from basins situated on its territory without prior agreement with the Government of the other State (III, art. 2).

467. *Contiguous rivers:*

(a) *Arbitrary diversion of water*. Germany and Belgium shall take the necessary measures to ensure that watercourses defining the frontier are not diverted arbitrarily (V, art. 1).

(b) *Artificial re-routing of watercourses (prior agreement)*. No frontier watercourse shall be artificially re-routed without previous agreement between the two riparian States (V, art. 1).

(c) *Upkeep and cleaning of watercourses*. Each State shall take the requisite measures to maintain frontier watercourses in good condition, and shall clean them when necessary. In addition, each State undertakes to take the necessary action with regard to its nationals to ensure that the work of cleaning and maintenance is property carried

[400] This Treaty came into force on 1 January 1958.

[401] See United Nations *Treaty Series* vol. 298 p. 169. See also Council of Europe *European Yearbook* (The Hague, Martinus Nijhoff, 1959), vol. V, p. 454, and *Legislative Texts . . . (op. cit.)*, treaty No. 124.

[402] These provisions are obligatory under article 35 of the Treaty of Versailles, which reads: "A Commission of seven persons, five of whom will be appointed by the principal Allied and Associated Powers, one by Germany and one by Belgium, will be set up fifteen days after the coming into force of the present Treaty to settle on the spot the new frontier line between Belgium and Germany, taking into account the economic factors and the means of communication. Decisions will be taken by a majority and will be binding on the parties concerned."

[403] See G. F. de Martens, ed., *op. cit.*, 1926, 3ème série, tome XIV, p. 834. See also *Legislative Texts . . . (op. cit.)*, treaty No. 118.

out. At points where the frontier runs along the median line of a watercourse, the work in question shall be carried out simultaneously by both Parties (V, art. 3).

Bulgaria, Greece and Turkey

Treaty of Peace between the British Empire, France, Italy, Japan, Greece, Romania and Yugoslavia of the one part, and Turkey of the other part, signed at Lausanne on 24 July 1923[404]

468. The general provision contained in this Treaty regarding the régime of watercourses affected by the delimitation of a new frontier, which was reproduced in that part of the present report on multilateral treaties relating to international rivers of Asia also applies to the régime of watercourses on the European frontiers of Turkey, i.e., to watercourses on Turkey's frontiers with Bulgaria and Greece.[405]

(c) Provisions of treaties relating to one or more specific rivers

Lake Constance (Germany, Austria and Switzerland)

Convention[406] *between Switzerland, Austria, Bavaria, Württemberg and the Grand Duchy of Baden to establish international regulations for navigation and port service on Lake Constance, signed at Bregenz on 22 September 1867*[407]

469. *Removal of obstacles to navigation.* States bordering on Lake Constance shall take steps, each along the whole of its own shore and over the whole of that part of the lake which is under its jurisdiction, to ensure that navigation on the lake is not hindered by scaffolding, the exercise of certain trades, or any other activity (art. 3).

The Danube (Austria, Bulgaria, Hungary, Romania, Czechoslovakia, the USSR and Yugoslavia)

Convention[408] *between the Union of Soviet Socialist Republics, the People's Republic of Bulgaria, the Hungarian Republic, the People's Republic of Romania, the Ukrainian Soviet Socialist Republic, the Republic of Czechoslovakia, and the Federal People's Republic of Yugoslavia regarding the régime of navigation on the Danube, signed at Belgrade, on 18 August 1948*[409]

470. The régime established by this Convention applies to the navigable part of the Danube between Ulm and the Black Sea through the Sulina arm, with the outlet to the sea through the Sulina channel.

471. *Removal of obstacles to navigation.* The Danubian States undertake not to obstruct or hinder navigation on the navigable channels of the Danube (art. 3).

472. *Technical co-operation:*

(a) *Danube Commission (hydrological services).* The Danube Commission set up under the Convention co-ordinates the activities of the hydrological services and publishes short-term and long-term hydrological forecasts for the Danube (art. 8, second para., sub-para. (*h*)).

(b) *Special River Administrations of the lower Danube and the Iron Gates section (for the execution of hydraulic engineering works).* Two "Special River Administrations" composed of representatives of the adjacent riparian States have been established for the lower Danube, between the mouth of the Sulina channel and Braila, and for the Iron Gates section, between Vince and Kostol on the right bank and between Moldova-Veche and Turnu-Severin on the left bank. These Administrations have been set up not only to regulate navigation, but also to execute hydraulic engineering works in their respective areas. Each Administration acts on the basis of an agreement between the Governments of the countries that are members of the Administration (articles 20 and 21).

473. *Settlement of disputes (diplomatic channel, conciliation commission).* Any dispute between signatory States regarding the application or interpretation of the Convention which has not been settled by direct negotiation shall, at the request of either party to the dispute, be referred for settlement to a conciliation commission. The decision of the conciliation commission is final and binding on the parties to the dispute (art. 45).

Moselle (France, Germany and Luxembourg)

Convention[410] *concluded by the Federal Republic of Germany, the French Republic and the Grand Duchy of Luxembourg concerning the canalization of the Moselle, signed at Luxembourg on 27 October 1956*[411]

474. *Canalization for purposes of navigation with due regard for other uses.* In carrying out the work of canaliza-

[404] See foot-notes 287 and 288 above.

[405] See paras. 304 and 421 above.

[406] This Convention came into force on 1 March 1868.

[407] Switzerland, Federal Chancellery, *op. cit.* (Berne, 1953), vol. 13, p. 380. See also *Legislative Texts . . . (op. cit.)*, treaty No. 110.

[408] This Convention came into force on 11 May 1949. Austria became a party to the Convention on 20 January 1960.

[409] See United Nations, *Treaty Series*, vol. 33, p. 196. See also *Legislative Texts . . . (op. cit.)*, treaty No. 121.

[410] This Convention came into force on 31 December 1956 by the exchange of the instruments of ratification. The Convention regulates the work for the improvement of the Moselle for deep-draught navigation between Thionville and Coblentz. An "International Company of the Moselle" shall be responsible for carrying out and financing this work. The articles of association of the Company are annexed to the Convention. The Convention also institutes the régime governing navigation of the Moselle. As regards the negotiations that preceded the conclusion of the Convention, see "*Les négociations franco-allemandes sur la canalisation de la Moselle. L'attitude de la Belgique*", in *Revue de la navigation intérieure et rhénane* (1956), vol. XXVIII, p. 173, "*Les répercussions de la canalisation de la Moselle sur l'économie luxembourgeoise*" (*ibid.*, p. 172) and "*Données techniques et économiques fondamentales de la canalisation de la Moselle*" (*ibid.*, p. 266). For an analysis of the Convention, see "*La Moselle canalisée (la Convention franco-germano-luxembourgeoise a été signée le 27 octobre a Luxembourg. Les avantages particuliers obtenus par le Luxembourg)*" (*ibid.*, p. 710). See also J. Charpentier, "*Pratique française du droit international public*", in *Annuaire français de droit international, 1956* (Paris), p. 857, *1957*, p. 843 and *1958*, p. 823.

[411] Federal Republic of Germany, Federal Ministry of Justice, *Bundesgesetzblatt*, 1956, part II, No. 36, p. 1838. See also *Legislative Texts . . (op. cit.)*, treaty No. 123.

tion, account shall be taken of the requirements of electricity, agriculture, fishing, hydrology and tourism. Further, such work shall be carried out in such a way that the harmony of the sites shall be respected as much as possible (art. 1 (3)).

475. *Boundaries between works for the construction of navigation canals and those for the construction of electric power stations.* If a hydro-electric plant is situated next to the dam that is to be built, the plans shall mark the boundaries between the two installations, in order that the dam can be constructed independently of the power station (art. 1 (2); annex I, art. 3).

476. *Construction of electric power stations and utilization of hydro-electric power.* The construction of electric power stations and the utilization of hydro-electric power from the Moselle shall be reserved to each of the Contracting States on its own territory (art. 7).[412]

477. *Ensuring the production of hydro-electric power (diversion of waters).* The Parties undertake to ensure that no measure is taken which may seriously affect the production of hydro-electric power and, in particular, that the waters of the Moselle and its tributaries are not diverted to another river basin (art. 54).

478. *Water pollution prevention.* The Parties shall take all measures necessary to protect the waters of the Moselle and its tributaries against pollution. The competent services of the three States shall duly co-operate with each other for this purpose (art. 55).

479. *Settlement of questions arising out of the legal status of the frontier sections of the river.* Germany, France and Luxembourg shall settle by mutual agreement and on a bilateral or multilateral basis questions arising out of the legal status of the frontier sections of the Moselle, as defined by existing international conventions,[413] in particular with regard to questions concerning the construction of works, the operation, maintenance and repair of such works and of the navigable waterway, and the utilization of hydraulic resources (art. 56).

480. *Settlement of disputes (arbitration, emergency procedure).* If a dispute cannot be settled by mutual agreement within a time-limit of three months, it shall be submitted, at the request of one of the Parties, to an arbitral tribunal. Provision is also made for an emergency procedure, namely, of arbitration by a single expert and subject to shorter time-limits (articles 57–62).

[412] Germany, as one of the countries directly concerned, shall construct nine hydro-electric power plants from Coblentz to Trier. Another plant may eventually be built at the frontier between Germany and Luxembourg (see "*La Moselle canalisée, Revue de la navigation intérieure et rhénane* (1956), vol. XXVIII, p. 710).

[413] In accordance with article 68 of the Act of the Congress of Vienna of 9 June 1815, the Moselle, the Sûre and the Our form the boundary between Germany and Luxembourg. The Act of the Congress of Vienna, however, determined the régime for international navigable rivers only in so far as navigation was concerned (articles 108 and 109 of the Act). On the other hand, article 67 of the Act ceded the Grand Duchy of Luxembourg to the King of the Netherlands. The general legal status of the three frontier rivers of Germany and Luxembourg was established only by article 27 of the Treaty on Boundaries between the King of Prussia and the King of the Netherlands, signed at Aix-la-Chapelle on 26 June 1816. The legal status thus defined was that of a condominium, that is to say, joint sovereignty. For the text of this Treaty, see G. F. de Martens, ed., *Nouveau Recueil de traités, 1808–1818* (Göttingen, Librairie Dieterich, 1877), tome III, p. 24, or *Legislative Texts ... (op. cit.)*, treaty No. 203.

Lake Raibl (Austria and Italy)

Treaty of Peace[414] between the Allied and Associated Powers, of the one part, and Austria, of the other part, signed at Saint-Germain-en-Laye on 10 September 1919[415]

481. *Utilization and diversion of the waters.* Austria recognizes the right of Italy to the free use of the waters of Lake Raibl and its tributary, and to divert the said waters towards the Korinitza basin (article 44, second para.).[416]

The Rhine (France, Germany and the Netherlands)

Revised Convention[417] relating to the navigation of the Rhine between Baden, Bavaria, France, Hesse, the Netherlands and Prussia, signed at Mannheim on 17 October 1868[418]

482. *Hydrotechnical projects (prior notice).* The riparian States bordering on the Rhine shall inform each other of any hydrotechnical projects the carrying out of which may have a direct effect on the section of the river, or of its banks, which belongs to them, so that such projects may be executed in the manner most suitable for both States. They shall come to an agreement upon questions which may arise during the execution of such works (art. 29).[419]

483. *Removal of obstacles to navigation. Prohibition of new mill concessions.* The riparian States shall ensure that navigation on the Rhine is not impeded by mills, other plants established along the Rhine, or any other engineering works. No concession shall, in the future, be granted for the establishment of additional floating mills (art. 30). Hydrotechnical engineers appointed by the Governments of all the riparian States shall carry out visits of inspection from time to time, for the purpose of ascertaining the condition of the river, and report thereon to the Central Rhine Commission (art. 31).

[414] The Treaty came into force on 16 July 1920. The British Empire, France, Italy, China, Greece, the Serbo-Croat-Slovene State, Czechoslovakia, Siam, Austria, Belgium, Cuba, Romania, Japan, Nicaragua and Portugal ratified the Treaty and deposited their instruments of ratification.

[415] See G. F. de Martens ed., *Nouveau Recueil général de traités* (Liepzig, Theodor Weicher 1922) 3 ème série, tome XI, p. 691. See also *Legislative Texts ... (op. cit.)*, treaty No. 116.

[416] This provision is reproduced in article 16 of the Agreement between Italy and Austria concerning economic relations between the frontier zones of the two States, signed at Rome on 28 April 1923 (see below, paras. 928–931).

[417] The Convention came into force on 1 July 1869. In accordance with article 48, this Convention supersedes the Convention relating to the navigation of the Rhine, of 31 March 1831, the supplementary and additional articles to this Convention and all other resolutions concerning matters mentioned therein.

[418] See Council of Europe, *European Yearbook* (The Hague, Martinus Nijhoff, 1956), vol. II, p. 258. See also *Legislative Texts ... (op. cit.)*, treaty No. 111.

[419] See article 358 of the Treaty of Versailles, para. 484 below.

The Rhine (FRANCE AND GERMANY)

Treaty of Peace[420] *between the Allied and Associated Powers, of the one part, and Germany, of the other part, signed at Versailles, on 28 June 1919*[421]

484. *Rights granted to France.*[422] *Restrictions on the exercise thereof.* Subject to the obligation to comply with the provisions of the Convention of Mannheim of 1868,[423] France has, along the whole course of the Rhine included between the extreme points of its frontiers, rights established by the Treaty of Versailles relating to the taking of water and the production of hydraulic power. The exercise of these rights, however, shall not interfere with navigability, nor shall it reduce the facilities for navigation, either in the bed of the Rhine or in the derivations which may be substituted therefor. Moreover, all proposed schemes shall be laid before the Central Rhine Navigation Commission, in order that it may assure itself that these conditions are complied with (art. 358).

(a) *Taking of water (execution of works).* France has the right to take water from the Rhine to feed navigation and irrigation canals (constructed or to be constructed) or for any other purpose, and to execute on the German banks all works necessary for the exercise of this right (art. 358, first para., sub-para. (*a*)).

(b) *Production of hydraulic power (payment, execution of works).* France has the exclusive right to the power produced, subject to the payment to Germany of the value of half the power actually produced;[424] the amount will be calculated by taking into account the cost of the works necessary for producing the power and in default of agreement will be determined by arbitration. France alone shall have the right to carry out all the works of regulation that it may consider necessary for the production of power (art. 358, first para., sub-para. (*b*)).

485. *Measures designed to ensure the exercise of the rights granted to France (Prohibition to undertake or to authorize any work of construction; the right of support and right of way; plans for works of regulation and concessions schemes).* Germany: (*a*) binds itself not to undertake or to authorize the construction of any lateral canal or any derivation on the right bank of the Rhine opposite the French frontiers; (*b*) recognizes the possession by France of the right of support on and the right of way over all lands situated on the right bank which may be required in order to survey, build and operate dams which France, with the approval of the Central Rhine Commission, may subsequently decide to establish,[425] (*c*) shall deliver to France all plans, studies, drafts of concessions and of specifications concerning the regulation of the Rhine for any purpose whatever, which have been drawn up or received by the Government of Alsace-Lorraine or by the Grand Duchy of Baden.

486. *The execution of work to be subject to the previous approval of the Central Rhine Commission.* No work shall be carried out in the bed or on either bank of the Rhine where it forms the boundary between France and Germany without the previous approval of the Central Rhine Commission or of its agents (art. 359).

487. *Assumption, by way of substitution, of rights and obligations resulting from previous agreements.* France reserves the right of substituting itself as regards the rights and obligations resulting from agreements arrived at between the Government of Alsace-Lorraine and the Grand Duchy of Baden concerning the works to be carried out on the Rhine, and may also denounce those agreements within a time-limit prescribed by the Treaty (art. 360).

The Rhine (lateral canal of Kembs) (FRANCE, GERMANY AND SWITZERLAND)

Agreement[426] *between Germany, France and Switzerland concerning the scheme for the Kembs lateral canal, signed at Strasbourg on 20 May 1922*[427]

488. This Agreement was concluded between France, Germany and Switzerland for the purpose of introducing into the Kembs derivation scheme, submitted by the French Government under article 358 of the Treaty of Versailles,[428] the amendments recommended by the Central Rhine Navigation Commission.[429]

489. *Concession of the fall produced by the dam. Right of support.* The concession of the fall produced by the Kembs dam (France) on Swiss territory up to the confluence of the Birse and the authorization for the acquisition of additional land on the territory of Baden shall be granted to the concessionaire[430] nominated by the French Government,

[420] The Treaty came into force on 10 January 1920. Germany, the British Empire, France, Italy, Japan, Belgium, Bolivia, Brazil, Guatemala, Peru, Poland, Siam, Czechoslovakia, Uruguay, Cuba, Greece, Haiti, Honduras, Liberia, Nicaragua, Panama, Portugal, Romania and the Serbo-Croat-Slovene State ratified the Treaty and deposited their instruments of ratification. By two Protocols, dated 21 January 1921 and 29 March 1927, the Netherlands agreed to the amendments made to the Convention of Mannheim of 1868 by the Treaty of Versailles (for the text of these Protocols, see Council of Europe, *European Yearbook* (The Hague, Martinus Nijhoff, 1956), vol. II, p. 275).

[421] See G. F. de Martens, ed., *op. cit.*, p. 323. See also *Legislative Texts . . . (op. cit.)*, treaty No. 115.

[422] Although the Convention concluded between France and the Federal Republic of Germany on 27 October 1956 for the regulation of the Upper Rhine between Basle and Strasbourg does not essentially infringe the rights granted to France by the Treaty of Versailles, it introduces a change in the relationship between the two countries with respect to this question (see paras. 806–809 below).

[423] See paras. 482 and 483 above.

[424] See para. 807 below.

[425] If Switzerland so requests and if the Central Rhine Commission approves, the same rights shall be accorded to Switzerland for the part of the river forming its frontier with other riparian States.

[426] The Agreement entered into force on the day of signature.

[427] See League of Nations, *Treaty Series*, vol. XXVI, p. 266. See also *Legislative Texts . . . (op. cit.)*, treaty No. 117.

[428] See para. 484 above.

[429] Resolutions of the Central Rhine Commission: (*a*) approving the Kembs dam and canal of the Grand Canal of Alsace, 16 December 1921; (*b*) concerning the Kembs canal, 10 May 1922; (*c*) approving the extension of the Kembs flood level as far as the Birse and the regulation of the Rhine between Strasbourg and Basle, 10 May 1922 (see *Les Actes du Rhin, Traités, conventions, lois, et reglements principaux concernant la navigation sur le Rhin et les voies navigables d'Europe Occidentale* (Strasbourg, Editions de la navigation du Rhin, 1957), pp. 34 and 35).

[430] The Kembs fall was ceded to a French company by an Act of 28 July 1927 (*Journal Official de la République française*, 1 August 1927).

subject to the formalities and conditions laid down in the legislation of the two countries concerned (para. I).[431]

Roya River and Lake of Mont Cenis (ITALY AND FRANCE) and springs in the Commune of Gorizia and vicinity (ITALY AND YUGOSLAVIA)

Treaty of Peace[432] between the Allied and Associated Powers and Italy, signed at Paris on 10 February 1947[433]

490. Articles 9, 13 and 21 of the Treaty of Peace provide for guarantees concerning the regulation and utilization of Franco–Italian and Italo–Yugoslav international rivers and of rivers near the new frontiers of France and Yugoslavia with Italy. Details of the guarantees are given in annexes III, V and IX of the Treaty. They protect pre-existing usage and, at the same time, try to solve new difficulties of water utilization connected with the territorial changes effected by the Treaty.[434]

491. *Guarantees given by France to Italy in connexion with the cession of the Tenda–Briga District and the plateau of Mont Cenis to France:*

(a) *Provisions concerning the hydro-electric works on the Upper Roya.*[435] Hydro-electric works establishing on the Upper Roya in the Tenda District (generating stations at San Dalmazzo, Le Mesce and Confine) in order to meet the electricity requirements of the Italian economy, are situated wholly or partly in French territory, since the entry into force of the Treaty of Peace of 1947. Until 1961, the output of these generating stations was reserved by right of priority for the requirements of Italy; the power was conveyed to the frontier by France and charged for at the same price as that charged in France for the supply of similar quantities of hydro-electricity in French territory in the neighbourhood of the Upper Valley of the Roya or in other regions where conditions were comparable (annex III, B, paras. 1, 2 and 3).[436]

(b) *Provisions concerning the use of the water resources of the Roya.* France shall operate the hydro-electric plants on the Roya in French territory, taking into account as far as reasonably practicable the needs of the generating stations down-stream. France shall inform Italy in advance of the amount of water which will be available each day, and shall furnish all other relevant information. In addition, it is provided that France and Italy shall, through bilateral negotiations, draw up a co-ordinated plan[437] for the utilization of the hydraulic resources of the Roya and that a commission shall be established to supervise the carrying out of the plan and to facilitate the observance of the guarantees (annex III, B, para. 4).

(c) *Provisions concerning the hydro-electric works on the Lake of Mont Cenis:*[438]

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[431] The conditions governing the utilization of the additional power made available to the Kembs electric power station by the extension of the dam's flood level were set out in a Franco–Swiss Convention concluded at Berne on 27 August 1926 (see paras. 818–826 below).

[432] The Treaty came into force on 15 September 1947. The following States deposited instruments of ratification or accession: Albania, Australia, Belgium, Brazil, Canada, China, Czechoslovakia, Ethiopia, France, Greece, India, Italy, Mexico, Netherlands, New Zealand, Poland, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia. Pakistan stated that it considered the ratification deposited by India as binding on it.

[433] See United Nations, *Treaty Series*, vol. 49, p. 126. See also *Legislative Texts . . . (op. cit.)*, treaty No. 120.

[434] In connexion with the guarantees to the Free Territory of Trieste described in annex IX, it should be pointed out that the "Memorandum of understanding between the Governments of Italy, the United Kingdom, the United States and Yugoslavia regarding the Free Territory of Trieste", signed at London on 5 October 1954, brought to an end the existence of the Free Territory (see United Nations, *Treaty Series*, vol. 235, p. 100). The provisions of annex IX are therefore not examined here. As a result of the frontier modifications and changes in administration made in accordance with the above-mentioned memorandum of understanding, the rivers Quieto and Risano flow throughout their entire course in Yugoslav territory. It should be noted that in annex IX, part B, concerning electricity supplies to the Free Territory of Trieste, paragraph 5 states: "Yugoslavia shall ensure that the existing and any future power installations on the Isonzo (Soca) are operated so as to provide that such supplies of water as Italy may from time to time request may be diverted from the Isonzo (Soca) for irrigation in the region from Gorizia south-westward to the Adriatic. Italy may not claim the right to the use of water from the Isonzo (Soca) in greater volume or under more favourable conditions than has been customary in the past." Finally, it should be added that so far no bilateral agreement has been concluded between Italy and Yugoslavia for the purpose of determining their respective rights to the water in the Isonzo basin (see D. A. Caponera, "Lo status giuridico dei fiumi e bacini internazionali in Italia", *La Comunità internazionale* (Rome), vol. XV, 1960, p. 287.

[435] The Roya is a river flowing from Colle di Tenda to Ventimiglia. Before the frontier modifications effected by the Treaty of Peace of 1947, which resulted in the cession of the Tenda–Briga District to France, the Roya flowed successively in Italy, in France, again in Italy and finally into the Mediterranean. In order to put an end to the current disputes in the Fontan region between the Société française d'énergie électrique du littoral méditerranée and the Italian electricity company of Liguria about the use of the waters of the river, France and Italy concluded, after an inquiry by a joint commission, a "Convention on the use of the waters of the River Roya and its tributaries", signed at Paris on 17 December 1914. (The instruments of ratification of this Convention were exchanged on 8 May 1915. For the text of the Convention, see J. Basdevant, *Traités et Conventions en vigueur entre la France et les puissances étrangères*, tome II (Espagne–Italie) (Paris, Imprimerie nationale, 1919), p. 810.) Since the Treaty of Peace of 1947, the major part of the course of the Roya is in French territory.

[436] Since 1947, the conditions under which the electricity from the generating stations on the Upper Roya is exported to Italy have also been the subject of private agreements between the Service national d'électricité de France and the operators of the Italian public services concerned. These private agreements have in fact replaced the corresponding clauses in annex III, B, of the Treaty of Peace (see J. L'Huillier, "Les conventions conclues par la France sur l'utilisation de la force motrice des cours d'eau internationaux", *Annuaire français de droit international 1958* (Paris, 1959)), vol. 4, p. 705.

[437] The usefulness of such a plan lies in the fact that the operation of the French hydro-electric generating stations using the upper course of this river might, due to ill-placed reservoirs or locks, impede the operation of the Italian generating stations between the frontier and the sea. It seems, however, that here too the system of private agreements between users should prove more effective than recourse to international conventions (*ibid.*).

[438] The Lake of Mont Cenis and the upper valley of its emissary, the Cenischia, which are part of the Po basin, were incorporated in French territory by the modifications in the Alpine frontier resulting from the Treaty of Peace of 1947. The waters from this lake supply three hydro-electric generating stations successively, one of which, Gran Scala, is in ceded territory, while the down-stream plants, Venaus and Mompantero, have remained in Italian territory. The status of this group of works was governed by annex III, A of the Treaty of Peace, the provisions of which were subsequently partially replaced by those of a Provisional Agreement between France and Italy concluded at Rome on 12 January 1955 and supplemented by an exchange of letters of the same date (see paras. 748–751 below). The relevant provisions of the Treaty of Peace are therefore reproduced here, subject to the modifications introduced by the Agreement of 1955, since, as specified in the Treaty of Peace itself, the provisions were designed to remain in force in perpetuity "unless otherwise agreed between France and Italy" (annex III, A, III) (see D. A. Caponera, *op. cit.*, p. 269).

(i) *Regulation of the flow of the water intake works.* France undertakes to regulate the flow of the water intake works from the Lake of Mont Cenis so as to supply the three hydro-electric stations at Gran Scala, Venans and Mompantero with such quantities of water as Italy may require. France also undertakes to inform Italy, on request, of the reserves of water existing in the Lake of Mont Cenis and to provide any other information so as to enable Italy to determine the quantities of water and rates of flow to be diverted. Italy will refund to France the cost of repairing or renewing the water intake works common to the three hydro-electric generating stations, which shall be carried out with due regard for economy (annex III, A, I).

(ii) *Operation of the Gran Scala hydro-electric station.* France shall operate all the installations at the Gran Scala generating station so as to meet the requirements for which it had been used by Italy before the conclusion of the Treaty of Peace. Subject to the quantity needed to meet local requirements, all the electricity generated at Gran Scala shall be exported to Italy through a transmission line to be maintained by France. The pumping plant at Gran Scala must be operated so as to pump water to the Lake of Mont Cenis as and when required by Italy. In addition, the price paid by Italy for the electricity exported from the Gran Scala plant must be the same as the price charged in France for the supply of similar quantities of hydro-electricity in French territory in the neighbourhood of Mont Cenis or in other regions where conditions are comparable (annex III, A, II).

(iii) *Establishment of a joint Technical Commission.* A Supervisory Technical Commission comprising an equal number of French and Italian members is established to supervise and facilitate the execution of the clauses relating to the hydro-electric works of Mont Cenis (annex III, A, IV).

492. *Mutual guarantees given by Italy and Yugoslavia concerning the water supply for Gorizia and vicinity:*[439]

(a) *Water supply from Yugoslav territory.* Yugoslavia, as the owner, shall maintain and operate the springs and water supply installations at Fonte Fredda and Moncorona and the supply of water to that part of the Commune of Gorizia, which, under the terms of the Treaty of Peace, remains in Italy. Italy continues to maintain and operate the reservoir and water distribution system within Italian territory which is supplied by the above-mentioned springs (annex V, 1).

(b) *Water supply from Italian territory.* Italy supplies water to those areas in Yugoslavia which, under the terms of the Treaty of Peace, were transferred to that State and which are supplied with water from Italian territory (annex V, 1, *in fine*).

(c) *Joint provisions (quantities of water supplied, additional supplies, reduction due to natural causes, charges).* The quantities of water supplied shall be the same as those customarily supplied to the region in the past. Should consumers require additional supplies of water, the two Governments shall examine the matter jointly, with a view to reaching agreement on such measures as may reasonably be required to satisfy these needs. If there should be a temporary reduction in the amount of water available due to natural causes, distribution of water to the consumers in Yugoslavia and Italy shall be reduced in proportion to their respective previous consumption (annex V, 2). The charges to be paid for the water shall be based solely on the cost of operation and maintenance of the water supply system and on new capital expenditures which may be required (annex V, 3).

Terneuzen (canal) (BELGIUM AND THE NETHERLANDS)

Treaty[440] *between Belgium, the Netherlands and the Grand Duchy of Luxembourg, supplementing the treaty of 19 April 1839,*[441] *concluded at The Hague on 5 November 1842*[442]

493. *Water run-off.* The flow of Belgian water through the Terneuzen canal shall be in accordance with the conditions to be established by commissioners appointed by Belgium and the Netherlands and Belgium shall pay no dues of any kind to the Netherlands. The Treaty then lists the bases on which the provisions shall be established by the commissioners from the two countries (art. 20).

494. *Construction of installations.* The Netherlands shall see that the necessary installations are constructed for the regulation of the existing out-flow of water and to make possible any further discharge required (art. 20, second para., sub-para. (*b*)).

495. *Method of use of the installations.* The Treaty states that, during the construction of the above-mentioned installations, the works on the canal shall be used in the interest of both countries, as in the past. After the completion of the installations, they shall be operated in accordance with the instructions of the representatives of the Belgian Government (art. 20, second para., sub-para. (*c*)).

496. *Maintenance of the canal.* The Netherlands Government undertakes to maintain the canal and subsidiary works in a good state of repair and to carry out the measures necessary for the drainage of water and for navigation (art. 22).

[439] It is stated that upon the expiration of a ten-year period after the coming into force of the Treaty of Peace, Yugoslavia and Italy shall re-examine the provisions in order to determine whether any adjustments or alterations should be made (annex V, 5). In addition, it is stipulated that within one month from the coming into force of the Treaty, Yugoslavia and Italy shall enter into an agreement to determine their respective responsibilities under the provisions. A joint commission is established to supervise the execution of the agreement (annex V, 4). On 26 June 1954, Italy and Yugoslavia entered into a first agreement concerning the water supply for the Commune of Gorizia, which was followed by the signature on 18 July 1957 at Nova Gorica of another agreement accompanied by an exchange of notes (see paras. 711–719 below).

[440] The exchange of instruments of ratification took place at The Hague on 11 February 1843.

[441] See paras. 893 and 894 below.

[442] See A. de Busschère, *Code de traités et arrangements internationaux intéressant la Belgique* (Brussels, J. Lebègue et Cie., 1896), vol. I, p. 50. See also *Legislative Texts . . . (op. cit.)*, treaty No. 108.

497. *Cost of maintenance and construction of the necessary installations.* In consideration of the expenses to be borne by the Netherlands in connexion with the maintenance of the canal and the construction of installations, Belgium undertakes to pay the Netherlands an annual sum fixed by the Treaty (articles 23 and 24). Should Belgium state that it renounces the use of the canal, both as a means of water drainage and as a means of navigation, the payment of the above-mentioned compensation shall cease *ipso facto* (art. 25).

B. BILATERAL TREATIES

1. Bilateral treaties concerned exclusively with the utilization and use of international rivers in Europe

(*a*) TREATIES RELATING GENERALLY TO CONTIGUOUS AND SUCCESSIVE RIVERS IN THE TERRITORIES OF TWO STATES

Albania and Yugoslavia

Agreement[443] between the Government of the Federal People's Republic of Yugoslavia and the Government of the People's Republic of Albania concerning water economy questions, together with the Statute of the Yugoslav–Albanian Water Economy Commission and with the Protocol concerning fishing in frontier lakes and rivers, signed at Belgrade on 5 December 1956[444]

498. *Obligation to settle by agreement all questions of water economy.* The Parties undertake to examine and to settle by agreement all questions of water economy,[445] including measures and works which may affect the quantity and quality of the water and which are of interest to both or either of the Parties.[446] They will maintain a common policy in water economy relations and recognize the rights and obligations arising out of such policy (art. 1, para. 1). Therefore, the Parties undertake to maintain in good condition the beds of watercourses and installations, to co-ordinate management and operation of installations, to modify existing installations, to erect new installations and to initiate new works and measures, with due regard to the interests of both Parties (art. 2).[447]

499. *Obligation to give notice in the event of high water or any other dangers.* The local authorities of the Parties shall notify each other, by the quickest possible means, of any danger fron high water and any other impending danger which may arise (art. 8).

500. *Establishment of a joint Water Economy Commission.* Questions arising out of the provisions of the Agreement, and measures and works undertaken pursuant thereto, shall fall within the competence of a Yugoslav–Albanian Water Economy Commission, which is established for this purpose. The composition, terms of reference and procedure of the Commission are laid down in a Statute annexed to the Agreement. The Commission shall draw up joint regulations, for instance against flooding, but such regulations shall be approved by the Governments before their entry into force (art. 4). Questions on which the Commission fails to reach agreement shall be transmitted to the Governments for decision (art. 9).

501. *Fishing. Establishment of a Fishery Sub-Commission.* By the Protocol annexed to the Agreement, the Parties agree to work out special provisions which shall regulate the question of fishing and fishery. These provisions and measures relating to fishing shall comprise: (*a*) protection and control provisions, (*b*) biological measures and (*c*) technical provisions. The study and examination of all provisions and measures for the settlement of questions concerning fishing shall be carried out by the Fishery Sub-Commission as an organ of the Yugoslav–Albanian Water Economy Commission.

502. *Settlement of disputes.* Any dispute between the Parties relating to the application and interpretation of the Agreement shall, unless the two parties to the dispute agree upon some other mode of settlement, be submitted at the request of either Party to a commission composed of two representatives of each Party. If this commission fails to reach agreement, the dispute shall be settled directly by the Governments (art. 10).

Germany (Federal Republic of) and Austria

Agreement[448] between the Federal Government of the Republic of Austria and the Free State of Bavaria concerning the Österreichish–Bayerische Kraftwerke AG (Austrian Bavarian Hydroelectric Company), concluded on 16 October 1950[449]

503. Austria and Bavaria undertake to ensure the observance of the provisions agreed upon by an Austrian group and a Bavarian group concerning the establishment and organization of a company for the joint development and utilization of water power on the frontier rivers between Austria and Bavaria, in particular the Inn and the Salzach, but with the exception of the Danube.[450]

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[443] The Agreement entered into force on 6 August 1957, the date of the exchange of the instruments of ratification.

[444] See Yugoslavia, *Federativne Narodne Republike Jugoslavije, Medunarodni Ugovori*, 1957, No. 74, p. 16.

[445] Questions concerning watercourses which form the State frontier and watercourses, lakes and water systems which are intersected by the State frontier, especially Lake Ohrid, Lake Prespa, the Crni Drim, the Beli Drim, Lake Skadar and the Bojana. The Agreement covers surface and natural watercourses as well as underground and artificial ones (see the Preamble of the Agreements (article 1, paras. 2 and 3) and the Preamble of the Protocol concerning fishing).

[446] In particular, (*a*) utilization of water power; (*b*) regulation and canalization of watercourses; (*c*) discharge and drainage of water; (*d*) protection against flooding; (*e*) storage and retention works; (*f*) water supply and pipe-laying; (*g*) navigation; (*h*) ground water; (*i*) protection against soil erosion; (*j*) utilization of water in agriculture; (*k*) hydrological studies, preparation of projects and execution of works; (*l*) fishing; (*m*) apportionment of the cost of survey, planning, constructions, operation and maintenance; (*n*) exchange of data, plans and information (see art. 1, para. 2).

[447] For the purpose of applying and giving effect to the provisions of the Agreement, detailed regulations have been laid down respecting the questions of apportionment of expenses (art. 3), exemption from customs of the necessary materials and equipment for the execution of works (art. 5) and the passage of persons across the frontiers (art. 7).

[448] The Agreement entered into force on 17 May 1951.

[449] See E. Hartig, *Internationale Wasserwirtschaft und internationales Recht (Schriftenreihe des Österreichischen Wasserwirtschaftverbands*, vol. 28/29) (Vienna, Springer, 1955), annex 7, p. 58. See also *Legislative Texts . . . (op. cit.)*, treaty No. 137.

[450] For the Danube, see the Agreement between the Federal Republic of Germany, the Free State of Bavaria and the Republic of Austria, 13 February 1952 (paras. 643–646 below).

504. *Establishment and organization of an Austro-German operating company.* The company shall be established as a joint-stock company within the meaning of the German Joint Stock Company Act of 30 January 1937 (art. 1). The shareholders of the company shall be apportioned between an Austrian group and a Bavarian group, each of which shall contribute half of the share capital. The persons who may be shareholders are listed in the Agreement (art. 2). The first shareholders and the extent of their participation shall be determined by the Austrian Federal Government in the case of the Austrian group and by the Bavarian State Government in the case of the Bavarian group (art. 3). The board of management and the board of directors shall be made up of an equal number of representatives from the Austrian and the Bavarian sides (articles 5 and 6). If the majority required in the board of directors or the general meeting for the adoption of a decision on an important company matter is not obtained, the two States shall endeavour to arrange a settlement by negotiation (art. 10). Either Party to the Agreement may ask that the company be dissolved if essential provisions of the Agreement have been seriously infringed by the other Party or if dissolution is advisable for other compelling reasons (art. 11). In the event of the company being liquidated, the interests of both Parties shall be protected, and particular attention shall be given to ensuring the unimpaired continuance of operations (art. 12). The Agreement regulates transfers of ownership and financial and payment questions (articles 13 to 16).[451]

505. *Construction of works for the production of hydro-electric power.* In the construction of the power dams along the frontier sections, the power plants and their transformer stations shall, so far as is technically and economically feasible, be so laid out that on completion of the system they are distributed equally between the two sides (art. 18).

506. *Water rights granted for the construction of installations.* The two States shall grant the company such water rights and water-right permits as are necessary for the construction of its installations on the frontier waters to which this Agreement refers and they undertake not to grant to third parties, except by mutual agreement, water rights or water-right permits relating to these frontier waters that would be disadvantageous to the company (art. 25).

507. *Exercise of rights and fulfilment of obligations.* Where the Agreement entails rights and obligations which cannot by their nature be exercised or fulfilled by the two States, the two States shall take steps to ensure that the said rights and obligations can be directly exercised or fulfilled by the person or body concerned (art. 28).

508. *Fishing.* Fishing rights shall be governed by the legislation applicable in each of the two States (art. 23).

509. *Co-operation between the two States in the event of a change in their legislation.* If, as a result of legislative action by either of the two States, changes in the Agreement should become necessary in order to protect the interests of the two sides, such changes shall be agreed on immediately in a spirit of trust and co-operation (art. 29).

510. *Settlement of disputes (arbitration).* A board of arbitration is established to decide on certain matters relating to the internal organization of the company (art. 26). All differences between the two States arising out of the Agreement shall be submitted to an arbitral tribunal (art. 27).

Bulgaria and Yugoslavia

Agreement[452] concerning water-economy questions between the Government of the Federal People's Republic of Yugoslavia and the Government of the People's Republic of Bulgaria, signed at Sofia on 4 April 1958[453]

511. This Agreement was concluded in order to settle questions concerning the water economy of rivers and their tributaries that constitute the State frontier or are intersected thereby. Bulgaria and Yugoslavia undertake to examine and settle all questions of water economy, measures and works on rivers and works which may affect the quantity and quality of the waters, in particular questions relating to the regulation of rivers, drainage, retention works, water supply, protection of the waters against pollution, the study and utilization of ground-water, the utilization of water power, the utilization of waters for irrigation, the protection against soil erosion and the preparation of projects, the construction and utilization of installations and works affecting the economy of the waters.

512. *Maintenance of the beds of rivers and of existing installations.* The Contracting Parties undertake, each in its own territory and jointly in the case of frontier waters, to maintain in good condition the beds of rivers and of tributaries and all installations (art. 2, para. 1).

513. *Construction and maintenance of new installations and execution of works changing the régime of rivers.* The construction and maintenance of new installations and the execution of new works changing the régime of rivers shall be subject to agreement (art. 2, para. 2).

514. *Apportionment of expenses for maintenance and construction of installations and structures.* The Agreement specifies which expenses are to be apportioned between the two countries and which are to be borne exclusively by one of them. In the first case, the expenses shall be apportioned in proportion to the benefit accruing (art. 3).

515. *Preservation, maintenance and utilization of datum marks for the regulation of the régime of the waters.* Each country shall, in its own territory, preserve and maintain the datum marks along the frontier for the regulation of the régime of the waters. Both countries may use these marks (art. 6).

516. *Exchange of information on high waters.* The frontier and local authorities of the two countries shall advise each other, by the most rapid possible means, of any danger from high water or drifting ice and of any other danger which may arise on rivers (art. 8).

517. *Establishment of a joint Commission.* A Yugoslav–Bulgarian Water-Economy Commission is established,

[451] Questions dealing with taxation, facilities and treatment of persons crossing the frontier are also regulated by the Agreement (articles 19 to 22).

[452] The Agreement entered into force on 29 December 1959, the date of the exchange of the instruments of ratification.

[453] See United Nations, *Treaty Series*, vol. 367, p. 104. See also *Legislative Texts ... (op. cit.)*, treaty No. 161.

whose composition, terms of reference and procedure are governed by rules which constitute an integral part of the Agreement. The Commission may establish joint regulations which shall come into force after they have been approved by the two Governments (art. 4). The decisions of the Commission, which shall be drawn up in the form of protocols, may not be put into effect if either Government raises an objection (articles 5 and 6 of the Statute of the Commission). Questions on which the Commission fails to reach agreement shall be submitted by the Commission to the Governments (art. 9).[454]

518. *Settlement of disputes.* Any dispute relating to the application and interpretation of the Agreement shall, unless the two Parties agree upon some other mode of settlement, be submitted at the request of either Party to a commission composed of two representatives of each Party. If this commission fails to reach agreement, the dispute shall be submitted to the two Governments for decision (art. 10).

Finland and the USSR

(a) *Convention[455] between the Union of Soviet Socialist Republics and Finland concerning the maintenance of river channels and the regulation of fishing in watercourses forming part of the frontier between Finland and Russia, signed at Helsingfors on 28 October 1922[456]*

519. *Flow of water (timber-floating, migration of fish).* In rivers flowing from Finland to Russia and vice versa, or situated along their common frontier, the two States undertake to leave a fairway open for the free flow of the water, for timber-floating and for the migration of fish (art. 1). The Convention specifies the width of the fairway (art. 2).

520. *Prohibition of interference with the flow of the waters and of causing damage or injury to fish.* It is forbidden to divert the water of the rivers or to erect any constructions on the rivers or take any steps likely to have a detrimental effect on the flow of water in the territory of the other State or on the fish in that part of the river, or to damage the land or other property (art. 3).

521. *Exceptions to the provisions of the Convention (compensation for damages; guarantee of continuation of use).* Exceptions to the provisions of the Convention may be allowed under the laws in force in each country, but only on condition that the owners of the land or water concerned in the other State shall be indemnified in a manner to be agreed upon beforehand for any loss or damage which may be caused. If the fairway is blocked and the consequent effects extend to the territory of the other State, the purposes for which the fairway is used must be provided for by some other means (art. 4).

522. *Fishing regulations.* In order to protect fisheries and fish in certain rivers[457] flowing from the territory of one State to that of the other, the Convention delimits the fishing zone and regulates fishing therein. The erection of certain fishing installations and the use of certain fishing gear and of poisons, drugs or explosives for fishing are forbidden (art. 5).

(2) *Convention[458] between the Union of Soviet Socialist Republics and Finland regarding the floating of timber in watercourses flowing from Finland to Russia or vice versa, signed at Helsingfors on 28 October 1922[459] and amended by the Convention signed in Moscow on 15 October 1933[460]*

523. *Use of waters for the floating of timber (equality of treatment).* With respect to waters which flow from Finland to the Soviet Union and vice versa, nationals, companies and State enterprises of the two countries shall be entitled to float timber without hindrance, across the frontier and beyond it, in the territory of either country as far as the sea, provided that they adhere to the arrangements laid down in the Convention (art. 1). If a State should grant, within its territory, in connexion with timber-floating on watercourses covered by the Convention, any privileges or advantages to floaters belonging to its own country or to any third State, the same privileges and advantages shall be simultaneously granted to the timber-floaters of the other State (art. 5).

524. *Provisions concerning timber-floating on rivers which only cross the State frontier once:*

(a) *Regulation of timber-floating (observance of national laws and regulations).* The floaters of one State have the right to float timber into the territory of the other State along the shortest common floating route, and in accordance with the rules laid down and regulations in force in that State (art. 2 as amended, para. 1).

(b) *Execution of works.* Works carried out on logging routes in the interests of the floaters shall be subject to the observance of the laws and regulations in force in that territory. Requests shall be submitted by the persons concerned to delegates of their Government, who will transmit the applications to the delegates of the other State. The two States undertake to give favourable consideration to applications (art. 2 as amended, para. 2).

525. *Provisions concerning timber-floating on rivers which cross the State frontier at several points or form the State frontier:*

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[454] According to article 2 of its Statute, the Commission may, if necessary, set up sub-commissions (see para. 864 below, with reference to the Sub-Commission for the regularization of the Timok River).

[455] This Convention was renewed on 13 March 1948, the date of the notification given to the Government of the Finnish Republic by the Government of the USSR, in accordance with article 12 of the Treaty of Peace with Finland, signed in Paris on 10 February 1947 (see United Nations, *Treaty Series*, vol. 67, p. 158).

[456] See League of Nations, *Treaty Series*, vol. XIX, p. 193. See also *Legislative Texts . . . (op. cit.)*, treaty No. 173.

[457] Tuulomanjoki, Kutajoki, Pistojoki, Leiksa, Tuulijoki, Tulenmanjoki and Miinalanjoki.

[458] Renewed as from 13 March 1948, the date of the notification given to the Government of the Finnish Republic by the Government of the USSR, in accordance with article 12 of the Treaty of Peace with Finland, signed at Paris on 10 February 1947 (see United Nations, *Treaty Series*, vol. 67, p. 155). It was renewed as modified by the Convention to amend the Convention of 28 October 1922, signed at Moscow on 15 October 1933.

[459] See League of Nations, *Treaty Series*, vol. XIX, p. 170. See also *Legislative Texts . . . (op. cit.)*, treaty No. 174.

[460] See League of Nations, *Treaty Series*, vol. CXLIX, p. 267, or *Legislative Texts . . . (op. cit.)*, treaty No. 175.

(a) *Regulation of timber-floating (observance of the rules laid down in the Convention).* The floating of timber from the point where the watercourses for the first time either cross the State frontier or become a frontier watercourse to the point where the system finally enters the territory of the other State, shall be effected in accordance with the rules laid down in the Convention.[461] Accordingly, the supervision of timber-floating, the conditions of timber-floating, the reconciliation of the interests of floaters with the interests of owners of areas of bank and waterway and the settlement of all questions relating to floating shall devolve on the delegates for timber-floating questions appointed by the States. Should differences of opinion arise between delegates, the matter shall be settled through the diplomatic channel (art. 3 as amended, paras. 1 and 2).

(b) *Execution of work.* The execution of work for the improvement and maintenance in proper condition of logging channels, the erection of permanent plant for timber-floating purposes and also all steps for regulating timber-floating shall be carried out in accordance with decisions taken jointly by the delegates. These decisions shall be adopted in the form of minutes (art. 3 as amended, para. 3).

526. *Acquisition of areas for timber-floating purposes (expropriation).* If, in order to regulate, widen or improve the logging channel, it is necessary to acquire the right to utilize for timber-floating purposes an area of land or water owned by a third party, the question of the transfer of such area shall, if no amicable agreement on the subject is arrived at with its owner, be settled in accordance with the procedure laid down for the expropriation of property, in the interests of public utility, in the State in which the area in question is situated (art. 3 as amended, para. 5).

527. *Communication of laws and regulations.* The two States undertake to communicate to each other all the laws and regulations which affect timber-floating in the rivers covered by the Convention. Any modifications or additions to these laws and regulations shall be communicated forthwith to the other State (art. 8).

528. *Settlement of disputes.* All disputes regarding the interpretation or application of the Convention shall be referred if necessary for decision to a special commission, constituted on a basis of parity. The representatives on this commission shall be designated by the Governments of the two States (art. 9).

Greece and Yugoslavia

(1) *Exchange of letters[462] between the Government of the Federal People's Republic of Yugoslavia and the Government of the Kingdom of Greece, concerning the application of the provisions of the* procès-verbal[463] *annexed to the Agreement for economic collaboration and trade of 28 February 1953. The letters[464] were signed at Belgrade on 25 May 1954.*

529. *Appointment of delegations to consider the questions of water regulation and conservation.* The Governments of Greece and Yugoslavia agree to appoint delegations to study questions relating to the regulation and conservation of water and to propose solutions to the two Governments. The delegations are to meet within the periods prescribed by the letters.[465]

(2) *Agreement[466] between the Federal People's Republic of Yugoslavia and the Kingdom of Greece concerning hydro-economic questions and Annex concerning the Regulations of the Yugoslav–Greek Permanent Hydro-economic Commission and Exchange of Letters, signed at Athens on 18 June 1959[467]*

530. *Establishment of a joint permanent Hydro-economic Commission.* With a view to developing and encouraging co-operation in the hydro-economic field, a Yugoslav–Greek Permanent Hydro-economic Commission is established to study the hydro-economic problems and projects jointly submitted to it by the two States. These studies will refer *inter alia* to the problems of the regulation of watercourses in the basin of the Vardar (Axius) River,[468] the regulation of streams in the border area, hydroeconomic problems concerning Lake Dojran and Lake Prespa, fishing in those two lakes, and the exchange of hydrometeorological data (art. 1). The composition (each State being represented by five members), functions and procedure of the Commission are laid down in its Statute, annexed to the Agreement.

531. *Apportionment of the cost.* The Permament Commission is to propose the apportionment of the cost of carrying out works and giving effect to measures to be undertaken in the common interest or in the interest of one of the States, and to submit its proposals for the approval of the two Governments (art. 2).

532. *Right of access and other facilities.* The two States undertake mutually to accord facilities in connexion with the formalities to be complied with on crossing the frontiers by members and experts of the Commission and of officials of hydro-economic agencies and manual and non-manual workers employed on hydro-economic works (art. 3). The Agreement also provides for exemption from Customs duties on the necessary construction materials and equipment (art. 4).

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[461] Article 3A of the 1933 Convention contains a series of provisions regulating the floating of timber.

[462] The Agreement entered into force on 25 May 1953, upon the exchange of letters.

[463] See United Nations, *Treaty Series*, vol. 252, p. 39.

[464] *Ibid.*, p. 63. See also *Legislative Texts ... (op. cit.)*, treaty No. 221.

[465] The two delegations are to study: (*a*) the regulation of the Vardar River and Lake Dojran; (*b*) the regulation of the Vardar River and of Lake Prespa, flood control on the Ljumnica River and the Sakuleva, Dragas and Crateron, and the regulation of streams in the Pelagonia drainage system; (*c*) the exchange of hydrometeorological information; (*d*) the organization of arrangements for co-operation in the solution of water conservation problems; (*e*) measures for the development and protection of fisheries in Lakes Prespa and Dojran. With reference to Lake Dojran, see paras. 653–667 below.

[466] The Agreement entered into force on 31 March 1960.

[467] See United Nations, *Treaty Series*, vol. 363, p. 135. See also *Legislative Texts ... (op. cit.)*, treaty No. 224.

[468] In the exchange of letters accompanying the Agreement, Yugoslavia proposes that, as soon as the Commission is established, it shall study the question of the waters of the Vardar River with a view to investigating the possibilities of hydro-economic co-operation in this field. Greece takes note of the proposal.

533. *Exchange of information with a view to protection against floods.* The competent local authorities are to give each other warning, by the most rapid means, of any danger of high water, and of any other dangers threatening the régime of watercourses and the operation of hydro-technical installations (art. 5).

534. *Application of the Agreement (reciprocal rights and interests).* The two Parties are to facilitate the application of the Agreement, with due regard to reciprocal rights and interests (art. 6).

535. *Settlement of disputes.* The two Governments may decide by prior agreement to submit to arbitration any dispute which may arise between them concerning the application or interpretation of the Agreement. The decision of the tribunal is to be binding on the parties. The Agreement includes provisions on the composition and procedure of the arbitral tribunal (art. 7).

Hungary and Czechoslovakia

Agreement[469] between the People's Republic of Hungary and the Czechoslovak Republic on the settlement of technical and economic questions concerning frontier watercourses, signed at Prague on 16 April 1954[470]

536. The Agreement regulates the hydro-technical works carried out by the two States on the frontier sections of the Danube and the Tisza, and the other rivers constituting frontiers or crossed by the frontier. It concerns, *inter alia*, flood protection works, regulation of water, and dredging and maintenance of channels, but it also concerns all irrigation works, and works for the production of hydraulic power or water supplies, which have or possibly might have any effect on the régime of frontier rivers.

537. *Joint establishment of hydro-technical projects.* Projects for hydro-technical works are to be prepared jointly. The projects, and any major changes made in them, must be approved by both Parties. The Agreement determines the apportionment of costs of the projects between the Parties (articles 8 and 9).

538. *Execution of hydro-technical works:*

(a) *Regulation works.* Each Party carries out the regulation works needed on its own territory. The execution on the territory of both States of works which, on account of technical or economic reasons, cannot be divided between them, is subject to a separate agreement between the two Parties (art. 10). The Agreement contains detailed provisions on the distribution of the costs of constructing and maintaining works for regulation (articles 18–22).

(b) *Dredging for regulation.* Dredging for the regulation of river waters is to be effected in such a manner that each Party carries out in turn all such dredging operations as it is possible, from the technical point of view, to carry out independently (art. 13).

(c) *Dredging for other purposes.* The administrations of the two Parties are to establish jointly, for each sector of a frontier river, to what depth and in what quantity gravel and sand may be removed for purposes other than the regulation of the river (art. 14).

(d) *Works for the purposes of irrigation, hydraulic power production and water supplies.* Such works are to be executed by each Party on its own territory and at its own expense. If, for technical and economic reasons, the works cannot be satisfactorily apportioned, the two Parties are to conclude a separate agreement in each case, covering the costs of the works, the utilization and maintenance of the works, and the settlement of questions relating to them (art. 15).

(e) *Maintenance work.* The Parties are to see to the proper maintenance of the rivers and the hydrotechnical works therein. Each Party is to maintain the works constructed on its territory. In the case of works which serve the interests of the other Party, costs are to be borne by the Party whose interests are served (art. 17).

539. *Utilization of waters:*

(a) *Water distribution (respect for acquired rights).* In the frontier sectors of rivers, the Parties, without prejudice to acquired rights, are entitled to one half of the flow of water which has not been artificially increased (art. 23, para. 1).

(b) *Authorization for the construction of works with a view to the utilization of waters.* The Parties shall not authorize the construction of works for the utilization of the waters if such works might have an unfavourable effect on the régime of the waters or on the beds of frontier rivers (art. 23, para. 2). If the works to be constructed are on the territory of both Parties, authorization is to be requested from the competent water administration authorities of the two Parties (art. 24, para. 2).

(c) *Legislation applicable in respect of the right of utilization of waters.* Questions connected with the right of utilization of waters shall be judged according to the laws of the State on whose territory the works for the utilization of the waters are situated, or will be situated (art. 24, para. 1).

540. *Establishment of a joint technical commission.* The two States establish a Joint Technical Commission, in order to harmonize their views on the questions covered by the Agreement. The composition, functions, competence and methods of procedure of the Commission are established by the Agreement (articles 26–28).

541. *Right of access and other facilities.* Crossing of the frontier for the purposes of the Agreement is to be governed by an agreement concluded by the competent authorities of the two States (art. 31). The Agreement provides for Customs facilities for the delivery of construction material (articles 11 and 13).

542. *Exchange of information concerning the rivers beyond the boundary areas (pollution).* The Parties are to furnish each other with the necessary information concerning the effect on the flow of water of works situated outside the frontier areas. In particular, they are to keep each other informed of experience acquired in their measures for the prevention of pollution of the waters of frontier rivers (art. 29).

[469] The Agreement entered into force on the thirtieth day from the date of signature, in accordance with article 34. Article 35 of this Agreement abrogates the Convention concerning the Settlement of Technical and Economic Questions on the Hungarian-Czechoslovak Frontier Section of the Danube and on that of the Tisza below the Confluence of the Szamos, signed at Budapest on 24 August 1937 (see League of Nations, *Treaty Series*, vol. CLXXXIX, p. 405).

[470] See *Legislative Texts . . . (op. cit.)*, treaty No. 163.

Hungary and Yugoslavia

Agreement between the Government of the Federal People's Republic of Yugoslavia and the Government of the Hungarian People's Republic concerning water economy questions together with the Statute of the Yugoslav–Hungarian Water Economy Commission, signed at Belgrade on 8 August 1955[471]

543. The provisions embodied in this Agreement are similar to those contained in the Agreement between the Government of the Federal People's Republic of Yugoslavia and the Government of the People's Republic of Albania concerning water economy questions of 5 December 1956, already examined.[472] However, it must be pointed out that the Yugoslav–Hungarian Agreement does not deal with matters concerning fishing and navigation in frontier waters. On the other hand, the provisions of the Yugoslav–Hungarian Agreement apply also to the protection of the water against pollution. The Statute of the Yugoslav–Hungarian Water Economy Commission annexed to the Agreement, is also drafted along the same lines as the Statute of the Yugoslav–Albanian Water Economy Commission.[473]

Norway and Sweden

Convention[474] *between Norway and Sweden on certain questions relating to the law on watercourses, signed at Stockholm on 11 May 1929*[475]

544. The Convention relates to installations, or works or other operations on watercourses in one country which are of such a nature as to cause an appreciable change in watercourses in the other country, or to be to the detriment of fishing in the latter country. It also refers to timber-floating on watercourses which form the frontier between the countries, or otherwise lie within the territory of both countries, or which flow into such watercourses.

545. *Provisions to safeguard fishing interests:*

(a) *Undertakings including the transfer of water from one drainage area to another. Definition of the term "drainage area".* Either country may require that the question shall be the subject of special negotiations between the countries, in which case they will not be bound by the provisions of the Convention. The term "drainage area" is to be held to mean the entire area from which water has a common outlet to the sea (art. 2).

(b) *Authorizations for undertakings. Application of the laws.* Subject to compliance with the provisions of the Convention, the question whether and on what conditions an undertaking may be carried out is to be decided according to the laws of the country in which the undertaking is to be carried into effect. The relations between the other country and interested parties in its territory, and also the relations between such parties, shall be governed by the laws of that country (art. 3). Authorization for an undertaking may be granted for a specified period (art. 7).

(c) *Decision concerning the utility of works.* In deciding whether works may be carried out, the effects thereof in both countries are to be taken into consideration. As a rule, however, the utility of any work shall be considered to be solely the utility it offers as regards the party interested therein for whose account the work is to be carried out (art. 5). The work may be authorized independently of the question in which of the two countries the interested party is resident (art. 4).

(d) *Compensation for damage. Application of the law.* With regard to compensation for damage or nuisances resulting from any work undertaken, the law of the country in which the damage or nuisance occurs shall apply. With regard to the measures for preventing or reducing the damage or nuisance, the law of the country in which the measures are to be carried out is to apply (art. 6).

(e) *Transmission of power as compensation.* No obligation may be imposed to supply power from a waterfall in one country as compensation for damage or nuisance, or in order otherwise to safeguard interests in the other country (art. 9).

(f) *Participation in undertaking any works.* The laws of either country regarding rights or obligations to take part in any works may not be applied to the advantage or detriment of interests in the other country (art. 10).

(g) *Security for the execution of undertakings.* Either country may demand security for the fulfilment of conditions established with respect to the undertaking of any works (art. 11).

(h) *Approval of one country of the authorization granted by the other country for the undertaking of any works:*

(i) *Works affecting the use of waters.* One country may not authorize an undertaking unless the other country has given its approval, if the undertaking is likely to involve any considerable inconvenience in the latter country in the use of a watercourse for navigation or floating or to hinder the movement of fish to the detriment of fishing in that country, or if the undertaking is likely to cause considerable disturbance in conditions governing the water supply over an extensive area (art. 12, para. 1).

(ii) *Works which do not affect the utilization of water.* If there is no reason to believe that the undertaking of any works will produce effects on the utilization of the water in the other country, that country shall not be entitled to oppose the execution of the works (art. 12, para. 2).

(iii) *Principles to be applied when consent is required:* If the other country's consent is necessary, the

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[471] (See Yugoslavia, *Federativne Narodne Republike Jugoslavije, Medunarodni Ugovori*, 1957, No. 63, p. 43, and *Legislative Texts . . . (op. cit.)*, treaty No. 228.

[472] See paras. 498–502 above.

[473] In accordance with article 4 of the Agreement, the Yugoslav-Hungarian Water Economy Commission at its second session, held at Belgrade from 17 to 25 January 1958, adopted the "Regulations for flood and ice control on sectors of watercourses of common interest" (Maura, Drava, Danube, Tisza and Maros Rivers) (see Yugoslavia, *op. cit.*, 1958, No. 11, p. 50).

[474] The Convention came into force on the thirtieth day after the exchange of ratifications, which took place at Oslo on 2 July 1930. On the entry into force of the Convention, the Convention on lakes and watercourses common to the two countries, signed at Stockholm on 26 October 1905 (see *British and Foreign State Papers, 1904–1905* (London, 1909), vol. 98, p. 828) was abrogated.

[475] See League of Nations, *Treaty Series*, vol. CXX, p. 277. See also *Legislative Texts . . . (op. cit.)*, treaty No. 237.

question is to be decided in accordance with the principles applicable to the undertaking of similar works under that country's laws. The consent may not be subjected to other conditions than those referring to the planning of the work or the prevention or reduction of public damage or nuisances (art. 13).

(i) *Procedure to be followed for the authorization of works:*

(i) *Applications for authorization of works.* The Convention contains a series of provisions concerning the procedure to be followed to obtain authorization for undertaking any work including applications for authorizations (art. 14), the publication of applications (art. 15) and the examination of applications by a Commission, of whose members each State will nominate one half (articles 17–19).

(ii) *Authority competent to give decisions.* The question whether the consent of the other State is required for any works to be undertaken, and the question whether such works are permissible shall be decided by the King in the country in which the works are to be carried out (art. 20). The Convention also provides for the granting of the authorization and the tenor thereof (art. 21).

(iii) *Legal effect of the authorization in the other country.* When authorization for the undertaking of any works has been granted, the applicant must within a specified time-limit fixed after the grant of the authorization obtain from the competent authority of the other country a certificate that authorization has been granted in the manner provided in the Convention. When the certificate has been issued, every inhabitant of the country shall be obliged, provided always that the laws of the country are complied with and that he receives due compensation, to give up such immovable property as may be required and to submit to any servitude upon it and any damage or nuisance caused by the works in question (art. 22).

(iv) *Laws applicable to the supervision, maintenance and abandonment of works.* The regulations applicable to the supervision, maintenance and abandonment of any works, and the compensation for damage or nuisance are prescribed by the Convention (articles 24 and 25).

546. *Utilization of waters for timber-floating.* With regard to the use of watercourses for floating, the inhabitants of each country are to have the same rights and be subject to the same obligations in the other country as the inhabitants of that country. Each State may, however, issue special regulations regarding the liability of inhabitants of the other country to give security for obligations which they incur when engaged in timber-floating (art. 26).

547. *Execution of decisions.* A final judgement or decision which has acquired legal force in one country with regard to the undertaking of any works or in respect of transport or floating to which the Convention applies, shall be executed immediately on request in the other country provided that it can be executed in that country and does not prescribe a penalty (art. 30).

Romania and Yugoslavia

Agreement between the Federal People's Republic of Yugoslavia and the Romanian People's Republic concerning questions of water control on water control systems and watercourses on or intersected by the State frontier, together with the Statute of the Yugoslav–Romanian Water Control Commission, signed at Bucharest on 7 April 1955[476]

548. The purpose of this Agreement is to settle questions of water control on water control systems and watercourses on or intersected by the Yugoslav–Romanian State frontier. The provisions of the Agreement relate to the discharge of water and drainage, regulation of watercourses and maintenance of the beds, protection against flooding and ice, water supply, protection of waters against pollution, utilization of water power, protection against erosion, exchange of hydro-meteorological data, preparation of studies and execution of works[477] (art. 1).

549. *Establishment of a Mixed Commission (Right of access).* Questions arising out of the provisions of the Agreement, and measures and works undertaken pursuant thereto, shall fall within the competence of a Yugoslav–Romanian Water Control Commission established for this purpose (art. 1, *in fine*). The composition, terms of reference, procedure and methods of work of that Commission are laid down in the detailed provisions of a Statute annexed to the Agreement. For the purpose of applying and giving effect to the provisions of the Agreement, the Mixed Commission may carry out investigation *in situ* on either side of the State frontier. Persons designated to carry out joint works and measures may cross the State frontier in virtue of special passes issued by the competent authorities of the State (art. 5).

550. *Maintenance of river-beds and existing installations.* The two Parties undertake, each in its own territory and jointly on the frontier line, to maintain the beds and installations in good condition, and where necessary to improve their condition, and to keep the installations in operation on water control systems and watercourses (art. 2, para. 1).

551. *Construction of new works and installations.* The erection of any new installation and the execution of any new works, in the territory of either State, which may change, modify or interfere with the existing régime of the waters shall be referred to the Mixed Commission for examination (art. 2, para. 2, first sub-para.).

552. *Measures taken with a view to improving the discharge of water.* With a view to improving the existing situation as regards the discharge of internal waters in

[476] See Yugoslavia, *Federativne Narodne Republike Jugoslavije, Medunarodni Ugovori*, 1956, No. 73, p. 5. See also *Legislative Texts ... (op. cit.)*, treaty No. 253.

[477] The Agreement also relates to the Danube in so far as any of the questions enumerated is not settled by the 1948 Convention regarding the régime of navigation on the Danube (see paras. 470–473 above).

the frontier district, the Mixed Commission shall examine and propose to the Governments the amplification of existing water control systems and the erection of new installations (art. 2, para. 2, second and third sub-paras.).

553. *Carrying out of joint works.* The two Governments shall determine by agreement, on the proposals of the Mixed Commission, the apportionment of the expenses and the methods of carrying out joint works (art. 2, para. 3).

554. *Protection against flooding and other dangers.* With a view to preventing flooding, ice and other dangers, the Yugoslav–Romanian Water Control Commission, at its third meeting, held from 2 to 13 June 1957, adopted the "Joint Regulations for flood control on watercourses and water control systems on or intersected by the Yugoslav–Romanian State frontier",[478] in pursuance of the provisions contained in article 3 of the Agreement.

555. *Settlement of disputes (conciliation commission).* Any dispute between the Parties relating to the application and interpretation of the Agreement which cannot be settled by direct negotiations shall, unless the two Parties agree upon some other mode of settlement, be submitted to a conciliation commission, composed of one representative of each Party and a third member to be chosen by agreement between the Parties from among the nationals of a third State (art. 6).

(b) Treaties relating generally to contiguous rivers in the territories of two States

Germany and Denmark

Agreement[479] between Denmark and Germany relating to watercourses and dikes on the German–Danish frontier, together with a Final Protocol and instructions for the Frontier Water Commission and the Supreme Frontier Water Commission, attached as annex to the Treaty[480] between the two countries concerning the settlement of questions arising out of the transfer to Denmark of the sovereignty over North Slesvig, signed at Copenhagen on 10 April 1922[481]

556. The provisions of the Agreement apply to all waters which constitute the boundary between the two States, as also to the channel and canal systems connected up with those waters. The Agreement regulates in detail relations between local proprietors, or usufructuaries, of lands situated on either side of the frontier in connexion with the upkeep of frontier watercourses, their regularization, the establishment and alteration of works and the use of such watercourses. This detailed regulation of relations between private persons gives the contents of the Agreement the character, as it were, of a body of joint legislation on frontier waters imposing direct liability on the owners of lands contiguous to such waters. This is brought out by the fact that under the system of rules established by the Agreement it is the title to ownership of such lands which counts rather than the situation of the lands in relation to the frontier line. The Agreement is concerned much less with the rights and obligations of the States Parties to the Treaty than the rights and obligations of private persons who have an interest in the use of the frontier waters of the two States. Thus it becomes necessary to define in the Agreement the extent to which it is binding in relation to the national water laws in force.[482]

557. Responsibility for ensuring the application of joint legislation of this kind, concerning frontier waters is vested in two mixed commissions established by the Agreement. The watercourses portions of which constitute the boundary between the two States are not very large,[483] but the content of the Agreement is undeniably of legal interest, by reason of the method which it envisages for the settlement of questions concerning relations between neighbours as raised by the utilization and use of frontier waters.

558. *Establishment of a Frontier Water Commission and a Supreme Frontier Water Commission.* A Frontier Water Commission is established for the purpose of examining and deciding all matters connected with frontier waters (art. 2). A Supreme Frontier Water Commission is established as a court of final appeal[484] to consider appeals made from the decisions of the Frontier Water Commission (art. 3). The statutes of the two Commissions, relating to their composition, the transaction of business, accounts, expenses and allowances, and procedure, are annexed to the Agreement and may be amended only with the assent of the Parties.[485]

559. *Upkeep of frontier watercourses:*

(a) *Framing of regulations.* Regulations with regard to the watercourses are to be drawn up. They are to contain an exact description of the watercourse and provisions regarding the level of water for the mills and for hydraulic installations and dams. In particular, it is to be stated who is liable for the upkeep of the watercourses, how the work of upkeep is to be executed, the dates of the customary cleaning, when inspection is to be made and whether special supervision of the watercourses is to be carried out. Existing regulations are to be re-examined and additions to them made (art. 5). The Agreement specifies the procedure for framing and amending the regulations (arts. 6 and 7).

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[478] See Yugoslavia, *Federativne Narodne ... (op. cit.)*, 1958, No. 7, p. 73.

[479] The Agreement entered into force on 7 June 1922.

[480] See article 1 (3) of that Treaty (League of Nations, *Treaty Series*, vol. X, p. 187).

[481] *Ibid.*, p. 200. See also *Legislative Texts ... (op. cit.)*, treaty No. 166.

[482] Under article 55 of the Agreement, the German and Danish water laws and the provisions relating thereto are to remain in force in so far as they are not inconsistent with the provisions of the Agreement. Should doubt arise as to the extent to which a matter lies within the competence of the Frontier Water Commission, the Commission is to decide the matter, subject to an appeal to the Supreme Frontier Water Commission. The decisions of the Commissions shall be binding upon all persons concerned.

[483] Article 1 enumerates among these watercourses the Krusaa, the Skelboek, the Gammelaa, the Sönderaa and Lake Ruderböl.

[484] Article 6 on the framing of regulations for the upkeep of frontier waters makes one exception. Decisions of the Frontier Water Commission on these matters which are adopted unanimously are final and are not subject to appeal to the Supreme Frontier Water Commission.

[485] See League of Nations, *Treaty Series*, vol. X, p. 232.

(b) *Liability for general upkeep.* The liability for the upkeep of the frontier watercourses falls either upon the riparian proprietors alone or upon them together with other proprietors to whom the existence and the good condition of the watercourses is of use or advantage (art. 8). The Agreement contains provisions concerning compensation in connexion with general upkeep (art. 9), cost of upkeep (art. 10), liability for upkeep in connexion with divisions of land (art. 11), liability to contribute in the case of usufructuaries (art. 12) and the decisions of the Frontier Water Commission regarding liability for general upkeep (art. 13).

(c) *Supervision of frontier watercourses.* The supervision of the frontier watercourses is to be carried out jointly by German and Danish officials. They are to report any defects which they may discover and to cause any work which has been left undone to be carried out at the cost of the negligent party (art. 14).

560. *Regularization of frontier watercourses:*

(a) *Decisions of the Commission regarding regularization (preliminary investigation).* The Frontier Water Commission makes decisions concerning regularization to be carried out after an investigation in which the advantages that the regularization would confer are weighed against the expenditure entailed and the incidental disturbance or damage (art. 16). The Agreement includes provisions concerning the conditions of regularization, costs, execution and supervision of regularization work and failure to carry out work (articles 17 and 20–24).

(b) *Installations rendered necessary by regularization (public interest).* Any person undertaking regularization is to erect the installations which are required for the protection of land and the works necessary to guard against danger and damage. He is also to take such measures as the public interest may require (art. 25).

(c) *Compensation for damage caused by regularization.* Any person who suffers loss or damage in consequence of regularization has the right to claim full compensation from the person who benefits by the work in question. The riparian proprietors must permit, subject to compensation, the erection at or in the watercourse of subsidiary works necessary to carry out regularization. In the absence of agreement, the Frontier Water Commission is to determine the amount of compensation (art. 26).

(d) *Apportionment of cost of upkeep after regularization.* If the cost of upkeep is increased by the regularization of a watercourse, the increase is to be apportioned among all the proprietors to whom the regularization is of use or advantage (art. 27).

561. *Establishment of new and alteration of existing works:*

(a) *Authorization of the Commission (private rights; public interest).* The establishment of new works or the extensive alteration of existing works on frontier watercourses requires the authorization of the Frontier Water Commission. This provision applies in particular to the right of using, consuming, diverting and lowering or raising the level of the water. Furthermore, the watercourse may not be used in such a manner that the height of the tidal water would be altered, the water polluted, the water level altered or the upkeep of the watercourse made more burdensome to the detriment of third parties. If the proposed use of the watercourse is likely to prove highly detrimental to the public interest, authorization is to be refused, or granted only upon conditions which would take the public interest fully into account (art. 29). The Agreement contains provisions concerning the procedure to be followed in making applications for the erection of new works (art. 30), notification to the public (arts. 30 and 31), the contents of the decisions of the Commission (art. 32) and measures for the prevention of illegal installations (art. 33).

(b) *Irrigation works (right of use, apportionment of water).* In general, the water which is taken from a watercourse for purposes of irrigation may be used only for the irrigation of land abutting on the watercourse. If, however, the quantity of water available is sufficient, the Frontier Water Commission may allow the owners of land not directly bordering on the watercourse to take part in the irrigation. In deciding whether the use of the water may be granted to persons other than the riparian proprietors, care shall also be taken to ensure that no diminution in the quantity of water is occasioned to the detriment of land adjacent to the watercourse below the irrigation works (art. 34). The proprietors on both banks of a watercourse have equal rights as regards the use of the water, so that, if irrigation works are erected upon one bank, only half of the water of the watercourse may be assigned to these works. The assignment of more than half the volume of water requires the consent of all the proprietors and usufructuaries on the opposite bank of the watercourse between the point at which the water is diverted and the point at which it re-enters the watercourse (art. 35). Compensation for damage caused by irrigation works (art. 36), obligations of riparian and other proprietors (art. 37), the subsequent part-use of irrigation works (art. 39), the supervision of irrigation works (art. 41) and the formation of irrigation associations are covered by the Agreement.

562. *Use of watercourses:*

(a) *Common use of waters (watering places, household use).* All persons are entitled to use the water of frontier watercourses for watering cattle, for washing and for ordinary domestic requirements, provided that such use can be made without trespassing upon the land of third parties. The Frontier Water Commission may, at the request of the competent local authorities, control, restrict or prohibit the common use of the water (art. 43).

(b) *Existing works (acquired rights to be respected).* Existing machinery may not, in consequence of the use of the water by other persons, be deprived of the water necessary for its working to the extent which has heretofore been customary. If the right to enlarge the works has been established by means of an earlier authorization, the works may not be deprived of the water necessary for the extended operations (art. 44).

(c) *Protection of the waters.* If harmful substances are discharged into such frontier watercourses and if they seriously increase the work in connexion with the cleaning

of such frontier watercourses, cause damaging floods, interfere with fishing or inflict other injury on riparian proprietors, the persons who suffer damage thereby are entitled to appeal to the Frontier Water Commission (art. 45). The Commission is to state whether the complaint is justified and, if so, what amount of compensation must be paid. If not paid voluntarily, the amount in question may be recovered through legal proceedings (art. 46).

563. *Watercourses which are connected with frontier watercourses but do not form part of them:*

(a) *Outlet of waters.* If the water from land or from drainage or irrigation works on the one side of the frontier has its outlet in a watercourse situated on the other side of the frontier which does not come within the provisions of this Agreement, the proprietor of the land or the association is entitled to address complaints regarding the upkeep of the watercourse to the authorities responsible for the watercourse. Such complaints shall be dealt with according to the water laws of the country concerned, in the same manner as if the estate in connexion with which the complaint is made were situated in the same country as the watercourse (art. 53, first para.).

(b) *Alteration of the régime of watercourses.* If proprietors on one side of the frontier take steps to alter existing conditions by means of installations which increase the flow of water into a watercourse on the other side of the frontier without being authorized to do so by a decision of the Frontier Water Commission or of the competent water authorities on the other side of the frontier, the other persons who participate in the use of the watercourse are entitled to adopt measures on their side of the frontier to prevent the increase in the flow of water (art. 53, third para.).

(c) *Damming rights (acquired rights to be respected).* If damming rights on a watercourse on one side of the frontier which does not come within the provisions of this Agreement have heretofore applied to land on the other side of the frontier, the right of the proprietor or usufructuary shall remain unimpaired. The right must, however, be established (art. 54).

Germany and Luxembourg

Convention between the Grand Duchy of Luxembourg and Prussia concerning the regulation of fisheries in boundary waters, signed at Luxembourg on 5 November 1892[486]

564. The purpose of this Convention is the regulation of fisheries in boundary waters, with due regard to article 6, paragraph 2, of the Convention between Germany, the Netherlands and Switzerland for the Regulation of the Salmon Fishery in the Rhine, signed at Berlin, on 30 June 1885.[487]

565. *Provisions concerning fishing in waters under joint sovereignty (art. 2):*

(a) *Fish the capture of which is prohibited. Exceptions.* It shall be unlawful to take fish whose lengths are less than the lengths stated by the Convention. Spawn fishing shall also be prohibited. If they are below the sizes prescribed therein, the fishes shall be immediately returned to the water with the care required to ensure their survival. Furthermore, each of the Governments may, in the interest of pisciculture, of scientific research and of experimentation of general utility, grant to individual holders of fishing rights temporary and revocable permits for the taking of fish below the sizes prescribed (para. 1).

(b) *Prohibition of fishing during certain periods of the year. Exceptions.* The Convention laid down provisions relating to the periods or season in which fishing in the Moselle, Sauer and Our Rivers under joint sovereignty shall be closed (para. 3). Provisions concerning weekly periods and seasons closed to salmon fishing are also regulated by the Convention (para. 4). Each of the two Governments shall be authorized exceptionally to grant permission for shad fishing during the annual closed season. All permanent fishing appliances must be removed or put out of operation during the annual closed seasons. Exceptions compatible with fish conservation may be granted according to the provisions of the Convention (paras. 5 and 6).

(c) *Prohibition of certain methods of fishing.* In fishing it shall be unlawful: *(a)* to use harmful or explosive substances; *(b)* to use tackle designed to injure the fish; *(c)* to drive fish in shoals at night by means of lights; *(d)* to fish for salmon at night with torches; *(e)* to divert or to drain waters for fishing purposes; *(f)* to set up new fish-weirs, fish-crawls and automatic catching devices, except in cases of existing licences (paras. 8, 9 and 10, first sub-para.).

(d) *Protection of the waters.* Except where existing conduits are protected by legislation in force in the territories of the two Parties, it shall be unlawful for agricultural and industrial enterprises to cast or eject into the waters substances of such nature and in such quantities as may be injurious to fish stocks or as may damage the fishing rights of others. In the event of overriding agricultural or industrial interest, permission may be granted by agreement between the two Governments, provided that the owner of the enterprises provides such installation as may be necessary to reduce damage to fishing as far as possible (para. 11).

(e) *Prohibition of certain types of fishing gear.* It shall be unlawful, subject to the exemptions listed in the Convention, to use for fishing purposes any fishing gear the openings of which have a width less than that prescribed by the Convention. This provision shall apply, in particular, also to stakes attached to permanent fishing installations. Each Government agrees that the other Government shall be authorized to allow exemptions from the provisions regulating the width of meshes. Where such a measure is imperative in the interest of the conservation of fish stocks or of valuable species of fish, the use of certain harmful types of fishing tackle may be entirely excluded or

[486] See G. F. de Martens, ed., *op. cit.* (Leipzig, Librarie Dieterich, 1899), 2ème série, tome XXIV, p. 153. See also *Legislative Texts . . . (op. cit.)*, treaty No. 200.

[487] See paras. 453–457 and foot-note 394 above. In addition, according to article 1, the Grand Duchy of Luxembourg accedes to the said Convention between Germany, the Netherlands and Switzerland, provided that its provisions shall not apply to some parts of the Sauer, Alzette and Wark rivers and that article 1 shall be replaced by a new provision laid down in the Convention between Luxembourg and Prussia.

be subjected to more stringent restrictions (para. 13). It shall be unlawful in fishing to obstruct watercourses by permanent fishing installations over a distance exceeding that provided in the Convention (para. 14).

(f) *Prohibition of interference with navigation.* Fishing operations shall not be carried out in such a way as to hinder or interfere with navigation (para. 15).

(g) *Fishing permits.* Any person desiring to engage in fishing shall carry a permit issued by the appropriate authority. No permit shall be required to engage in fishing with hand rods and lines in the Moselle River and the sections of the Sauer river under joint sovereignty (paras. 16, 17 and 18).

(h) *Application of the provisions of the Convention. Fishery police.* The two Governments agree to take all requisite measures for the implementation of the Convention, in particular to ensure that all violations of its provisions, as well as of the police ordinances concerned, shall be subject to penalties. Each Government undertakes to recruit the necessary supervisory personnel to ensure the application of the Convention and of the regulations issued under it (paras. 20–24).

Austria and Hungary

Treaty[488] between the Hungarian People's Republic and the Republic of Austria concerning the regulation of water economy questions in the frontier region, signed at Vienna on 9 April 1956[489]

566. The Treaty regulates water economy questions in the frontier region, in particular the planning and construction of hydraulic works on the waters of that region.

567. *Delimitation of frontier waters.* The Treaty shall apply to the frontier waters, namely to those sectors of bodies of water which form the frontier or along which the frontier runs, as well as bodies of water which intersect the frontier and those situated in the frontier region within six kilometres of the frontier (art. 1).

568. *Carrying out of works on frontier waters (consent of the other Party).* Each Party undertakes to refrain from unilaterally carrying out, without the consent of the other Party, any measures or work on frontier waters which would adversely affect water conditions in the territory of the other Party. Consent may be refused only if the grounds for such refusal are duly set forth (art. 2, para. 1).

569. *Carrying out of works near frontier waters.* The Parties undertake to discuss in a Commission established by the Treaty any measures or works which it is intended to carry out on waters situated near the frontier but outside the frontier waters (art. 2, para. 4).

570. *Distribution of frontier waters with a view to their utilization (respect for acquired rights).* The Parties shall have the use, without prejudice to acquired rights, of half of the natural water yield, not increased by artificial means, of those sectors of bodies of water which form the frontier or along which the frontier runs (art. 2, para. 5). The State situated up-stream on a watercourse which intersects the frontier shall not be entitled to decrease the natural minimum water flow into the territory of the other State, as determined by the Commission established by the Treaty, by more than one third (art. 2, para. 6).

571. *Protection of waters.* In order to prevent the pollution of frontier waters, the Parties shall endeavour to ensure that factories, mines, industrial plants and similar installations, as well as residential communities, drain waste water into the said waters only after suitable purification. They shall take appropriate measures to purify waste water (art. 2, para. 7).

572. *Maintenance and improvement of the condition of the water and of hydraulic installations.* The Parties undertake to maintain in good condition the waters, hydraulic structures and installations and to make any necessary repairs or improvements in them (art. 3). Each Party shall be responsible for the maintenance of frontier waters situated in its territory and of their regulatory installations and other hydraulic structures, even if those structures serve the interests of the other Party (art. 4, paras. 1 and 2). The cleaning of the beds and banks of frontier waters shall as a general rule be carried out by each Party in its own territory (art. 4, para. 3).

573. *Preparation of plans for constructions.* Plants for hydraulic construction shall be prepared on the basis of general directives of the Commission established by the Treaty. The Party concerned shall prepare the plans for hydraulic construction work to be executed in its own territory. Plans for hydraulic construction work to be executed in the territory of both Parties shall be prepared by the Party designated by the said Commission (art. 5).

574. *Execution of the work.* As a general rule, each Party shall execute regulatory and other hydraulic works in its own territory. Decisions concerning the execution of works the cost of which is to be borne in part by the other Party shall be made by the Commission established by the Treaty. In the case of works which are to be executed in the territory of both Parties but which for technical or economic reasons cannot be executed independently by the Parties, the method of execution shall be determined by the said Commission (art. 6).

575. *Apportionment of the costs of preparing plans and executing the work.* The Treaty contains some provisions relating to the bearing of costs of the planning and execution of works (arts. 7 and 8).

576. *Supervision of the work.* The Parties undertake to afford each other at all times an opportunity for technical and financial verification of work executed at the expense or for the benefit of both Parties (art. 9).

577. *Procedure for the granting of right of use of waters.* Matters relating to water rights shall be governed by the laws of the Party in whose territory the proceeding for the grant of water rights is to be instituted. In the case of hydraulic installations to be constructed in the territory of both Parties, the grant of water rights for the part to be constructed in the territory of each Party shall be made

[488] The Treaty entered into force on 31 July 1959.

[489] See United Nations, *Treaty Series*, vol. 438, treaty No. 6315.

by that Party's competent authority for water questions. In such cases, every possible effort shall be made to conduct the proceedings simultaneously or in conjunction with each other (art. 10).

578. *Communication of information regarding floods and other dangers.* The authorities of the Parties shall notify each other as quickly as possible of any danger of flood or ice or other danger (art. 11).

579. *Establishment of a permanent commission. Composition, functions and powers.* In order to promote co-operation in matters of water economy and to deal with the water economy problems covered by the Treaty, the two States shall establish a permanent Hungarian–Austrian Water Commission. The Commission shall have four members and shall establish its own rules of procedure (art. 12). The Treaty lays down provisions concerning the functions (art. 13), sessions (art. 14) and organization of work (art. 15) of the Commission. The decisions of the Commission shall be adopted unanimously and shall be approved by the Governments. The Governments of the Parties shall endeavour to arrive at an agreed settlement of the matters on which the Commission has not reached agreement (art. 16).

580. *Granting of facilities for the application of the Treaty.* The Parties shall endeavour to facilitate the application of the Treaty and the work of the Commission, having due regard to the interests of both States (art. 19).

581. *Special provisions:*

(a) *Maintenance of hydraulic installations of the former Raab Conservancy Syndicate.*[490] The reciprocal financial obligations assumed by the Parties in the Treaty shall not affect the validity of the obligation to make an appropriate contribution to the cost of maintaining the hydraulic installations of the former "Raab Conservancy Syndicate" (art. 20). The pension benefits of the employees of the former Hungarian "Raab Conservancy Syndicate" shall be paid by the Parties in the ratio specified in an annex to the Treaty (art. 21, para. 2).

(b) *Supply of water to the city of Sopron.* Austria guarantees that it will accord to the city of Sopron, as regards the execution of works required for the supply of drinking water and for the operation of the water works, such preferential treatment as is provided for in the Austrian laws in force at any given time (annex III, clause 1).

(c) *Supply of water to the city of Köszeg.* Austria grants permission to divert waters of the Hetforrás (Siebenbründel) to the city of Köszeg and gives the same guarantee of preferential treatment concerning water works as that provided for the supply of drinking water to the city of Sopron (annex III, clause 2).

(d) *Use of the waters of the Kleine Leitha for the irrigation of the Marialiget region.* Austria guarantees to Hungary the right to divert water from the Kleine Leitha into the Wiesgraben (Rétárok) in Austrian territory for use in irrigating the Marialiget area (annex III, clause 3).

[490] See the Convention between Austria and Hungary for the adoption of the draft agreements (legal frontier protocols) drawn up by the Austro-Hungarian Delimitation Commission, signed at Vienna on 11 March 1927 (see League of Nations, *Treaty Series*, vol. LXXX, p. 68).

Belgium and France

Convention between Belgium and France to ensure the restoration to their normal state and subsequent maintenance of the non-navigable and non-floatable frontier watercourses between the two countries, signed at Paris on 22 June 1882[491]

582. *Preparation of plans for the execution of the work of cleaning, maintenance and repair.* The competent authorities of France and Belgium shall enter into an agreement and prepare plans indicating the present direction, breadth and normal depth of each watercourse, as well as its tributaries and the works which modify its natural state. All cleaning, maintenance and repair work will be effected in accordance with these plans (art. 1) The work will be given out by public tender, the specifications of which will be agreed on in advance (art. 2). The Convention deals in addition with the apportionment of costs and tenders between the two parties (articles 3 and 4). No dams, water wells, and in general no permanent or temporary works likely to affect the level of frontier watercourses shall be built or modified except by previous agreement between the administrative authorities of the two countries (art. 5).[492]

Spain and Portugal

Exchange of Notes[493] *constituting an Agreement between Spain and Portugal on the exploitation of border rivers for industrial purposes, Madrid, 29 August and 2 September 1912*[494]

583. This exchange of notes gives diplomatic approval to the conclusions reached, in a document dated 10 August 1910, by Spanish and Portuguese delegates, appointed by the Governments of the two countries, to consider rules for the utilization of the waters in the border rivers for industrial purposes. The conclusions are considered a binding addition to the provisions of the Boundary Treaty of 29 September 1864, and the Regulations of 4 November 1866 annexed thereto.

584. *Distribution of waters.* The two nations shall have the same rights in the border sections of the rivers, each accordingly being entitled to half the flow of water existing at the various seasons of the year. In the case of waterfalls, the relative positions of the elements involved are covered by the following combinations: (*a*) water taken and returned in the border section; (*b*) water taken in Spain and returned in the border section; (*c*) water taken in Spain and returned in Portugal; and (*d*) water taken in

[491] See G. F. de Martens, ed., *op. cit.* (Göttingen, Librairie Dieterich, 1884), 2ème série, tome IX, p. 55. See also *Legislative Texts . . . (op. cit.)*, treaty No. 147.

[492] The Convention between Belgium and Luxembourg signed at Brussels on 27 November 1886 contains similar provisions (see G. F. de Martens, ed., *op. cit.*, 1887, 2ème série, tome XII, p. 534).

[493] The Agreement entered into force on 17 September 1912, the date of publication in the official journals of Spain and Portugal.

[494] See Spain, *Legislación y disposiciones de la Administración central* (Madrid, Imprinta de la Revista de legislación, 1912), tome XLV, vol. 2, p. 493. See also *Legislative Texts . . . (op. cit.)*, treaty No. 246.

the border section and returned in Portugal (note No. I, third para., clause I).

585. *Concessions for the utilization of waters for industrial purposes.* Any entity desiring to exploit a waterfall for industrial purposes shall submit a technical plan to both nations, together with the appropriate application (*ibid.*, clause II). Before the concession is granted, an international technical commission shall fix the conditions to which the works shall be required to conform (*ibid.*, clause III). A concession granted by one of the two nations shall not oblige the other to grant a corresponding concession (*ibid.*, clause VI).

586. *Respect for acquired rights.* The rights of private persons shall remain protected by the legislation in force in each country (*ibid.*, clause IV).

587. *Supervison of works.* The supervision of the works in construction and operation shall be carried out by both nations (*ibid.*, clause V).

588. *Implementation agreements.* The Parties shall by agreement draw up such supplementary rules as may be necessary for the implementation of the provisions of the exchange of notes.

Hungary and Yugoslavia

Agreement[495] *between the Government of the Federal People's Republic of Yugoslavia and the Government of the Hungarian People's Republic concerning fishing in frontier waters, signed at Belgrade on 25 May 1957*[496]

589. This Agreement was concluded with a view to regulating fishing in Yugoslav–Hungarian frontier waters.

590. *Exercise of fishing rights.* The Parties shall permit the exercise of fishing rights in conformity with their regulations in frontier waters within their respective territories (art. 1).

591. *Delimitation of frontier waters.* For the purpose of this Agreement "frontier waters" means all flowing or standing waters forming the boundary line (art. 2).

592. *Measures to ensure the conservation, and to encourage the breeding of fish.* The Parties shall take all the necessary steps to ensure the conservation, development and proper utilization of aquatic wild life in the frontier waters (art. 3).

593. *Ban on fishing during certain periods of the year. Fish which may not be taken.* The Agreement regulates the question of closed seasons and the minimum sizes of fish. This provision may be changed by decision of the competent authorities of the Parties (art. 4).

594. *Protection of waters (compensation for damages).* It shall be prohibited to set flax and hemp in the frontier waters and to discharge untreated waste waters and other substances harmful to aquatic wild life. A Party failing to respect this provision shall make compensation for any damage caused (art. 5).

595. *Rules relating to fishing methods, equipment and devices.* Persons fishing may use electrical devices, provided that the electric current does not destroy the fish. The use of chemical substances, firearms, explosives, pointed instruments and nets with a mesh of less than a minimum fixed in the Agreement shall be prohibited. The use of any fixed or movable equipment longer than half the width of the main current of the frontier waters shall be prohibited (art. 6).

596. *Administrative, technical and scientific co-operation:*

(a) *Setting up of a permanent commission.* A permanent Mixed Yugoslav–Hungarian Commission of six members, comprising three members from each Party, shall be set up for the application and interpretation of the Agreement. Minor disputes concerning fishing in frontier waters shall be settled by the local representatives of the competent authorities of the Parties (art. 7).

(b) *Division of frontier waters into districts. Fishing permits.* The Parties shall divide the frontier waters into districts and shall also determine by agreement the districts in which fishing shall be permitted from bank to bank. The competent authorities of the Parties shall issue fishing permits designating the fishing district in which the permit holder is entitled to fish (art. 8).

(c) *Exchange of scientific information.* Scientific and other institutions of the Parties concerned with fishing shall exchange experience and information regarding the results of their research work (art. 9).

(d) *Preparation of a fishing development plan.* The competent authorities of the Parties shall prepare a long-term plan for the development and the rational utilization of aquatic wild life in frontier waters. The Parties shall co-ordinate their plans through the Mixed Commission (art. 10).

(e) *Exchange of information on fishing rules and regulations.* The Parties shall communicate to one another their rules and regulations pertaining to fishing and shall also provide particulars and certified copies of those rules and regulations (art. 11).

Hungary and the USSR

Treaty[497] *between the Government of the Union of Soviet Socialist Republics and the Government of the Hungarian People's Republic concerning the régime of the Soviet–Hungarian State frontier and Final Protocol, signed at Moscow on 24 February 1950*[498]

597. *Delimitation of frontier waters.* All rivers, streams and canals along which the frontier line runs shall be deemed to be frontier waters (art. 11, para. 1 and Final Protocol).

598. *Use of frontier waters (respect for the interests of the other Party).* Each Party shall take appropriate steps to ensure that in the use of frontier waters the provisions

[495] This Agreement came into force on 24 December 1957.

[496] See Yugoslavia, *Federativne Narodne Republike Jugoslavije, Medunarodni Ugovori*, 1958, No. 4, p. 60. See also *Legislative Texts ... (op. cit.)*, treaty No. 229.

[497] The exchange of the instruments of ratification took place at Budapest on 22 June 1950.

[498] USSR, Ministry of Foreign Affairs, *Sbornik deistvuiushchikh, dogovorov, soglashenii i konventsii zakliuchennyhk SSR s inostrannymi gosudarstvami*, vol. XIV, p. 29. See also *Legislative Texts ... (op. cit.)* treaty No. 226.

of the Treaty are observed and the relevant rights and interests of the other Party are respected (art. 11, para. 2).

599. *Maintenance of the waters and the banks in good condition (compensation for damages).* The Parties shall see that frontier waters are kept in proper order. They shall also take steps to prevent deliberate damage to the banks of frontier rivers. Where one Party occasions material damage to the other Party, compensation for such damage shall be paid by the Party responsible therefor (art. 14, paras. 1 and 2).

600. *Steps to prevent the shifting of rivers:*

(a) *Removal of obstacles to the natural flow of the waters.* The position and direction of frontier watercourses shall so far as possible be preserved unchanged. The necessary steps to remove such obstacles as may cause changes in the beds of frontier rivers or impede the natural flow of water along them shall jointly be taken by the Parties. Where necessary, both Parties shall make arrangements for carrying out the joint works. The expenses involved shall be divided equally between both Parties, unless a special agreement is concluded on the matter (art. 14, para. 3).

(b) *Prohibition of alteration of the natural flow of water by new constructions.* The natural flow of water in frontier watercourses and in adjacent areas inundated in time of flood may not be altered or obstructed to the detriment of the other Party by the erection or reconstruction of installations in the water or the banks (art. 15, para. 1).

(c) *Regulation of the flow of water to and from frontier waters.* The competent authorities of the Parties shall agree on arrangements for regulating the discharge of water into, and the removal of water from, frontier waters, and on all other questions relating to the frontier waters (art. 15, para. 2).

(d) *Strengthening of river banks.* In order to prevent changes in the beds of frontier rivers, their banks must be strengthened wherever the Parties jointly consider it necessary. The work shall be executed and the relevant expenses defrayed by the Party to which the bank belongs (art. 14, para. 4).

601. *Cleaning and protection of waters (pollution, poisoning).* The Treaty contains provisions concerning the cleaning of frontier watercourses (and for the cost of such cleaning (art. 16). The Parties shall take steps to maintain the frontier waters in a due state of cleanliness, so as to prevent the waters from being poisoned or polluted by acids or refuse from industrial establishments, or from being fouled by any other means (art. 17).

602. *Provisions concerning installations:*

(a) *Preservation of existing installations. Exceptions (consent of the Parties).* Existing dams and installations on frontier watercourses shall be preserved and may be used, with the exception of those whose demolition is considered necessary. If it becomes necessary to demolish any installation in such a way as to cause a change in the level of the water in the territory of one of the Parties, the works in question may be undertaken only after the consent of that Party has been obtained (art. 18, paras. 1 and 2).

(b) *Construction of new installations (agreement between the Parties).* The agreement between the Parties is necessary for the erection of new dams or installations (art. 18 para. 3).

603. *Exchange of information to avert danger from floods.* The Parties shall exchange information concerning the level of rivers and ice conditions, so as to avert danger from floods or from drifting ice. Delay or failure in communicating information shall not constitute grounds for a claim to compensation for damage (art. 19).

604. *Floating of timber:*

(a) *Use of water for floating timber.* Timber-floating may be freely carried out by both Parties throughout the whole length of the frontier watercourses, including places where both banks belong to only one of the Parties. The data, sequence and commencement of floating operations shall be determined and notified each year by the two Parties (art. 20).

(b) *Right of access for floating operations.* In order to ensure that timber-floating operations proceed normally, the two Parties may by agreement permit workmen to land and move about on their respective banks in order to construct temporary floating installations for timber-launching and to clear the bank of floating timber (art. 21, para. 1).

605. *Provisions concerning fishing:*

(a) *Right to fish. Prohibition of certain fishing methods.* Residents of each Party may fish in frontier waters up to the frontier line in accordance with the regulations in force in their territory. The use of explosive, poisonous or narcotic substances and fishing at night shall be prohibited (art. 25, para. 1).

(b) *Measures to encourage the conservation and breeding of fish (special agreements).* Measures relating to the conservation and breeding of fish in frontier waters, the prohibition of the taking of particular species of fish in certain sectors, the dates of fishing seasons and other measures of an economic nature may be authorized by special agreement between the Parties (art. 25, para. 2).

606. *Regulations concerning water levels (special agreements).* Special agreements may be concluded on questions relating to the regulations governing the use and maintenance of frontier waters, also the level of rivers, ice conditions and questions relating to timber-floating (Final Protocol).

(c) Treaties relating to one or more specific rivers

Arve and its tributaries, Doubs, Rhône, the Lake of Geneva and its tributaries and other watercourses crossing the territory of the two States (France and Switzerland)

Convention[499] between the French Republic and the Swiss Confederation for the regulation of fishing in frontier waters, signed at Paris on 9 March 1904[500]

[499] The exchange of the instruments of ratification took place in Paris on 1 February 1905.

[500] See G. F. de Martens, ed., *op. cit.* (Leipzig, Librairie Dieterich, 1906), 2ème série, tome XXXIII, p. 501. See also, *Legislative Texts . . . (op. cit.)* treaty No. 196.

607. This Convention is divided into four sections. Provisions concerning the regulations of fishing in the Lake of Geneva are contained in section I. Section II contains provisions concerning the tributaries of the Lake of Geneva, the Rhône from its source in Valais to the French frontier, down-stream from Chancy, the Arve and its tributaries and the other watercourses which cross the territory of the two States, with the exception of those parts of the Rhône and the Doubs which form the frontier. The regulation of fishing in the parts of the Doubs and the Rhône forming the frontier is dealt with in section III. Finally, section IV consists of general and transitory provisions.

608. *Fishing (permits, authorizations).* In the Lake of Geneva no person may fish by any means other than line-fishing unless he has obtained a fishing permit from the competent authority (art. 1). In that part of the Doubs which forms the frontier, no person may fish unless he has obtained authorization from the cantonal authority in Switzerland, or the riparian proprietor in France (art. 12). No person may fish in that part of the Rhône forming the frontier unless he holds an authorization from the competent authority of the country where he is fishing (art. 27). In the frontier waters of the Doubs and the Rhône, it is unlawful to fish by any means other than line-fishing within a distance less than that specified in the Convention, up-stream or down-stream from locks, dams, or other installations or natural falls (articles 20 and 29). Fishing is also prohibited in the frontier waters of these latter rivers on occasions when the level is lowered or during certain exceptionally dry periods (articles 21 and 29).

609. *Prohibition of certain fishing tackle and methods.* It is unlawful to use explosives or substances likely to stupefy or kill the fish (articles 5, 16 and 29). The use of certain fishing tackle is also forbidden (articles 4, 15 and 29). The use of snares, harpoons, tridents, firearms and branches to catch the fish is likewise prohibited by the Convention (articles 3, 14 and 29). In the frontier waters of the Doubs, night fishing is prohibited (art. 22).

610. *Prohibition of certain nets. Withdrawal of fishing permits.* Detailed provisions indicate the dimensions to which nets must conform if their use is to be permitted (articles 2, 13 and 29). The Convention makes express provision for the withdrawal in certain cases of fishing permits from fishermen who have not complied with the above-mentioned provisions, without prejudice to possible legal proceedings (art. 2, third para.). Other provisions prohibit the use of certain types of net in specific cases or during certain periods (articles 2, 8, 18, 19 and 29).

611. *Fish the capture of which is prohibited.* It is unlawful to capture any undersized fish with nets. The Convention specifies the length which fish of each species must have attained in order not to be considered undersized (articles 7, 23 and 29).

612. *Periods during which fishing is prohibited. Prohibition of sale of fish during such periods. Exceptions (in the interests of fish-breeding).* The Convention specifies the annual periods during which all fishing is prohibited, as also special periods during which the capture of certain species is prohibited (articles 8, 24 and 28). The prohibition of fishing includes a prohibition of the sale of the fish in question (art. 9, first para., art. 25, first para., and art. 29). In the interests of fish-breeding, however, the competent authority of each State may give special authorization for fishing and the sale of fish during the close periods (art. 9, second para., art. 25, second para., and art. 29).

613. *Protection of water for benefit of fish. Measures to encourage reproduction of fish.* It is unlawful for factories situated in the neighbourhood of the Lake of Geneva, the Doubs and the Rhône to discharge into the water any waste matter harmful to fish (articles 6, 17 and 29). In addition, the two States undertake to apply the measures provided in their respective laws to prevent pollution of the water in the tributaries of the Lake of Geneva, the Rhône from its source in Valais to the French frontier, down-stream from Chancy, the Arve and its tributaries and the other watercourses crossing the territory of the two States. It is also provided that in these latter waters the two States are to undertake to prevent the destruction of fish and to encourage their reproduction (art. 11).

614. *Introduction of new species of fish (subject to previous agreement).* New species of fish may not be introduced into the frontier waters without the express and agreed authorization of the two States. In addition, the authorities of the two States will come to an agreement respecting any prohibitions or other measures for the conservation of species newly introduced into the above-mentioned waters (art. 32).

615. *Establishment of a mixed technical commission.* Each of the two States will appoint a special commissioner to supervise fishing in that part of the water which is under his jurisdiction. The commissioners shall meet every year as a mixed commission to address to the Governments of the two States concerned a report on the way in which the agreed provisions are being observed and to submit to them their observations and proposals in the interests of fishing and of the propagation of the fish (art. 30).

616. *Policing of fisheries.* Special commissioners shall be appointed to supervise fishing (art. 31). Articles 10, 26 and 29 contain provisions for the enforcement of the provisions of the Convention and the prosecution of violators.

Bidassoa (Spain and France)

Convention[501] between Spain and France relating to fishing in the Bidassoa, signed at Bayonne on 18 February 1886[502]

[501] The instruments of ratification were exchanged at Madrid on 11 October 1886.

[502] See G. F. de Martens, ed., *op. cit.* (Göttingen, Librairie Dieterich, 1887), 2ème série, tome XII, p. 687. See also, *Legislative Texts . . . (op. cit.)*, treaty No. 187. Arts. 1, 2, 3, 4, 7, 8, 9, 10, 11, 13, 16, 17, 26 and 29 were amended wholly or partly by the Protocol of 19 January 1888 (see G. F. de Martens, ed., *op. cit.* (Leipzig, Librairie Dieterich, 1910), 3ème série, tome III, p. 253, or *Legislative Texts . . . (op. cit.)*, treaty No. 188), the Declarations of 4 October 1894 (see J. Basdevant, *Traités et Conventions en vigueur entre la France et les puissances étrangères*, tome II (Espagne-Italie) (Paris, Imprimerie nationale, 1919), p. 174, or United Nations, *op. cit.*, treaty No. 189), of 6 April 1908 (see G. F. de Martens, ed., *op. cit.*, p. 256, or United Nations, *op. cit.*, treaty No. 190) and of 2 June

617. The legal régime of the Bidassoa, outlined in articles 20 to 25 of the Treaty of 2 December 1856,[503] was amended and made more specific, as far as fishing is concerned, by this Convention.[504]

618. *Exercise of the right of fishing.* The right of fishing in the main course of the Bidassoa belongs exclusively and without distinction to the inhabitants of Irún and Fuenterrabía in Spain and the inhabitants of Biriatou, Urrugne and Hendaye in France. The Spanish riparian population have the exclusive right to fish in their canals, the limits of which are indicated by buoys. The riparian population of both countries may fish with any type of boat but the boats must bear specific distinguishing marks (art. 1, replaced by the Declaration of 2 June 1924 and the Additional Agreement of 24 September 1952). The exclusive right of salmon fishing belongs successively, for twenty-four-hour periods, to the French and Spanish communes (art. 10, replaced by the Protocol of 19 January 1888 and the Additional Agreement of 24 September 1952).

619. *Fishing facilities granted.* The riverside residents of the two countries may, in certain specified zones, take out and dry their nets on either the French or the Spanish bank; in no case, however, may they do so on private property without the authorization of the proprietor (art. 2, replaced by the Declaration of 2 June 1924, para. 1).

620. *Exemption from duty on fishery products.* In accordance with existing custom, all fishery products may be introduced duty-free into either of the two countries (*ibid.*, para. 2).

621. *Close periods.* The capture of certain species is permitted at all times. The capture of other species is authorized only during certain periods of the year (art. 4, replaced by the Additional Agreement of 24 September 1952). During the close period for oyster fishing it is unlawful to dredge the approaches to the oyster beds (art. 2 of the Declaration of 4 October 1894, amending art. 4 of the Convention of 18 February 1886). Oyster fishing may be temporarily prohibited for one year with a view to conserving stock (art. 6, para. 2).

622. *Fish and shellfish the taking of which is prohibited.* The taking of fish and shellfish which have not attained the length or the diameter prescribed for each species (art. 6, para. 1), as also the eggs of fish and crustaceans (art. 5), is prohibited. Fishermen are required to put back into the river fish and shellfish which have not attained the prescribed length or diameter (art. 7, amended by the Additional Argeement of 24 September 1952).

623. *Rules relating to fishing methods, gear and nets.* Articles 9 (replaced by the Additional Agreement of 24 September 1952), 10 (amended by the Additional Agreement of 24 September 1952), 11 (replaced by the Additional Agreement of 24 September 1952) and 12 contain general and specific provisions concerning fishing nets, devices and methods authorized for the various species of fish. Fishing by floating line or by casting is also regulated (art. 3, replaced by the Declaration of 6 April 1908 and the Additional Agreement of 24 September 1952).

624. *Construction of installations for the taking of shellfish.* The riparian population may build permanent or temporary fishery installations for the taking of shellfish with the authorization of the municipality competent in the case. The authorization granted may be revoked and shall in no case be considered a concession. Such installations must not impede navigation (art. 13, replaced by the Declaration of 2 June 1924).

625. *Measures to encourage the reproduction of fish.* French and Spanish fishermen may establish fish hatcheries for the purpose of restocking the waters of the Bidassoa. Such hatcheries must not, however, impede navigation (art. 14).

626. *Provisions concerning policing of fishing and prosecution of violators.* Arts. 15 (amended by the Additional Agreement of 24 September 1952), 1 *bis* and 22 (inserted and replaced respectively by the Declaration of 2 June 1924), 16, 26 and 29 (all replaced by the Protocol of 19 January 1888), 17 (replaced by the Declaration of 2 June 1924, the Additional Agreement of 24 September 1952 and the Exchange of Letters of 11 May and 8 June 1954) and arts. 18 to 21, 27, 28, 30 and 31 lay down rules for the application of the provisions of the Convention, the policing of fishing and the prosecution of violators.

Blaserbach, Dollmannbach, Dürrach and Kesselbach and Rissbach and their tributaries (GERMANY (FEDERAL REPUBLIC OF) AND AUSTRIA)

Agreement[505] *between the Austrian Federal Government and the Bavarian State Government concerning the diversion of water in the Rissbach, Dürrach, and Walchen districts, reached on 29 June 1948 and concluded on 16 October 1950*[506]

627. *Apportionment of the water.* Austria waived without compensation the right to lead off any waters of the Rissbach and its tributaries, while Bavaria in return agreed to the leading-off by Austria without compensation of the Dürrach, the Kesselbach, and Blaserbach and the Dollmannbach. Austria, however, undertook to allow the water of these streams to flow into the bed of the Isar during low-water periods totalling seventy-five days per year, at the request of Bavaria, in order to ensure the maintenance of a sufficient volume of water in the upper Isar until the construction of storage basins. In addition, Austria agreed in principle to permit the backing-up of

1924 (see *Journal officiel de la République française* (Paris, 4 June 1926), p. 6202, or United Nations, *op. cit.*, treaty No. 191), the Additional Agreement of 24 September 1952 (see *Revue générale de droit international public* (Paris, 1956), vol. LX, p. 147, or United Nations, *op. cit.*, treaty No. 192) and the Exchange of Letters of 11 May and 8 June 1954 (see *Revue générale de droit international public* (Paris, 1956), vol. LX, p. 152, or *Legislative texts . . . (op. cit.)*, treaty No. 193.

[503] See foot-note 726 below.

[504] See C. Rousseau, "Les frontières de la France", *Revue générale de droit international public* (Paris, 1954), vol. XXV, p. 370.

[505] The Agreement entered into force on 1 May 1951.

[506] See E. Hartig, *op. cit.*, annex 8, p. 64. See also *Legislative Texts . . . (op. cit.)*, treaty No. 136.

the Bavarian dam on Austrian territory which would take place after the construction of those storage basins.[507]

Bocholter Aa[508] (GERMANY AND THE NETHERLANDS)

Treaty[509] between the Netherlands and Prussia concerning the improvement of the frontier section of the Bocholter Aa, concluded at The Hague on 18 April 1900[510]

628. *Construction and operation of a dam.* A movable dam shall be constructed in the channel of the river. The dam is designed to allow a minimum flow of water (art. 1). The two Governments reserve the right to establish more detailed provisions for the use of the dam by means of special regulations (art. 3).

629. *Works for the improvement of the bed and banks.* The Treaty provides for levelling the channel-bed of the river to a steady gradient and raising the dikes on both sides of the river (art. 2).

630. *Facilities for the execution of the works planned.* The two Governments shall ensure, in their respective territories, that the sites required for the execution of the works are made available (art. 4).

631. *Execution and maintenance of the works planned.* The Prussian Government shall carry out all the works specified in the Treaty and shall be responsible for the maintenance of the dam. Each State shall be responsible for the maintenance in its territory of the section of the river to be improved, including the dikes (art. 6).

632. *Apportionment of costs.* The cost of the dam shall be borne in the proportion of one third by the Netherlands and two thirds by Prussia. One half of the cost of the improvement of the river shall be borne by each State (art. 5).

Breggia, Doveria, Giona, Maira, Melezza, Poschiavino, Spöl, Tresa and Lakes Lugano and Maggiore (ITALY AND SWITZERLAND)

Agreement[511] between Switzerland and Italy establishing provisions in respect of fishing in frontier waters, concluded at Lugano on 13 June 1906[512]

633. The purpose of the Agreement is to establish uniform provisions for the regulation of fishing in the waters common to Switzerland and Italy of the Rivers Breggia, Doveria, Giona, Maira, Melezza, Poschiavino, Tresa and Spöl and of Lakes Lugano and Maggiore. The Agreement also makes provision for the conservation and reproduction of fish belonging to species which are an important source of food. The provisions of the Agreement apply to the waters of the streams and lakes in question, even where such waters are the subject of private fishing rights. They also apply to private and public waters directly connected with the waters of the above-mentioned streams and lakes, even where such public waters are the subject of an exclusive fishing right (art. 1).

634. *Exercise of the right of fishing (fishing permits; respect for acquired rights).* The Parties reserve the power to withhold the right to fish in the common waters within their respective territories from anyone who has not obtained a licence. This power shall not extend to private fishing rights recognized by the two States so long as such rights are not redeemed or expropriated in conformity with their respective national laws (Additional Act of 8 February 1911).

635. Rules concerning fishing methods, *devices and gear and fish the capture of which is prohibited.* In fishing, it is unlawful:

(*a*) To use fixed or mobile tackle which impede the movement of the fish over more than half the width of the watercourse (art. 3);

(*b*) To use box-traps for catching trout or reed nets with branches for catching perch (art. 4);

(*c*) To place nets and other fishing gear in the water within a certain distance from fish ladders, the grills of hydraulic machinery, the inlets and outlets of canals, dams and locks (art. 5);

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[507] "The question of the relations between Austria and Bavaria in connexion with a number of contiguous watercourses, including the Inn, the Saalach, the Salzach and the Danube, and watercourses crossing the territory of those States, including the Ache, the Rissbach, the Dürrach, the Kesselbach, the Blaserbach and the Dollmannbach, all of which have their source in Austria but flow into the Isar in Bavarian territory, has led to exchanges of views and even to the formulation of interesting doctrinal positions; these relations have, however, been only very partially regulated by agreements between the two States concerning the industrial utilization of all the international waters in question. In the course of diplomatic negotiations which took place between 1920 and 1926 the two States agreed on the following very interesting principles: (1) Neither of the two States enjoys an exclusive right to the whole of the waters of contiguous rivers, streams, brooks and torrents, each of them, without prejudice to special legal claims, being entitled to half the volume of the waters; (2) Nevertheless, to ensure the best possible hydro-electric utilization of contiguous watercourses, it is advisable to seek to ascertain by common agreement what type of development will yield the highest return, from both the technical and the economic standpoints; (3) If such a study indicates that some form of development other than by division of the waters is more rational for the utilization of the hydraulic power provided by a contiguous watercourse—for example, division by sections according to the slope of the channel—the use of the volume of water belonging to the other State shall be ceded, on the condition that the interests of the relinquishing State and any rights of private persons are safeguarded. On the other hand, Bavaria has not agreed to the application of these principles based on 'fair apportionment' to rivers crossing the territory of the two States, and certain difficulties have arisen between them as a result . . .".

"Thus, in seeking to achieve the industrial development of a whole river area, the Contracting States have been guided above all by good-neighbourly considerations, agreeing in some cases to the diversion of watercourses from their natural beds, and in others abandoning the intention to divert them and taking the steps requisite to maintain the volume of water estimated necessary for industry in the States down-stream, and to make tolerable the backing-up of water in the territory of the State up-stream from any dams established." (See G. Sauser-Hall, "L'utilization industrielle des fleuves internationaux", *Recueil des cours de l'Academie de droit international de la Haye, 1953, II* (Leiden, A. W. Sijthoff, 1955), vol. 83, pp. 563–565).

[508] Also called Aastrang.

[509] The instruments of ratification were exchanged at The Hague on 14 December 1900.

[510] See E. G. Lagemans, *Recueil des Traités et conventions conclus par le Royaume des Pays-Bas avec les puissances étrangères depuis 1813 jusqu'à nos jours* (The Hague, Belinfante, 1901), vol. 14, p. 146. See also *Legislative Texts . . . (op. cit.)*, treaty No. 209.

[511] The Agreement came into force on 1 February 1907. It was partially amended by the Additional Act of 8 February 1911, which came into force on 1 May 1911.

[512] Switzerland, Federal Chancellery, *op. cit.*, vol. 14, p. 262. See also *Legislative Texts . . .(op. cit.)*, treaty No. 230.

(*d*) To occupy for purposes of fishing the submerged parts of the river banks or the submerged borders of the lakes, as also to construct walls, dikes or other obstacles on the banks (art. 6);

(*e*) To fish in the two lakes at the inlets or outlets of the watercourses within a radius equal to half the width of the watercourse measures at the mean water level plus 50 to 100 metres, depending on the size of the watercourse (art. 7);

(*f*) To use nets not inspected by the competent authority (art. 9);

(*g*) to agitate the bottom of the water, uproot aquatic plants or disturb stones covered with spawn (art. 10, first para.);

(*h*) To fish with harpoons during a certain part of the year (art. 10, second para.);

(*i*) To use narcotic or poisonous substances or explosives of any kind (art. 12). The Agreement also includes provisions concerning the minimum length of the fish and the close seasons for fishing and for the use of certain fishing methods (arts. 16, 17, 17 *bis*, 18 and 19).

636. *Protection of the waters.* It is unlawful to discharge or to allow the flow into the water waste material from factories or other substances which by reason of their nature and quantity could be harmful to fish or crayfish (art. 12, para. 5).

637. *Prohibition to drain watercourses (respect for acquired rights to the industrial or agricultural utilization of the water).* It is unlawful to drain the watercourses for the purpose of fishing. If such operations are required for other purposes, notice is to be given in good time to the competent authority and the proprietors or concessionaires of fishing rights. The competent authorities of each of the two States are to settle jointly the question of the extent to which rights acquired by legitimate possessors who use the water for industrial or agricultural purposes are to be subject to this prohibition (art. 13).

638. *Diversion of the water in the interests of fishing (respect for acquired rights).* The competent authorities of each of the two States are to decide jointly in which cases the interests of fishing are sufficiently important to justify the diversion of water harmful to fish and are to order the application of the measures required for that purpose, subject to the reservation of the rights acquired by legitimate possessors (art. 14, first para.).

639. *Construction of installations to allow passage of fish (respect for acquired rights).* Subject to the reservation of rights acquired by legitimate possessors, the competent authority may order the proprietors of dikes, dams, locks and other installations established for purposes other than fishing to take steps to ensure the passage of the fish (art. 14, second para.).

640. *Facilities for the restocking of fish and scientific research.* The two Parties undertake to facilitate the restocking of the frontier waters by means of fish-breeding stations for artificial insemination, incubation of eggs and the breeding of species recognized to be of value. The two States may authorize the establishment of such stations and grant them permission to capture and sell fish during the close period (art. 20). To facilitate scientific research, expressly designated persons may, by common agreement, be granted special licences exempting them from observing the provisions concerning the minimum length of the fish and the close periods (art. 21).

641. *Introduction of new species of fish (prior agreement).* In the absence of a special prior agreement, no new species of fish may be introduced into the common waters (art. 22).

642. *Co-operation between the Parties:*

(a) *Promulgation of regulations.* Each of the two States is to take the necessary steps for the implementation in its territory of the provisions of the Agreement, and is to promulgate, by agreement with the other State, regulations to that effect (art. 23, para. 1).[513]

(b) *Appointment of commissioners.* Each State is to appoint its own commissioner. These commissioners are to meet at least twice a year to discuss measures for the improvement of fishing. They are to inform their respective Governments of any proposed amendments or innovations (art. 23, second to fourth paras.).

Danube (Germany (Federal Republic of) and Austria)

Agreement[514] between the Government of the Republic of Austria and the Government of the Federal Republic of Germany and of the Free State of Bavaria concerning the Donaukraftwerk-Jochenstein-Aktiengesellschaft (Danube Power-Plant and Jochenstein Joint Stock Company) concluded on 13 February 1952[515]

643. The Agreement was concluded by the Parties to promote the joint development and utilization of water power on the frontier section of the Danube. For this purpose they established a Company to construct a dam on the Danube at Jochenstein and utilize it for the production of power. In so doing, the Company must take every precaution to avoid any material obstruction to navigation.

644. *Constitution and organization of an Austro-German Development Company.* The German "Rhine, Main and Danube Joint-Stock Company" as an undertaking of the Federal Republic of Germany and of the Free State of Bavaria, and the Austrian "Consolidated Network Company", as fiduciary for the Republic of Austria, establish, as principal shareholders, the "Danube Power-Plant and Jochenstein Joint-Stock Company". This company shall be a company under German law (articles 1 and 5). The provisions concerning the organization of the company are similar to those contained in the Agreement between Austria and Bavaria concluded on 16 October 1950[516] (articles 5–14).

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[513] See "Règlement de la pêche dans les eaux limitrophes entre la Suisse et l'Italie du 2 mai 1913" (Switzerland, Federal Chancellery, *op. cit.* (Berne, 1951), vol. 9. p. 586).

[514] The Agreement entered into force on 13 February 1952.

[515] See E. Hartig, *op. cit.*, annex 9, p. 65. See also *Legislative Texts ... (op. cit.)*, treaty No. 138.

[516] See paras. 503–510 above. This applies also to the provisions concerning the granting of water rights to the Company (art. 16), supervision of the exercise and fulfilment of the Company's rights and obligations (art. 23), co-operation between the States in the event of changes in their laws (art. 24), fishing rights (art. 21) and questions concerning taxes, facilities, and rights of access of personnel (articles 17–20).

645. *The construction and operation of installations for hydro-electric power and navigation.* The Jochenstein dam shall consist of a power plant installation together with a weir, drainage and other auxiliary facilities, and a navigation installation. The area of the dam on the German and the Austrian sides, beyond the common-frontier section of the Danube, is prescribed in the Agreement. The construction plans shall be prepared by the "Danube Power-Plant and Jochenstein Joint-Stock Company" on the basis of the preliminary work already carried out by the German "Rhine, Main and Danube Joint-Stock Company" and the Austrian "Consolidated Network Company". The plans shall obtain the approval of the competent Federal Ministries on both sides (art. 2). The Company shall construct the power-plant installation as the property of the Federal Republic of Germany or the Republic of Austria in accordance with the situation of those installations in relation to the German–Austrian frontier. The Parties shall, to the extent necessary for the construction and operation of the dam, place their property and property rights at the disposal of the Company without special compensation (art. 3). On the completion of the dam, the Federal Republic of Germany and the Republic of Austria shall assume responsibility for the operation and maintenance of the navigation installation. The Company shall bear the cost of operating and maintaining the power-plant installation (art. 4).

646. *Settlement of disputes (arbitration).* If a difference of opinion arises between Germany and Austria concerning the interpretation or application of the Agreement, the matter shall, at the request of either Party, be settled through arbitration by an arbitral tribunal. The Agreement lays down provisions dealing with the appointment of the arbitrators and the proceedings to be adopted by the arbitral tribunal (art. 25).

Dinkel, Vechte, Laar'sche Bruch, canals of the Emlichsheim and the Nordhorn–Almelo and the canals on the right bank of the Ems (GERMANY AND THE NETHERLANDS)

Convention[517] between the Netherlands and Prussia concerning the Dinkel and Vechte Rivers, signed at Berlin on 17 October 1905[518]

647. *Provisions concerning the Dinkel River:*

Flow of water. Servicing of culvert. Drainage. Water level. The Netherlands undertakes to ensure that the proposed culvert for the passage of the Dinkel River below the Nordhorn–Almelo Canal and the lock installed at the point of intersection of the Dinkel River with the aforesaid canal shall be serviced according to the provisions laid down in the Convention.[519] The draining of surplus water shall be carried out in such manner as to prevent any overflowing of the banks of the lower reaches of the Dinkel River. If it is necessary to lower the water level, either in order to allow repair works to be carried out or for other purposes, the opening of the gates of the river shall be effected gradually (art. I).

648. *Provisions concerning the river:*

Flow of water. Removal of a dam. Drainage. Upkeep of works. Prussia will cause a dike to be built and maintained along the left bank of the Vechte River. The Netherlands will take action to have the barrage dam standing in that area completely removed over a distance as laid down in the Convention and will cause the works to be carried out in the territory of the Netherlands, in connexion with the drainage of the left bank of the river Vechte. It will also take such measures as may be required to prevent the formation of new obstructions to the free flow of water below the barrage. Each State shall be responsible within its own territory for ensuring the permanent and satisfactory upkeep of the works. The works shall be inspected by a mixed commission (art. II).

649. *Provisions concerning the canals on the left bank of the Ems:*

Diversion of the water. Prussia agrees to take the requisite measures to ensure that no water in excess of the amounts required to feed the Prussian canals on the left bank of the Ems River shall be diverted from the Vechte river through these canals (art. III).

650. *Provisions concerning the Laar'sche Bruch:*

Drainage. Diversion of the water. The Netherlands raises no objection to the artificial drainage of the Laar'sche Bruch by means of the two culverts under the Coevorden Canal. Prussia guarantees that no water shall in the future be diverted from land being drained towards the Vechte river or the Piccardie–Coevorden Canal in such a manner as to cut through the watershed towards the Laarwold Wetering. However, during droughts it shall be permissible to conduct water from the Piccardie–Coevorden Canal to the Laar'sche Bruch for purposes of irrigation (art. IV).

651. *Provisions concerning the Emlichsheim Canal:*

Drainage. As soon as the regulation of the drainage system at the frontier has been completed as provided by the Convention, Prussia will take all requisite measures to ensure that any surplus water of the Piccardie–Coevorden Canal shall be conducted to the Vechte River by way of the Emlichsheim drainage canal (art. V).

652. *Provisions concerning the Nordhorn–Almelo Canal:*

Diversion of the water. Prussia guarantees that the navigation lock to be erected in the Nordhorn–Almelo Canal shall not be used for the diversion of flood waters from the Vechte River (art. VI).

Lake Dojran (GREECE AND YUGOSLAVIA)

(1) *Minutes of meetings held by delegations of the Federal People's Republic of Yugoslavia and the Kingdom of Greece from 23 to 30 March 1956 to discuss the water level of Lake Dojran, signed at Salonica on 31 March 1956[520]*

[517] The exchange of the instruments of ratification took place at Berlin on 3 August 1906.

[518] See E. G. Lagemans, *Recueil des traités . . . (op. cit.)* (1905), vol. 15, p. 36. See also *Legislative Texts . . . (op. cit.)*, treaty No. 210.

[519] The main purpose of those provisions is to ensure the quantity of water necessary for navigation (art. I, sections 1, 2 and 3).

[520] See Yugoslavia, *Federativne Narodne Republike Jugoslavije, Medunarodni Ugovori*, 1957, No. 63, p. 24. See also *Legislative Texts . . . (op. cit.)*, treaty No. 222.

653. Delegations of Greece and Yugoslavia met at Salonica in accordance with the co-operation as mentioned in the Exchange of Letters of 25 May 1954[521] to make provisions for maintaining Lake Dojran at its normal level. On the basis of the facts established (section I) and the technical considerations advanced (section II), the two delegations agreed on a number of points which were of interest to both Parties concerning in particular flood control and the accumulation and better utilization of the water (section III).

654. *Use of the water.* Greece has the right to use for its needs all the available water between the maximum and minimum levels provided for in the Minutes (section III, para. 1).

655. *Installations to regulate the flow of the water.* The installations on the Greek side for the regulation of the flow of the lake water are to be such as to maintain the maximum and minimum levels (section III, para. 2). Gauges for measuring the levels are to be installed (section III, para. 3).

656. *Gradual lowering of the level of the lake.* The Greek delegation undertakes not to allow the situation to be aggravated by a rise in the level of the lake and, further, to begin steps immediately for its gradual lowering (section III, paras. 5 and 6).

657. *Technical co-operation (experts, exchange of information).* With a view to the equitable solution of problems which may arise in the future, it is essential to ensure the co-operation of experts from the two countries and to facilitate the exchange of technical, statistical and scientific information. It is also essential that the two Parties should inform each other of any measures to be taken which might influence the régime of the lake waters (section III, para. 4).

(2) *Minutes of meetings held by delegations of the People's Federal Republic of Yugoslavia and the Kingdom of Greece from 26 August to 1 September 1957 to work out a procedure and plan for co-operation in making hydro-economic studies of the drainage area of Lake Dojran, Stari Dojran, 1 September 1957*[522]

658. After adopting an agenda of nine items concerning hydro-economic studies of the drainage area of Lake Dojran and the procedure and plan for co-operation in carrying them out (section A), the two delegations reached a number of findings and conclusions (section B).

659. *Topographical Works.* The two delegations agreed on the installation of a common bench-mark on the frontier line in the vicinity of the lake to be inscribed with two absolute data of altitude, each of which is to be connected with the levelling network of each country. A topographical chart of the drainage canal of the lake is also be be drawn up (section B, I).

660. *Hydrological studies.* Agreement was also reached on the installation of meteorological, evaporimetric, heliographic and limnigraphic stations and on ways of measuring the flow of the lake's tributaries. It was recognized that a study of the level of the subterranean waters would be useful. Each country is to organize and carry out such a study in its own territory (section B, II).

661. *Pedological studies.* Each country is to carry out in its territory pedological studies of the cultivable land in the drainage area of the lake. It is also recognized that research concerning the lake bed would be useful (section B, III).

662. *Agronomic studies.* Studies of the present agricultural development of the drainage area of the lake and studies to determine the amount of water required for the irrigation of different crops are to be carried out by each country within its own territory (section B, IV).

663. *Studies concerning fishing.* The usefulness of studies concerning the present exploitation of fishing operations and possible improvements is recognized. Such studies, carried out separately by each in its own territory, should serve as a basis for regulations governing fisheries and the protection of fish (section B, V).

664. *Protection of the lake from alluvial accumulations.* Each country is to undertake for its own territory studies with a view to conserving the lake as a permanent water reservoir by protecting it from alluvial deposits (section B, VI).

665. *Studies concerning the present uses of the water and floods.* Studies of the present uses of the lake water for various purposes and of the damage caused by floods are to be carried out by each country in its own territory (section B, VII).

666. *Co-ordination of operations.* The two delegations are to submit to their respective Governments proposals concerning the establishment of a joint permanent technical body to ensure better utilization of the water of the lake (section B, VIII).

667. *Exchange of findings already established.* The competent services of the two countries are to proceed as soon as possible to exchange findings already established concerning water levels, the depth and duration of rainfall in the lake basin, the temperature and rate of evaporation of the water and the discharge coefficient in the lake basin (section B, IX).

Dollard (Germany and the Netherlands)

Agreement[523] *between the Netherlands and Prussia to regulate the building of dikes on the Dollard, concluded at Leer on 23 September 1874*[524]

668. This Agreement was concluded with a view to the building of dikes to control flooding in both parts of the Dollard. It also regulates drainage in the area of the frontier

[521] See para. 529 above.

[522] See Yugoslavia, *op. cit.*, 1958, No. 8, p. 75. See also *Legislative Texts ... (op. cit.)*, treaty No. 223.

[523] The Agreement entered into force in March 1875.

[524] See E. G. Lagemans, *Recueil des traités ... (op. cit.)* (1878), vol. 7, p. 67. See also *Legislative Texts ... (op. cit.)*, treaty No. 206.

between the province of Groningen (Netherlands) and the province of East Frisia (Germany). The drainage systems of these two provinces are to be entirely separate: Groningen is to be drained exclusively towards the frontier river Aa, while East Frisia is to be drained exclusively towards the German river Ems.[525]

669. *Construction of works for flood control.* To protect the two States from the Dollard floods, the Government of the Netherlands undertakes to construct a new lock in its territory and authorizes the Government of Prussia to connect with this lock a polder dike which the latter undertakes to build. These improvement works are to be undertaken simultaneously (art. II).

670. *Approval of the works programme.* A works programme, annexed to a draft contract signed by the commissioners of the two countries, is approved by the two States (art. II, *in fine*). The Agreement specifies the year in which the work is to be carried out (art. VI).

671. *Apportionment of expenses.* Each State is to carry out at its own expense and without requesting any contribution from the other part of the work agreed upon which is to be done in its own territory (art. III).

Doubs (France and Switzerland)

Convention[526] between France and Switzerland respecting the Chatelot Falls Concession on the Doubs, signed at Paris on 19 November 1930[527]

672. This Convention was concluded with a view to the harnessing of the falls known as the Chatelot, which affect a section of the course of the Doubs where the latter constitutes the frontier between France and Switzerland.[528] Applications for the concession for these falls with a view to the development of the hydro-electric power available on the Doubs had been made simultaneously in France by the Compagnie Générale d'Electricité at Paris and in Switzerland by the Société d'Electricité et de Traction at Bâle on behalf of and for the account of an international group.

673. *Granting of deeds of concession. Sole concessionaire.* The Convention, after recognizing that the hydraulic power of the falls can be developed only by a single generating station, concludes that the plant in question should be established by a sole concessionaire.[529]

674. *Distribution of the power produced by the generating station to be constructed.* The power output is divided equally between the two States granting the concession. Each of these States uses its share as it sees fit and in accordance with the principles of its own legislation; the operator, however, retains the right to export to one State power reserved to the other, if the latter has no need for it in its own territory (art. 5).

675. *Planning and execution of the works project (prior agreement).* The plan for the construction of the installations is to be drawn up by the concessionaire (art. 3). The Convention sets forth certain essential technical particulars concerning the waterfall which is the subject of the concession (articles 1 and 2). The concessionaire's draft plan is to be submitted to the two Governments and may not be carried out until they have approved it.

676. *Supervision of the work. Establishment of a mixed commission.* The Convention provides for the establishment of a mixed commission to supervise the execution of the work. It is to be composed of four members. The two Governments undertake to carry out within their respective territories the decisions adopted unanimously by the commission (art. 10). The Governments reserve the right to prescribe changes in the draft plan after it has been approved (art. 3).

677. *Supervison of operation and upkeep of installations.* All the installations are to be maintained and operated by the concessionaire. Their operation is to conform to regulations agreed upon by the two Governments with a view to fulfilling certain conditions prescribed by the Convention (art. 2). The discharge and intake installations are to be operated in such a way as to maintain the benchmarks established up-stream and to reduce to a minimum variations resulting from the flow of the water down-stream; general interests are not to be jeopardized, particularly the normal operation of down-stream plants[530] (art. 4). Supervision is to be carried out in accordance with the conditions laid down in the deeds of concession, each Government to provide the officials of the other State with all the requisite facilities (art. 11).

678. *Terms of the deeds of concession.* The two Governments are to communicate to each other their decisions concerning the deeds of concession and the latter are not to go into effect until the two countries have signified their agreement to the terms laid down (art. 6). Provisions concerning the time-limits allowed for the execution of the work, renewal, redemption and the lapsing or expiry of the concessions are the subject of articles 6, 7 and 8 of the Convention.

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[525] See article I of the Agreement. The Moorschloot is the subject of provisions relating to a special regularization scheme.

[526] The Convention entered into force on 12 July 1932 upon exchange of the instruments of ratification.

[527] See *British and Foreign State Papers, 1930*, second part (London, 1935), vol. 133, p. 487. See also *Legislative Texts . . . (op. cit.)*, treaty No. 199.

[528] That part of the river between the Saut-du-Doubs and the Graviers.

[529] The provisions of the Convention of 1930 are simpler than those of the earlier Convention (see paras. 818–826 below, "Convention for the regulation of relations between Switzerland and France with regard to certain clauses of the juridical régime governing the future diversion of water from the Rhine at Kembs, signed at Berne on 27 October 1926") and the spirit underlying them is entirely different. In the case of the Chatelot Falls there were no grounds for discriminating between the French and the Swiss applications for the concession and giving one preference over the other. Thus, the prevailing principle was that of agreed action by the two Governments (see J. L'Huillier, *op. cit.*, p. 698).

[530] It is interesting to note that a distinction is made between damage which is tolerable by reason of the good-neighbourly relations existing between the two countries and more serious damage affecting the general interests of the other party (see G. Sauser-Hall, *op. cit.*, p. 574).

Douro (Spain and Portugal)

Convention[531] *between Spain and Portugal to regulate the hydro-electric development of the international section of the River Douro, signed at Lisbon on 11 August 1927*[532]

679. Spain and Portugal, desirous of regulating the development of the international section of the river Douro with a view to the production of electric power, appointed a Mixed Commission, which prepared a draft on the basis of which the two States subsequently concluded this Convention. They thus supplemented the Agreement relative to the industrial utilization of the waters of the boundary rivers between the two States contained in the Exchange of Notes of 29 August and 2 September 1912.[533] The hydro-electric development of the international section of the Douro is carried out in the interests of both frontier States, in accordance with the Agreement of 1912. The rights of both frontier States on the international section of the river, defined in the Frontier Treaty of 29 September 1864[534] and in the annexed Regulations of 4 November 1866,[535] remain in force in so far as they are not incompatible with the provisions of the Convention. The jurisdiction of each State in the international section of the river extends up to the boundary fixed by the Treaty of 1864, i.e., the median line of the water, but the Convention regulates the industrial development of the section contiguous to the river as if it were a river crossing the two States, the boundary line not being taken into consideration.

680. *Distribution of hydro-electric power by zones.* Instead of establishing a condominium over the power resources of the international section of the Douro, the Convention divides the river transversely into two zones of development, one Portuguese, the other Spanish. It distributes the power capable of being developed on that section of the river by granting to the Parties the exclusive right of utilizing the entire fall in level of the river in their respective zones. Thus, Portugal has the exclusive right of utilizing the entire fall in level of the river in the zone included between the beginning of the international section and the confluence of the Tormes and the Douro, while Spain will have the exclusive right of utilizing the entire fall in level of the river in the zone included between the confluence of the Tormes and the Douro and the lower limit of the international section. Moreover, with a view to obtaining the full benefit of the fall caused by the barrage constructed on the Portuguese Douro, the Convention authorizes Portugal to utilize the necessary fall in level at the lower end of the international section, without, however, going beyond the mouth of the Huebra (art. 2, sub-paras. (*a*), (*b*) and (*c*)).

681. *Right to utilize water for the production of electric power.* Each State has the right to utilize for the production of electric power the entire volume of water which flows in the zone of development allotted to it, with the exception of whatever may be necessary for common needs (art. 2, sub-para. (*d*)).

682. *Prohibition from reducing the volume of water which should reach the zones of utilization of the river.* Both States undertake mutually not to reduce the volume of water which should reach, first, the beginning of the zone of utilization of the international Douro, that is, at the exit from Spanish territory, and then the beginning of the zone of utilization of the Portuguese Douro (art. 2, sub-para. (*e*)).

683. *Prohibition of the leading-off of water in the international section. Exceptions.* In the international section of the river, no part of the water used in virtue of the Convention may be led off except for reasons of public health or other special purposes and only after agreement between the two States (art. 8).

684. *Utilization of zones. Concessions.* Each State will undertake the hydro-electric utilization of its zone directly or by means of concessions granted in accordance with its laws. The Convention includes provisions relating to the constitution of the firms receiving the concession (art. 3). It is also anticipated that the concessionaires of the two zones may form a consortium (art. 20).

685. *Construction of works. Facilities for carrying out surveys.* All the works and installations necessary for the utilization of each zone must be situated on the territory of the State to which the zone is allotted. An exception is made for the dams, barrages or certain accessory works which have to be built in the bed or on the bank of the river belonging to the other State (art. 4). The two Governments shall reciprocally grant each other all the facilities necessary for carrying out surveys (art. 9).

686. *Declaration of public utility of works of development.* The two States declare to be of public utility all works which either Party may have to carry out for the hydro-electric development of the international section of the river (art. 6, first para.).

687. *Establishment of servitudes for development. Expropriations.* Each of the Parties undertakes to establish on a private footing, in favour of the works of the other Party, on Government lands within its territory, the servitudes with respect to reservoirs, dam-supports, off-lets or installations of any other kind whatsoever which may be necessary for the construction and operation of the works of development. The two States will proceed to carry out the necessary expropriations (art. 5).

688. *Priority of the utilization of the water for the production of hydro-electric power.* The two States will not recognize the river as a navigable waterway or one capable of being used for floating purposes in the zones of the international section, where such a character would be incompatible with the full use of the zones of hydro-electric development. Works constructed with a view to improving navigation must be carried out without interfering with the hydro-electric operations (art. 6, first para. *in fine* and second para.).

689. *Prior communication of development plans.* Each Government will communicate the development plans for its zone to the other Government before approving them,

[531] The exchange of instruments of ratification took place at Lisbon on 22 August 1927. The Convention came into force eight days after this exchange, in accordance with art. 23.

[532] See League of Nations, *Treaty Series*, vol. LXXXII, p. 131. See also *Legislative Texts ... (op. cit.)*, treaty No. 248.

[533] See paras. 583–588 above.

[534] See paras. 935 and 936 below.

[535] See paras. 937–942 below.

in order to avoid works being carried out in one zone which might prejudice the development and interests of the other zone (art. 10).

690. *Use of the power produced. Exportation of power. Surplus production of power.* The power belonging to each country will be used exclusively in the territory of that country and may not be transferred, leased or ceded to another country. Power may be exported from one State to the other by means of a special agreement, which must be based on the principle of reciprocity. In case of a surplus production of power, the two Governments will examine the manner in which this surplus can be applied (art. 12).

691. *Appointment of an International Commission. Composition. Duties.* With a view to facilitating the application of this Convention, a Spanish–Portuguese International Commission is appointed, to regulate the exercise of the rights recognized on either side and to decide the judicial or technical questions to which such rights may give rise. This Commission will be composed of three members appointed by the Portuguese Government and of three members appointed by the Spanish Government. The Commission will draw up its own Statute.[536] The Convention specifies the advisory, deliberative and supervisory duties of the Commission and its powers (articles 14–19).

692. *Settlement of disputes (arbitration).* The decisions of the International Commission on questions concerning its competence are taken by a majority vote. If no agreement has been reached within the Commission and if, further, the two Governments do not arrive at an agreement, the question will be submitted to an arbitral tribunal composed of the members of the Commission and presided over by an umpire (art. 21). Both Parties undertake also to submit to this arbitration procedure any dispute arising between the two States out of the application or interpretation of the Convention (art. 22).

Drava (Austria and Yugoslavia)

Convention[537] between the Government of the Federal People's Republic of Yugoslavia and the Federal Government of the Austrian Republic concerning water economy questions relating to the Drava, signed at Geneva on 25 May 1954[538]

693. The Convention provides for the utilization of the waters of the Drava for hydro-electric purposes with a view to preventing any harmful effects resulting from the mode of operation of the Austrian power stations of Schwabeck and Lavamünd and having regard to the diversion of water from the Drava basin.[539]

694. *Regulation of the flow from the Austrian Drava power stations (water flow; maintenance of frequency).* The Austrian Drava power stations will be so operated that the discharge below the Lavamünd power station is as provided in a table annexed to the Convention. Moreover, Austria will endeavour not to use the Schwabeck power station for maintaining the frequency. Where such use proves necessary in exceptional cases, however, it shall be so restricted as to comply with the provisions of the aforesaid table (art. 1, sub-paras. (*a*) and (*b*)).

695. *Waiver of claims for compensation arising out of the operation of the water economy in the past.* Yugoslavia will not press any claims for compensation which have arisen out of the manner in which the Schwabeck and Lavamünd power stations in Austria have hitherto been operated, or out of the diversion of water from the Drava basin. So long as the Yugoslav Dravograd power station remains in service, Austria will not press any claims for compensation in respect of the backing-up of water from the Dravograd power station into Austrian territory, or any other claims previously lodged in respect of the water economy of the Drava (art. 3, first and second paras.).

696. *Waiver of claims for compensation arising out of the water economy established by the Convention.* Yugoslavia will not press any claims for compensation which may in future arise out of the mode of operation of the Austrian power stations, provided that the provisions of the Convention are observed (art. 3, fourth para.).

697. *Austrian alteration of the river régime (prior consultation).* Should Austria seriously contemplate plans for new installations to divert water from the Drava basin or for construction work which might affect the Drava river régime to the detriment of Yugoslavia, Austria undertakes to discuss such plans with Yugoslavia prior to legal negotiations concerning rights in the water. If no agreed settlement can be reached by discussion, either directly or in the Joint Commission created by the Convention, the matter will be referred to the Court of Arbitration, the constitution of which is laid down in the Convention (art. 4).

698. *Establishment of a permanent joint commission.* A permanent Joint Drava Commission is established for the exchange of information and the achievement of agreement on all questions of common interest relating to the water economy of the Drava (art. 5). The terms of reference, composition and powers of the Commission are dealt with in a statute annexed to the Convention. It is provided that in the event of any major alterations in the Yugoslav Drava power stations or in the Drava river régime, either party may apply to the Joint Commission for amendment of the conditions (art. 1, sub-para. (*c*)).

699. *Settlement of disputes.* If there is disagreement on the interpretation or application of any of the provisions of the

[536] Statute to govern the procedure of the International Commission established by the Convention between Spain and Portugal of 11 August 1927 to regulate the hydro-electric development of the international section of the River Douro (see Portugal, Ministry of Foreign Affairs, Aproveitamento Hidroeléctrico do Troso International do Rio Douro (Lisbon, 1955), p. 60).

[537] The Convention entered into force on 15 January 1955 by an exchange of notes. According to article 2 of the Convention, both Governments approve a power and equipment supply contract concluded between the Österreichische Elektrizitätswirtschafts A.G. and the Elektroenergetski sistem Slovenije, dated 15 April 1954, the text of which is appended to the Convention.

[538] See United Nations, *Treaty Series*, vol. 227, p. 128. See also *Legislative Texts ... (op. cit.)*, treaty No. 144.

[539] The Convention was concluded in accordance with the decisions taken at the meetings held by the two Governments at Bled on 29 February 1952, at Velden on 10 May 1952 and at Opatija on 10 July 1953. In accordance with article 6 of the Convention, the Protocols of the meetings mentioned will be used as supplementary material for the interpretation of the Agreement, in so far as they are not at variance with it.

Convention, the question will be referred to a Court of Arbitration. Each Government appoints one member to the Court of Arbitration, whereas the Chairman is designated by agreement between the two Governments. If, within three months of the request of either Party for the convening of the Court, all the members of the Court have not been appointed, the remainder will, at the request of either Party, be appointed by the Executive Secretary of the United Nations Economic Commission for Europe (art. 7).

Espierres canal and Roubaix canal (BELGIUM AND FRANCE)

Arrangement[540] *between Belgium and France to facilitate the feeding of the Espierres canal, signed at Paris on 14 May 1884*[541]

700. *Feeding of water to the canal.* The French administration undertakes never to permit intakes to be re-established in the Roubaix canal (Scheldt bank) for industrial, agricultural or any other uses. All the surplus water which might be led into the Roubaix and Leers canals by the difference in fall of the various locks of the Roubaix canal must be used to feed the Espierres canal, to the exclusion of any other use (art. 1). The French and Belgian administrations will be responsible for the feeding of water to the canal and will see to the working of the locks. Moreover, they will decide by agreement on the works to be carried out.[542]

Flanders (waters of) (BELGIUM AND THE NETHERLANDS)

Convention[543] *concluded between Belgium and the Netherlands for regulating the drainage of the waters of Flanders, signed at Gand on 20 May 1843*[544]

701. Concluded in execution of article 8 of the Treaty of Peace between Belgium and the Netherlands, signed at London on 19 April 1839,[545] this Convention is concerned with the regulation of the questions raised by the utilization and administration of certain canals and locks that drain the waters of Flanders (Belgium) towards Netherlands territory.[546]

702. *Alterations in the drainage works (prior agreement).* The dimensions of the canals and the outlet of the works used in Belgium to drain the water of Flanders towards Netherlands territory may not be increased without the consent of the Netherlands Government. Likewise, the dimensions or outlets of the works on Netherlands territory which are used to drain the same water may not be decreased without the consent of the Belgian Government. However, changes whose sole purpose is to facilitate or alter the flow of the water, without damaging the properties concerned, may be made with the consent of the appropriate Belgian and Netherlands provincial administrations (articles 38 and 39).

703. *Carrying out of the works (application of local regulations).* The Belgian drainage works administrations are required to comply with the Netherlands regulations, as regards works to be carried out on Netherlands territory (art. 37).

704. *Maintenance policing of works in the territory of the other Party.* The Belgian drainage works administrations are authorized to take charge of the care of their works which have to be maintained on Netherlands territory (art. 40).

705. *Technical co-operation.* The provincial authorities of the two Flanders (Belgium) and of Zeeland (Netherlands) and the administrative staffs of the polders included in a single drainage works will communicate directly with each other in all matters concerning water drainage (art. 42).

706. *Settlement of disputes.* If difficulties arise among drainage works, polders or the members of a joint management concerning the execution or application of the Convention, the question will be submitted to a Commission, entrusted with the task of bringing about an agreement between the parties or deciding by a plurality of votes. Should the votes be equally divided, the matter will be referred to the two Governments (articles 43 and 44).

Gandvik, Fuglevatn, Kallo and Näätämö[547] **and Förstevannene, Garsjöen and Kjerringvatn lakes** (FINLAND AND NORWAY)

Agreement[548] *between the Governments of Finland and Norway on the transfer from the courses of the Näätämö River to the course of the Gandvik River of water from the Garsjöen, Kjerringvatn and Förstevannene Lakes, signed at Oslo on 25 April 1951*[549]

707. *Agreement between the up-stream State and the down-stream State for the diversion of water for the production of hydro-electric power.* The Agreement provides for the transfer from the river Kallo (Finland) a tributary of the Näätämö river, to the course of the Gandvik river, of water from the Garsjöen, Kjerringvatn and Förstevannene lakes, in connexion with the operation of the electric power station to be built at Gandvik (Norway) (preamble).

708. *Consent of the up-stream State (Finland).* Finland shall raise no objection to the closing of the natural outflow of the Garsjöen, Kjerringvatn and Förstevannene lakes by dams or otherwise, or to the diversion of water from these

[540] The substance of this Arrangement is an agreement between the Minister for Public Works of France and the Espierres Canal Company concluded at Paris on 28 February 1884.

[541] See G. F. de Martens, ed., *op. cit.*, 1887, 2ème série, tome XII, p. 621. See also *Legislative Texts ... (op. cit.)*, treaty No. 148.

[542] An indemnity is granted to the Espierres Canal Company for the relinquishment of these properties and rights (articles 2 and 4 of the Convention).

[543] The exchange of the instruments of ratification took place on 29 June 1843.

[544] See García de la Véga, *Recueil des Traités et conventions concernant le Royaume de Belgique*, vol. 1, 1850, p. 323. See also *Legislative Texts ... (op. cit.)*, treaty No. 155.

[545] See paras. 893 and 894 below.

[546] The Convention includes provisions relating to: the utilization of the Terneuzen canal for the drainage of water and for navigation (section I); drainage of water from land situated to the right and to the left of the Terneuzen canal (sections II and III); the Isabelle drainage works (section IV); the Capitalen-Dam drainage works (section V); the Slippendamme drainage works (sections VI and VII) and the Pas-Sluis drainage works (section VIII).

[547] Also called Neiden.

[548] The Agreement entered into force on the day of signature.

[549] Finland, *Finlands Författningssmalings, Fördragsserie, Överenskommelser Med Främmande Makter, 1951* (Helsinki, 1952), No. 8, p. 24. See also *Legislative Texts ... (op. cit.)*, treaty No. 168.

lakes through pipes to the Fuglevatn or any of its tributaries (art. 1).

709. *Compensation to be paid by the down-stream State (Norway).* Norway shall compensate Finland for any loss of water power which may be caused and for the cost of the clearing operations, by an over-all payment fixed by the Agreement (art. 2, sub-para. (*c*)).

710. *Measures for the conservation and protection of fish (ascent of salmon).* The two States shall try to reach agreement on uniform conservation and similar measures for the protection and care of the fish in the Näätämö river (art. 2, sub-para. (*d*)). Norway shall take steps to facilitate the movement of salmon up-stream past Kaltaakoski on the Näätämö river so that the fish can gain access to the upper reaches of the river. The plans for the installations shall be laid down by experts designated by Finland. The work shall be carried out at the expense of Norway (art. 2, sub-para. (*a*)). Finland shall arrange for the removal of a number of boulders and holms obstructing timber-floating along the Näätämö river and the frontier between Finland and Norway (art. 2, sub-para. (*b*)).

Gorizia (supply of water to the commune of)
(ITALY AND YUGOSLAVIA)

Agreement between the Government of the Italian Republic and the Government of the Federal People's Republic of Yugoslavia concerning the supply of water to the commune of Gorizia in accordance with annex V, paragraph 5 of the Treaty of Peace with Italy, and Exchange of Notes, signed at Nova Gorica on 18 July 1957[550]

711. Italy and Yugoslavia concluded this Agreement with a view to continuing to maintain the water supply of Gorizia, which until then had been regulated by the Rome Agreement of 26 July 1954[551] in accordance with annex V, paragraph 5, of the Treaty of Peace with Italy of 10 February 1947.[552] The installations at Mrzlek or Fonte Fredda (Yugoslavia) will continue to maintain the supply of water to that part of the commune of Gorizia, which, under the terms of the Treaty of Peace, remained in Italy.[553]

712. *Methods of supplying water.* The Uprava Goriških Vodovodov of Nova Gorica, which manages the installations at Mrzlek (Fonte Fredda) will supply water to the commune of Gorizia through a conduit which leads the water to the reservoir situated on the château of Gorizia (art. 2).

713. *Amounts of water to be supplied.* The Agreement specifies the annual maximum volume of water to be supplied, the proportion in which the water is distributed, and the cubic metres to be supplied daily. The volume is computed on the basis of the amount which has been customarily supplied to the commune of Gorizia in the past. The amount of water supplied will be measured by meters installed on both sides of the boundary (art. 5).

714. *Supply of greater amounts of water than anticipated.* Should it become necessary to supply greater amounts of water than those specified, a joint commission as provided by the Agreement will consider the question and make appropriate proposals to the Governments (art. 4, first para.).

715. *Reduction in the water available.* If, for any reason whatever, the water coming from the Mrzlek (Fonte Fredda) springs should happen to be reduced, the amount actually available will be distributed between the commune of Gorizia and Yugoslavia in the same proportions. If the reduction is due to other than natural causes, the commune of Gorizia and the Uprava Goriških Vodovodov of Nova Gorica, each in its own territory, will do whatever is necessary to re-establish normal service as quickly as possible (art. 4, second and third paras.).

716. *Development and maintenance of springs and installations (full output; regularity; continuity).* The commune of Gorizia and the Uprava Goriških Vodovodov of Nova Gorica will see to the development and maintenance of the springs and installations situated on their respective territories, in order to ensure a full output and to guarantee the regularity and the continuity of the water supply (art. 6).

717. *Water purification.* The Uprava Goriških Vodovodov of Nova Gorica will continue to ensure the continuous and regular purification of the water in the installations at Mrzlek (Fonte Fredda). The joint commission provided for in the Agreement will see to the application of those methods and systems and, if necessary, may modify them in accordance with modern principles of public health technology. There is provision for reference to public health experts (art. 7).

718. *Charges for water.* The Agreement fixes the charges for the water supplied for the consumption of the commune of Gorizia (art. 9). The terms of payment are also established by the Agreement (art. 10).

719. *Continuation of the duties of the joint commission established in 1954 (right of access).* In order to ensure the practical application of the Agreement, the Joint Commission established by the Agreement of 26 July 1954 is confirmed in its duties. It is made up of two representatives of each party and may secure the service of experts (art. 11). The Agreement lists the powers of the Commission (art. 12). The members and experts may have access, on condition of prior agreement, to all installations (art. 13).

Lake Inari (FINLAND AND THE USSR)

Additional Protocol[554] *between the Union of Soviet Socialist Republics and Finland concerning compensation for loss and damage and for the works to be carried out by Finland in connexion with the implementation of the agreement of*

[550] See Italy, *Raccolta Ufficiale delle Leggi e dei Decreti della Repubblica Italiana, 1957* (Rome, Istituto Poligrafico dello Stato, 1959), vol. 13, p. 5060. See also *Legislative Texts . . . (op. cit.)*, treaty No. 236.

[551] See Italy, *Raccolta Ufficiale delle Leggi e dei Decreti della Repubblica Italiana, 1954* (Rome, Istituto Poligrafico dello Stato, 1955), vol. 13, p. 4580. The Agreement of 26 July 1954 expired on 15 September 1957.

[552] See para. 492 and foot-note 439 above.

[553] The new Agreement does not mention the Krombeck (Moncorona) stream. Through natural causes dating from 1933, this stream is gradually diminishing. Nevertheless, the volume of water guaranteed by the Agreement remained unchanged in comparison with that provided for by the Agreement of 26 July 1954 (see the exchange of notes annexed to the Agreement).

[554] The Protocol entered into force on 29 April 1959, on signature.

29 April 1959[555] *between the Government of the Union of Soviet Socialist Republics, the Government of Finland and the Government of Norway concerning the regulation of Lake Inari by means of the Kaitakoski hydro-electric power station and dam, signed at Moscow on 29 April 1959*[556]

720. *Sum paid by the USSR (compensation for damage; payment for cost of work).* The Soviet Government has paid to the Finnish Government a specified lump sum to compensate for loss and damage caused by the regulation of the level of Lake Inari, and to pay for the cost of the work carried out by Finland under the Agreement concluded between the USSR, Finland and Norway on 29 April 1929. Consequently, Finland assumes full responsibility with respect to the authorities, private persons and corporate bodies in Finland for such loss and damage (art. 1).

Lake of Lugano and Tresa (ITALY AND SWITZERLAND)

Convention[557] *between Italy and Switzerland concerning the regulation of Lake Lugano, signed at Lugano on 17 September 1955*[558]

721. This Convention was concluded for the purpose of protecting the area surrounding Lake Lugano from periodic flood damage caused by flood waters from the lake. It aims to improve control of the level of the lake. Italy and Switzerland agreed to take steps for the regulation of Lake Lugano in accordance with a plan and control regulations submitted by the Federal Water Service at Berne[559] (art. I).

722. *Regulation works to be carried out.* The regulation works comprise: (*a*) correction of the Lavena narrows; (*b*) the control dam at La Rochetta; (*c*) correction of the Tresa between Ponte-Tresa and Madonnone (art. II).

723. *Execution of the regulation works. Utilities.* The Swiss canton of Ticino is responsible for executing the works. The Council of State of the Canton is to make arrangements, in consultation with the Italian authorities, to publish works plans and award contracts. The Convention also provides for measures to facilitate the execution of the works (art. IV).

724. *Recognition as a work of public interest. Expropriations.* The two Parties recognize the regulation of the lake as a work of public interest. Consequently, each accords with respect to its own territory the right to expropriate such land as may be necessary for the execution, operation and maintenance of the works and also any rights which may conflict therewith (art. III).

725. *Operation of the dam to be constructed.* Switzerland undertakes to operate the dam and to comply with the control regulations (art. VIII).

726. *Apportionment of the cost of execution, maintenance, protection and operation of the works.* The total cost of the control works and the maintenance of the dam is to be borne by Switzerland. Italy undertakes to bear the total cost of protecting the banks of the Tresa in Italian territory. Italy and Switzerland undertake to maintain at their own expense the banks and channel of the Larena narrows and of the Tresa in their respective territories (art. V and IX). The cost of operating the dam is borne by Switzerland (art. VIII, para. 2).

727. *Establishment of a Joint Supervisory Commission. Powers of arbitration.* The two Governments will establish a joint Supervisory Commission. While the works are under construction, the Commission is to be responsible for approving the programmes of work and supervising the execution of the works. It will render periodic reports to the Governments on the progress of the works. After the inspection of the works, the Commission will be empowered to examine and settle any question concerning the application of the control regulations, the operation of the dam and the maintenance and renewal of the works. The Commission shall take its decisions by unanimous vote but the Convention provides for an arbitration procedure where the Commission fails to reach a unanimous decision (art. VI).

728. *Measures to prevent the obstruction of regulation or damage to the bank belonging to the other State (in the judgement of the Supervisory Commission).* Within its own territory, each Government ensures that, in the event of the construction or alteration of any civil engineering works such as fixed fishery or irrigation installations, or hydraulic works on the Lavena narrows or the international reaches of the Tresa, the necessary precautions are taken to prevent any obstruction or interference with the regulation of the lake or any damage to the bank belonging to the other State. Plans for such work will be submitted to the authorities of the two countries, which will consult the Supervisory Commission (art. X).

729. *Settlement of disputes (International Court of Justice).* Any dispute concerning the interpretation or application of the Convention which cannot be settled by direct negotiation may, at the request of either Government, be submitted to the International Court of Justice (art. XI).

Maritza-Ebros (GREECE AND TURKEY)

Agreement[560] *between Greece and Turkey concerning the control of hydraulic works on both banks of the River Maritza-Ebros (signed at Ankara on 20 June 1934)*[561]

730. *Preservation and maintenance of existing works (notice).* The Agreement lists the existing works on the river which will be removed. All other existing works will be preserved and maintained pending the conclusion of a joint study, provided by the Agreement, in which a final decision will be taken on their fate. Maintenance work cannot be carried out unless ten days' advance notice[562] is given to the other Party (part I).

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[555] See paras. 447–452 above.

[556] See United Nations, *Treaty Series*, vol. 346, page 212. See also *Legislative Texts . . . (op. cit.)*, treaty No. 176.

[557] The Convention entered into force on 15 February 1958, the date of the exchange of the instruments of ratification at Rome.

[558] See United Nations, *Treaty Series*, vol. 291, page 218. See also *Legislative Texts . . . (op. cit.)*, treaty No. 234.

[559] See D. A. Caponera, *op. cit.*, p. 274.

[560] The Agreement was ratified by Turkey on 25 May 1935 and by Greece on 1 October 1936.

[561] See Greece, *Greek Official Gazette* (Athens, 27 October 1936), No. 474. See also *Legislative Texts . . . (op. cit.)*, treaty No. 220.

[562] The periods of notice referred to do not imply a request for consent and approval by the Party addressed, but are intended simply to inform the frontier authorities of the planned operation (part III, clause 6).

731. *Hydraulic works to be carried out. Notice. Special agreements. (Consolidation works, works for protection and rectification, surveys).* The Agreement specifies in detail the nature of the work which either Party is free to undertake by giving one month's notice.[562] These are the frontal defences of banks, dykes and jetties. Hydraulic works for the consolidation of the main bed of the river will be executed by progressive stages in accordance with a joint survey. Both States will undertake on the joint part of the river works to consolidate the banks of the main bed, taking into account the effect of the principal affluents and subsidiary arms of the river on the level of the main bed. In the event of a survey in connexion with such work showing the need for a rectification of the course of the main bed, such rectification can only be decided by a special agreement between the two Parties. Isolated works of an emergency nature may be carried out by either Party in accordance with a preliminary plan which must be submitted to the other Party for approval. The study and execution of major hydraulic works for the general control of the river as a protection against major flooding are postponed, but the two Parties agree to install forthwith hydraulic observation posts (part II). The Agreement contains provisions concerning the procedure to be followed for the preparation of surveys and the execution of the works provided for, as well as rules concerning mapping, hydraulic observations and measurement of the rate of flow, which are necessary for the preparation of the above-mentioned surveys (part III, clauses 1, 2, 3 and 4).

732. *Rules governing conditions for fishing.* Both Parties will jointly prepare and apply a special set of regulations governing the conditions for fishing in the waters of the main bed of the river. These regulations must contain stipulations forbidding the use, and providing for the removal of, fixed devices which affect the flow of water and alter its course (part III, clause 5 (*a*)).

733. *Steps to facilitate the flow of water.* Since the bed of the river is in many places overgrown by trees and bushes in such a way as to hinder the flow of water and to cause disturbances in the stream, the joint survey to be carried out by the Parties must provide for adequate clearance (part III, clause 5 (*c*)).

734. *Supervision of the execution and maintenance of works. Notification. Facilities. Stoppage, demolition or modification of works.* When the work is begun, the Party concerned will notify the other Party, so as to enable the latter to inspect the work while in progress and upon its completion. Inspection will consist of verifying on the spot that the work fulfils the conditions stipulated in the agreement or laid down by the approved surveys and plans. The Party concerned undertakes to grant the inspectors of the other Party all facilities necessary for the accomplishment of their task. If it is considered after examination that the work does not meet the conditions laid down, the Party concerned, having received due and proper notice, will be bound to stop the works in progress or, within a time-limit fixed by the notification, to demolish or modify the work in question (part IV, first and second paras.).

735. *Settlement of disputes (Permanent Court of International Justice).* Any dispute which may arise between the Parties in connexion with the interpretation of the application of the Agreement will be settled, by arbitration after agreement to that effect, by the Permanent Court of International Justice in accordance with article 22 of the Treaty of Friendship, Neutrality, Conciliation and Arbitration between Turkey and Greece of 30 October 1930. The Agreement contains provisions concerning the resumption of the work or the restoration of work, as well as damages and costs incurred as a result of the stoppage of work or the demolition and reconstruction of work, once the decision of the Court has been given (part IV, third, fourth and fifth paras.).

Meuse (Belgium and the Netherlands)

Treaty[563] between Belgium and the Netherlands to regulate the régime of the diversion of water from the Meuse, followed by an explanatory note,[564] signed at The Hague on 12 May 1863[565]

736. This Treaty was concluded for the purpose of settling finally and permanently the régime of the diversion of the water from the Meuse in order to feed the navigation and irrigation canals.[566] The provisions concerning the discharge of water from the irrigation works carried out in Belgium were modified by the Convention between Belgium and the Netherlands signed at Brussels on 11 January 1873.[567]

737. *Construction of new works (water supply, irrigation). Apportionment of cost.* A new water intake from the Meuse will be built below Maastricht to feed all the canals situated below that town, and for the irrigation of the Campine area and the Netherlands (art. 1). The replacement of certain sluices and canal improvement works are also provided for (articles 2 and 9). The cost of the installations and works will be met jointly (art. 10).

738. *Allocation of the amount of water to be removed.* Of the amount of water to be removed from the Meuse laid down by article 4 of the Treaty, the volume allotted to the canals and irrigations works of the Netherlands are determined

[562] See page 145.

[563] The instruments of ratification were exchanged on 14 July 1863.

[564] The explanatory note relates solely to regulation works to be carried out in order to improve the navigability of the Meuse between Maastricht and Venlo, in accordance with the provisions of article 9 of the Treaty.

[565] See G. F. de Martens, ed., *op. cit.*, 1876, 2ème série, tome I, p. 117. See also *Legislative Texts ... (op. cit.)*, treaty No. 157.

[566] See the decision dated 28 June 1927 made by the Permanent Court of International Justice concerning the waters of the Meuse, paras. 1022–1033 below. For an account of the question of the diversion of the waters from the Meuse, see H. A. Smith, *The Economic Uses of International Rivers* (London, P. S. King, 1931), p. 24.

[567] In accordance with article 2 of the Convention of 11 January 1873, Belgium undertook to pay a certain amount of the cost of improving the River Dommel and its tributaries or other watercourses situated in Netherlands territory which were to receive water from Belgian irrigation works for discharge into Netherlands territory without Belgium incurring any liability to the Netherlands riparian population on that account. The Convention is accompanied by a declaration by the Belgian and Netherlands Governments on matters concerning the implementation of the Treaty of 12 May 1863. The instruments of ratification of the Convention of 1873 were exchanged on 14 February 1874 (for the text of the Convention, see G. F. de Martens, ed., *op. cit.*, p. 123, or *Legislative Texts ... (op. cit.)*, treaty No. 158).

(art. 5). If subsequently the Netherlands considers it advisable to undertake works making it necessary to increase the amount of water to be diverted from the Meuse at Maastricht, the assistance of Belgium to ensure the discharge of the water will be the subject of negotiation between the Governments of the two countries (art. 11).

739. *Prohibition of the diversion of rivers from their natural course.* Belgium will leave as they are, or restore to their natural courses, streams and watercourses which rise in Belgium and flow into Netherlands territory (art. 7).

740. *Prohibition of the construction of certain works on the frontier section of the river.* By extension of the provisions of article 10 of the Convention between Belgium and the Netherlands fixing the frontiers between the two Kingdoms on 8 August 1843,[568] works of such a kind as to modify the flow cannot be constructed with a specified distance from the thalweg of the Meuse, where the river forms the frontier, except by joint agreement (art. 12).

Miño (Spain and Portugal)

Regulations[569] for fishing in the Miño River, drawn up by a Mixed Spanish–Portuguese Commission pursuant to article 5 of Appendix VI to the Treaty of Commerce and Navigation between Spain and Portugal of 27 March 1893,[570] Madrid, 15 May 1897[571]

741. According to article 5 of Section I of Appendix VI to the Treaty of Commerce and Navigation between Spain and Portugal of 27 March 1893, the fisheries in the boundary river Miño will continue to be carried out in common by Portuguese and Spaniards, in accordance with the provisions and regulations which may be agreed upon by the respective Governments. The Regulations provided for the fishing in the Miño in accordance with those provisions. The Regulations shall have effect from the bar of the river to the point at which the river ceases to be an international waterway.

742. *Exercise of fishing rights. Limitations.* Fishing operations on the Miño River may be performed by Spaniards and Portuguese nationals, subject to observance of the rules established by the Regulations (chap. I, art. 1). The prohibition of fishing by Portuguese fishermen immediately off the Spanish shore and by Spanish fishermen immediately off the Portuguese shore is maintained (chap. I, art. 2).

743. *Fishing licences.* No vessel may engage in fishing on the river unless it is registered and authorized for that purpose. The harbour masters at La Guardia and Caminha issue licences for fishing (chap. I, articles 3–10). Existing stationary traps intended exclusively for fishing shall be registered at the office of the harbour master at La Guardia or Caminha (chap. VII).

744. *Rules governing fishing methods, tackle and trammel nets, and the periods when fishing is prohibited.* The regulations contain stipulations concerning the nets and tackle which are permitted for fishing operations (chap. II), fishing seasons (chap. III), casting of nets (chap. IV) and rotation of casting (chap. V). A rotation arrangement, when two fleets of fishing vessels (*quebradas* or *cobradas*), one Spanish and the other Portuguese, meet at the same bank or shoal, is provided for (chap. V, art. 2). Fishing with dynamite or any substance which poisons water or stuns fish shall be punishable (chap. VIII, art. 24). All illegally caught fish which is seized shall be sent immediately to the nearest charitable institution (chap. VIII, art. 25).

745. *Violation of the rules. Compensation for damage.* If any violation of the Regulations causes damage to third parties, the offender shall compensate the party sustaining the damage. The amount of the compensation to be paid shall be determined by the competent maritime authorities (chap. IX, art. 2).

746. *Policing of fisheries.* The maintenance of order and the policing of the river, as well as the measures to ensure strict observance of the provisions of the Regulations, shall be the responsibility of the gunboat commanders of the two countries, who shall operate in co-ordination with their respective port authorities. The master of a vessel shall always be of the same nationality as the vessel, except temporarily in the case of a hired vessel. However, in both cases, the entire crew must consist of persons having the same nationality as the owner, or, at most, one quarter of the crew may consist of foreign subjects. The master shall always be held responsible for any violation of the Regulations committed on board of his vessel, unless the offenders themselves submit to their maritime authorities (chap. VI). The Regulation also provides for disciplinary sanctions and fines in cases of violations of its rules (chap. VIII).

747. *Amendments to the Regulations.* The maritime authorities at La Guardia and Caminha and the gunboat commanders shall submit annually to their respective Governments a report including such observations as they deem appropriate concerning the application of the Regulations. The Governments shall agree to make such changes therein as they consider necessary (chap. IX, art. 3).

Lake Mont-Cenis (France and Italy)

Provisional Agreement[572] and Exchange of Notes between France and Italy regarding the operation of the Gran Scala power station, signed at Rome on 12 January 1955[573]

748. Practical difficulties were encountered in the application of the clauses of the Peace Treaty of 10 February 1947 relating to the Mont-Cenis hydro-electric installations,[574] under which France was to operate the installations on behalf of and in the interests of Italy. It was in order to put an end to these difficulties that the agreement of 12 January

[568] See paras. 975–977 below.

[569] Approved by an exchange of notes of the same date. Promulgated at Madrid and Lisbon on 17 and 19 May 1897. Revised by exchanges of notes of 14 September 1901 and 20 February 1904.

[570] See para. 971 below.

[571] See Marquis de Olivart, *Colección de los Tratados, Convenios y Documentos Internacionales* (Madrid, Fernandote, 1903–1904), vol. 12, p. 115. See also *Legislative Texts . . . (op. cit.)*, treaty No. 244.

[572] The Agreement entered into force on the day of signature, its provisions taking effect retrospectively as from 1 April 1948, in accordance with the provisions of article 5 of the Agreement.

[573] See Italy, *Gazzetta Ufficiale della Republica Italiana* (Rome, 17 January 1956), 97th year, No. 13, p. 162. See also *Legislative Texts . . . (op. cit.)*, treaty No. 181.

[574] See para. 491 (*c*) above.

1955[575] was concluded. Under this Agreement, whereby Italy is granted, in accordance with the provisions of the Peace Treaty, all the electrical power produced by the Gran Scala power station, provided always that local needs are satisfied, a simpler régime is established regarding the operation of the installations and the relevant guarantees.

749. *Operation of the hydro-electric installations by Italy.* The present Mont-Cenis hydro-electric installations, including the Gran Scala power station, which are situated in French territory, shall no longer be operated by France on behalf of Italy, but by Italy itself, under the conditions provided for in paragraph A of annex III of the Peace Treaty. The Italian Government shall assume responsibility for all expenses relating to the maintenance or renewal of the installations (art. 2). The operation of the installations shall be entrusted to an Italian concessionary company, the "Société hydro-électrique du Piémont", which is designated in the letters accompanying the Agreement. Consequently, France is freed of the guarantees to which its operation of the installations was subject. It is, however, stipulated that France shall reassume the corresponding obligations in the event of the development of Lake Mont-Cenis[576] (art. 2, *in fine*).

750. *Compensation to be paid by Italy.* The surrender, under the Agreement, of the administration of the installations operated for Italy's benefit does not involve any surrender by France of its rights to the property. France remains the owner of the power station and the holder of the right to use the power generated. Italy and its concessionaire are entitled only to the use thereof. In return for the use of the electric power produced by the Gran Scala power station, Italy has undertaken to pay to France a fixed annual sum stated in the Agreement and subject to revision every five years (art. 3).

751. *Joint Technical Commission.* The Agreement provides for the continued existence of the Joint Technical Commission set up under annex III of the Peace Treaty of 1947. Under the Agreement, the Commission is responsible for supervising the observance of the clauses of the Agreement, in co-operation with the competent French technical services (art. 4).

Muonio and Tornea[577] (Finland and Sweden)

(1) *Convention[578] between the Republic of Finland and the Kingdom of Sweden concerning the joint exploitation of the salmon fisheries in the Tornea (Tornio) and Muonio rivers, and Regulations concerning fishing in the fishery zone of the Tornea (Tornio) river,[579] signed at Helsingfors on 10 May 1927[580]*

752. The object of this Convention is, according to article I, the joint utilization, for the profit of the two Contracting States, of the salmon fisheries in the Tornea and Muonio rivers, from the mouth up-stream for as far as those waterways form the boundary between Sweden and Finland and as far as salmon ascend them.[581]

753. *Protection of common interests (salmon runs).* Salmon and salmon trout fishing shall be forbidden in that part of the coastal archipelago situated opposite the mouth of the Tornea. A free passage shall be left so that fish shall not be prevented from going up-stream (art. II).[582]

754. *Distribution of catch.* Each of the two Contracting States shall be entitled to half the yield of the fisheries (art. III).

755. *Operation of the fisheries (fishery leases, public auctioning of fishing rights, concessions, fishing permits).* The Convention specifies how the fisheries shall be jointly operated according to the different types of tackle used (art. V). Leases for the operation of the fisheries by means of large fishing appliances shall be offered to the landowners of the villages enumerated in the Convention. If the offers fail to result in the conclusion of leases, either with the landowners or with groups of landowners, the fishing rights shall be put up for public auction (art. VI). The rights for the operation of the less important fisheries shall be granted on application to a certain type of land-owning community, offered on lease to such a community or its members, or granted to a private person who has applied for a concession (art. VI). The right to fish with spinners and similar appliances shall be granted on payment of the fee for a fishing permit (art. VIII). Before the conclusion of a lease, measures shall be taken to prevent damage which might result from timber-floating (articles VI and VII, *in fine*).

756. *Formation of associations of lessees.* If fishing rights

[575] This Agreement was concluded in a simplified form by the Président du Conseil of France and the Minister for Foreign Affairs of Italy and was presented by its signatories as a provisional agreement which reserved questions of fact and law at present pending without prejudice to any final solution of the question of the fate of the Gran Scala power station which might be sought by the two Governments.

[576] "This clause concerns the possibility of new developments which the French Government might be led to undertake with a view to using Lake Mont-Cenis as a reservoir for supplying hydro-electric power stations situated on the western slope of the Alps. It would be easy, by means of engineering works carried out on French territory, to raise the level of this lake and increase the flow of water which it could supply, by leading into it water drawn off from the river Arc or its upper tributaries. Such use by the French of Lake Mont-Cenis, which is at present the subject of technical studies, would have the consequence of reimposing on France a number of obligations that would be equivalent to—but, as the 1955 Agreement seems to admit, not identical with—those it had assumed in 1947. It would no longer be the purpose of such obligations to ensure, in accordance with Italy's needs, the operation of water catchment works henceforth to be operated by a concessionaire of the Italian State, but of not hindering the satisfaction of such needs through the operation of its own works for water intake. The construction of such works would necessitate the conclusion of technical agreements similar, *mutatis mutandis*, to those made necessary by France's utilization of Lake Lanoux. It would be necessary to settle the extremely delicate problems due to the simultaneous existence, in the same reservoir, of two masses of water which are physically indistinguishable but legally earmarked for the needs of two different States." (See J. L'Huillier, *op. cit.*, p. 707.)

[577] The Tornea river is also called the Tornio.

[578] The Convention entered into force on 1 January 1928.

[579] These Regulations lay down detailed conditions governing fishing in the Tornea river (see League of Nations, *Treaty Series*, vol. LXX, p. 233). Article 7 of the Regulations has been modified by the Declaration signed at Stockholm on 16 February 1933 (see G. F. de Martens, ed., *op. cit.* (Leipzig, Hans Buske, 1934) 3rd series, vol. 28, p. 805).

[580] See League of Nations, *Treaty Series*, vol. LXX, p. 228. See also *Legislative Texts ... (op. cit.)*, treaty No. 171.

[581] With the exception, however, of the Sompaisenniska, Alainen Korpikoski, Syvakoste and Muuraissaari fisheries in Sweden and the Hellelä and Tuoppolansaari fisheries in Finland.

[582] With a view to meeting the cost of supervision, each of the two Contracting States shall grant an annual credit determined by the Convention (art. X).

have been conceded on a lease, the lessees, if not less than five in number, shall be bound to form an association. The rules of the association must conform with the legislation on economic associations and co-operative undertakings in force in the country in which the headquarters of the association are situated. If the number of members is less than five, the provisions concerning the obligations incumbent on them shall be inserted in the lease (art. IX).

757. *Removal of hindrances to timber-floating. Compensation.* Certain fixed fishing appliances shall be removed, since they interfere with the floating of timber. Other appliances may also be removed at the request of the "Timber-floating Association of the frontier rivers of Tornea and Muonio". The said Timber-floating Association shall pay to the Contracting States compensation for the loss of fishery rents due to the discontinuance of the fisheries (art. IV).

758. *Establishment of a fish hatchery to be managed by a Board.* The two Contracting States shall jointly construct, maintain and operate a hatcheries establishment, which shall be managed by a Board. The expense thereby involved shall be met out of the yield of the charges paid for improving the fisheries by the "Timber-floating Association of the frontier rivers of Tornea and Muonio" (art. XI).[583]

759. *Co-operation between the Parties (fishing and timber-floating interests).* The provincial administrations referred to in the Convention shall respectively represent the two Contracting States on all questions concerning the joint fisheries. Before the fisheries are put out to lease, the said provincial administrations shall cause a joint Commission to enquire into the conditions of the lease. The Commission shall also see that the interests both of the fisheries and of timber-floating are duly taken into consideration and safeguarded (art. XIII).

(2) *Agreement[584] between the Kingdom of Sweden and the Republic of Finland concerning timber-floating in the Tornea and Muonio frontier rivers, signed at Stockholm on 17 February 1949[585]*

760. *Utilization of rivers for timber-floating.* Timber-floating in the Tornea and Muonio frontier rivers shall be permitted both to the two Contracting States and to individuals and bodies corporate of those States in accordance with the provisions of the Regulations[586] annexed to the Agreement (art. I).

761. *Facilities concerning the delivery of timber by floating (Customs duties; taxes; right of access).* Timber shall be exempt from all Customs formalities and from import and export duties, on condition that it is delivered to the State from which it was brought to the floatway. The same applies to equipment and material for floating operations (art. II). The timber-floating association[587] shall be exempt from the obligation to pay taxes in respect of income from timber-floating operations or the capital assets necessary for the conduct of those operations (art. III). The two States shall permit persons who are responsible for managing or participating in the work of timber-floating to cross the frontier, and shall grant them all the necessary facilities (art. IV).

762. *Tax levied on timber for the purpose of preserving fish stocks.* For the purpose of preserving fish stocks, each cubic metre of timber floated shall be subject to a tax defined in the Agreement. This tax shall be levied on the timber-floating association, and the proceeds thereof shall upon request be handed over to the Board mentioned in article XI of the Convention of 10 May 1927 concerning the joint operation of the salmon fisheries in the Tornea and Muonio rivers, as amended by the Declaration of 16 February 1933[588] (art. V).

763. *Settlement of disputes (diplomatic channel, conciliation).* Any disputes that may arise between the two States and cannot be settled by negotiation shall be dealt with as provided in the Convention of 27 June 1924 between Sweden and Finland on the establishment of a conciliation board (art. VI).[589]

The Mura and certain of its tributaries
(AUSTRIA AND YUGOSLAVIA)

Agreement[590] between the Federal People's Republic of Yugoslavia and the Republic of Austria concerning water economy questions in respect of the frontier sector of the Mura and the frontier waters of the Mura, together with the Statute of the Permanent Yugoslav-Austrian Commission for the Mura, signed at Vienna on 16 December 1954[591]

764. The Parties concluded this Agreement in order to settle water economy questions, measures, works and substantial effects brought about by the diversion of water or by pollution, in respect of the frontier sector of the Mura and all tributaries of the Mura which form or intersect the frontier between both States.

765. *Establishment of a Permanent Mixed Commission.* All those questions, which are considered to be of interest to both States, shall be dealt with by a Permanent Yugoslav-Austrian Commission for the Mura established for this purpose. The terms of reference, the composition and the

[583] As amended by the Declaration signed at Stockholm on 16 February 1933 (see G. F. de Martens, ed., *op. cit.*, p. 806). See also para. 762 below.

[584] The Agreement entered into force on 9 July 1949. This Agreement replaces the "Declaration agreed to between Russia and Sweden on July 3/June 20, 1917, to regulate the floating of timber down the Tornea and Muonio rivers" (see G. F. de Martens, ed., *op. cit.* (Leipzig, Theodor Weicher, 1919), 3ème série, tome IX, p. 743), which was recognized by the exchange of notes of 10 May 1920 between Sweden and Finland (see League of Nations, *Treaty Series*, vol. II, p. 141).

[585] See United Nations, *Treaty Series*, vol. 197, p. 148. See also *Legislative Texts . . . (op. cit.)*, treaty No. 172.

[586] "Regulations concerning timber floating in the floatway of the Tornea and Muonio frontier rivers". These Regulations contain, among other provisions, detailed stipulations concerning the widening of the floatway, the timber-floating association and its activities, damage resulting from timber-floating operations, persons engaged in timber-floating, and penalties for unlawful operations.

[587] See articles 9–21 of the Regulations.

[588] See para. 758 and foot-note 583 above.

[589] See G. F. de Martens, ed., *op. cit.* (publication of the Institut de droit public comparé et de droit des gens) (Leipzig, Theodor Weicher, 1926), 3ème série, tome XIV, p. 656.

[590] The Agreement entered into force on 9 February 1956 by the exchange of instruments of ratification.

[591] See United Nations, *Treaty Series*, vol. 396, p. 100. See also *Legislative Texts . . . (op. cit.)*, treaty No. 145.

procedure of the Commission shall be as laid down in a Statute which is annexed to the Agreement. The terms of reference of the Commission shall accordingly comprise, in particular, water regulations, the erection of high-water embankments, protection against flooding and ice, the utilization of water power, changes in the régime of the river, the reclamation of riparian areas, water supply, pollution by effluents, ferries and bridges (art. 1). Both States shall endeavour to facilitate the activity of the Commission (art. 8).

766. *Maintenance and improvement of existing installations.* Austria and Yugoslavia undertake to maintain in their existing condition, and where necessary to improve the condition of, the water installations.[592]

767. *Extraction of gravel and sand from the river-bed in frontier waters (previous agreement).* The extraction of gravel and sand from sandbanks between the regulation lines for river engineering purposes shall be permitted in the frontier sector, regardless of the position of such banks in the river bed, subject to a previous agreement between the two engineering administrations. The consent of the Commission shall be required for extraction for other purposes (art. 4).

768. *Warning of high water and other dangers.* The local authorities of both parties shall advise each other, by the quickest possible means, of any danger from high water or ice and of any other impending danger which comes to their notice (art. 7).

769. *Settlement of disputes (arbitration).* Questions on which the Commission fails to reach agreement shall be submitted to the Governments of the two States. If the two Governments fail to agree on the interpretation or application of the Agreement, the question at issue shall be referred to a court of arbitration for decision. Each Government shall appoint one member to the court of arbitration. The Chairman shall be appointed by agreement between the two Governments. If all the members of the court of arbitration have not been appointed within three months after the submission of a request, the remainder shall, at the request of either State, be appointed by the Executive Secretary of the United Nations Economic Commission for Europe. Unless otherwise agreed, the procedure followed before the court of arbitration shall be that laid down in the Convention for the Pacific Settlement of International Disputes signed at The Hague on 18 October 1907[593] (art. 10).

The Niers and the Guelder Niers canal (Germany and the Netherlands)

Convention between the Netherlands and Germany concerning the improvement and maintenance of the lower Niers and the Guelder Niers canal, signed at The Hague on 16 May 1895[594]

770. *Improvement and maintenance works.* The Convention contains precise provisions concerning improvement and maintenance works on certain parts of the Niers and the Niers canal. These provisions cover the width of drains, the slope of embankments, the slope of the bed, the opening of sluice-gates to avoid flooding the land, the slope of the banks, cleaning works, the maximum draining flow and the installation of levelling bench-marks (articles I–V).

771. *Establishment of inspection commissions.* Inspection commissions shall see that the provisions of the Convention are carried out. The conclusions of these commissions shall be put on record in an official report and submitted to the two Governments (art. VI).

Our (Germany (Federal Republic of) and Luxembourg)

State Treaty between the Grand Duchy of Luxembourg and the Land *Rhineland Palatinate in the Federal Republic of Germany concerning the construction of hydro-electric power installations on the Our, with Annexes, signed at Trier on 10 July 1958*[595]

772. *Construction and operation of hydro-electric power installations.* With a view to regulating the water resources of the German-Luxembourg frontier, the two countries agree to construct and operate hydro-electric power installations on the Our. The installations shall consist of a storage lake and a power plant in the Our, an elevated storage basin on the Nikolausberg, and a storage power plant. Additional installations shall be subject to new negotiations (art. 1).

773. *Utilization of the waters for the production of hydro-electric power ("most effective possible utilization").* The two countries agree to utilize, for the purpose of operating power installations, the water of the Our in the vicinity of Vienden and to strive for the most effective possible utilization of the power resources available (art. 1).

774. *Concession granted to a Luxembourg company for the construction and operation of the installations. Deed of concession.* The two countries agree to authorize a Luxembourg Company, the "Société Electrique de l'Our", to construct and operate hydro-electric power installations (art. 1). The concessions granted to the Company, setting forth its rights, conditions and obligations, is attached as an annex and constitutes an integral part of the Treaty (art. 2 and annex I). Under the terms of the concession, the Company shall acquire a vested right which shall also be exercisable with respect to third parties and may not be infringed. The Company shall fulfil the conditions of the concession. Installations built on the river shall remain the property of the concessionnaire, even though the river and its banks are not its property (art. 2, second para.).

775. *Protection of German interests.* The German interested parties shall be given an appropriate voice in the Company as regards the management, security and economic efficiency of the installations covered by the concession (art. 9).

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[592] The Agreement contains provisions dealing with the apportionment of expenses (art. 2, para. 2), exemption from taxes and Customs duties for the necessary construction materials and equipment (art. 3) and facilities relating to the procedure for crossing the frontier (art. 6).

[593] See G. F. de Martens, ed., *op. cit.* (Leipzig, Librairie Dieterich, 1910), 3ème série, tome III, p. 360.

[594] See E. G. Lagemans, *Recueil des traités ... (op. cit.)*, 1895, vol. 12, p. 176. See also *Legislative Texts ... (op. cit.)*, treaty No. 208.

[595] *Mémorial du Grand Duché de Luxembourg* (Luxembourg, Victor Buck, 1959), No. 25 (11 June 1959). See also *Legislative Texts ... (op. cit.)*, treaty No. 202.

776. *Declaration that the installations are of public interest.* The two countries take note that the installations affect the public interest and general welfare of both countries. They therefore undertake to carry out the measures required to ensure the completion, operation and maintenance of the project (art. 3).

777. *Compensation for damage.* The Company shall take practical measures to reduce the damage to a minimum and shall, if necessary, make appropriate compensation to the required parties. Compensation proceedings shall not affect the construction and operation of the power plant (art. 4 and annex II).

778. *Facilities relating to the transmission of the power produced.* The Treaty provides facilities concerning the transmission of power by both countries (articles 6 and 7).

779. *Allocation of contracts by the concessionary Company. Guarantees for the Parties.* Nothing shall be done to prevent the Company from awarding its contracts on the basis of commercial and technological considerations or from giving preference to those firms which are best able to guarantee completely satisfactory service at competitive prices. Nevertheless, in letting contracts for the construction of the installation covered by the concession, reasonable consideration shall be given to the Luxembourg and German economies (art. 8).

780. *Primacy of the provisions of the Treaty.* The Treaty being a special arrangement, shall take precedence over all other legislation of the Parties and over any articles of association of companies (art. 10).

781. *Settlement of disputes (arbitration).* Any disputes arising out of the Treaty shall be settled by an arbitral tribunal. The composition, proceedings and costs of the tribunal are regulated by the Treaty (art. 11).

Paatsojoki[596] (Norway and the USSR)

Agreement[597] between Norway and the Union of Soviet Socialist Republics on the utilization of water-power on the Pasvik (Paatso) River, signed at Oslo on 18 December 1957[598]

782. The object of the Agreement is the utilization of the water-power of the Pasvik River, situated on the frontier between the two countries, "for their mutual benefit on the basis of an equitable apportionment ... of the rights to utilize this water-power".

783. *Allocation of rights of utilization with a view to the production of hydro-electric power.* The Soviet Union shall have the right to utilize the water-power in the lower and upper sections of the Pasvik River, while Norway shall have the right to utilize water-power in the middle section of the river (art. 2).

784. *Construction and operation of works and installations.* For the purposes of utilizing the water power allocated to each Party, the Agreement defines the right of the Soviet Union (art. 3) and of Norway (art. 4) to construct and operate water-power installations. Such installations include water-lifting dams with discharge channels and power stations with inlet and outlet channels. The position of the installations in Soviet and Norwegian territory shall be as shown on a map annexed to the Agreement. During the construction of the installations, the consent of the Parties must be obtained for any alterations affecting their interests. The lands on which the water-power installations are built shall be made available free of charge for use by the Party having the right to construct and operate the said installations. Such land shall be surveyed and marked in accordance with a supplementary agreement between the Parties (articles 5 Party and 6).

785. *Facilities granted with a view to the construction of the installations (rights of storage, right to use of materials, right of access).* While the construction of the water-power installations is in progress, each Party shall authorize the other to use land in its territory that may be required for storage and to extract and use the materials found there (sand, gravel, clay, stone) (art. 7). Unimpeded access to the installations shall be ensured to the nationals of the other who are concerned in such work (art. 8).

786. *Previous notice concerning the commencement of the work.* The Party constructing the installations provided for in the Agreement shall inform the other Party of the beginning of the work not later than two months beforehand and shall at the same time furnish the other Party with a time-table for the execution of the work (art. 15).

787. *Compensation for damage (unavoidable and unforeseen damage).* The Agreement draws a distinction between unavoidable damage on the one hand and unforeseen damage on the other. Compensation will not be paid for unavoidable damage caused by the construction of the (Soviet) installations in the lower section of the river or of the (Norwegian) installations in the middle section of the river (articles 9 and 10). The Soviet Union shall, however, pay compensation to Norway for unavoidable damage caused to Norwegian territory or to Norwegian interests by flooding in connexion with the construction and operation of the water-power stations in the upper section of the river (art. 11). Compensation for unforeseen damage shall be paid by the Party which carries out the construction or operation of the installations which caused the damage (art. 12).

788. *Protection of timber-floating.* It shall be the duty of the Parties to provide timber-aprons at the water-power installations. Each Party may in future, and at its own expense, construct, operate and maintain timber-floating installations at the water-power plants of the other Party (art. 14).

789. *Measures for the prevention of overflows.* In the operation of the water-power installations, the water level in the intake reservoirs of the dams shall not exceed the prescribed embankment limits. The dam-control machinery shall be kept in good condition and spillways shall not be blocked (art. 16).

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[596] Also called Pasvik.

[597] The Agreement entered into force on 27 June 1958.

[598] See United Nations, *Treaty Series*, vol. 312, p. 274. See also *Legislative Texts ... (op. cit.)*, treaty No. 239.

Pommeroeul (Canal) at Antoing and the Calonne, Mâcon and Verne de Bury streams (BELGIUM AND FRANCE)

Arrangement between Belgium and France concerning the regulation of the outflow of the highwater level of the Pommeroeul canal at Antoing, signed at Paris on 31 May 1882[599]

790. *Outfall (previous notice;* force majeure*).* The Belgian administration shall not carry out any drainage of the high-water level of the Pommeroeul Canal at Antoing through the streams which act as discharge channels, namely, Mâcon, Verne de Bury and the Calonne, unless it has notified the French Hydraulic Service at least three months in advance, except in cases of *force majeure*, because the overflow of these waters affects French territory (art. 1). Moreover, the run-off will be so conducted as to avoid discharging into those streams a volume of water greater than they can carry (art. 2).

Pruth (ROMANIA AND THE USSR)

Convention[600] *between the Government of the Union of Soviet Socialist Republics and the Government of the Romanian People's Republic concerning measures to prevent floods and to regulate the water régime of the river Pruth, signed at Kishinev on 25 December 1952*[601]

791. The purposes and contents of the Convention are similar to those of the Convention between the Government of the Union of Soviet Socialist Republics and the Government of the Hungarian People's Republic concerning the River Tisza, signed on 9 June 1950, mentioned below.[602]

Reno di Lei and other rivers situated in the Averserrhein basin (ITALY AND SWITZERLAND)

Agreement[603] *between Italy and Switzerland on the Reno di Lei hydraulic power concession, with Additional Protocol, signed at Rome on 18 June 1949*[604]

792. After the Second World War, the Italian Edison Company made plans to use the hydraulic power of the Reno di Lei by diverting its waters into another river located on Italian territory. Since an agreement was subsequently reached with the Swiss Company, Rhätische Werke für Elektrizität, the Edison plan was discarded and replaced by a new project for the utilization of the generating power of the river for the benefit of Italy and Switzerland; for that, however, an agreement between the two States was necessary.[605] The Governments of Italy and Switzerland, having received an application for the concession of the generating power of the Reno di Lei and other watercourses situated in the Averserrhein basin, recognized by that Agreement that the project jointly submitted by the Edison and Rhätische Werke für Elektrizität companies for the development in one generating station only of the water-power of sections of Italian and Swiss watercourses would ensure the rational utilization of such power. They noted at the same time, however, that the harnessing and utilization of the hydraulic power should constitute the subject of an international agreement taking account of the differences in the legislation of the two countries. The conclusion of the Agreement led to a rectification of the Italo-Swiss frontier in the Val di Lei.[606]

793. *Provisions relating to the construction of works for the production of electrical power and to the allocation of the power produced:*

(a) *Construction of a dam and power-station by the concessionnaire.* The concessionnaires of the two Governments will erect on the Reno di Lei, several kilometres above the point where this river flows into the Averserrhein, a large dam to form a collecting reservoir in the Val di Lei.[607] The deeds of concession will fix the same absolute figure for the maximum height of the water level (art. 1). A power-station for the production of electrical power will be constructed near Innerferrera (art. 2, second para.).

(b) *Equipment of the dam for protection against floods.* The dam is to be constructed in such a way as to offer maximum security and is to be equipped to enable flood-water to flow away. Outlets must be provided to enable the level of the collecting reservoir to be lowered (art. 2, first para.).

(c) *The preparation of the project and its execution. Inspection (Supervisory Committee).* The project for the execution of the work is to be drawn up by the concessionnaire. It must contain the concessionnaire's proposals for replacing the land which will be submerged by the collecting reservoir, with the aim of restoring the agricultural economy of the region.[608] The scheme may not be carried out until the two Governments have given their approval (art. 3). The two Governments are to exercise control over the work (art. 4, first para.) through a supervisory committee of four members appointed by the Swiss and Italian Governments (art. 10).

(d) *Operation and maintenance of the works.* All works are to be operated and maintained by the concessionaire (art. 4, second para.).

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[599] See G. F. de Martens, ed., *op. cit.* (Göttingen, Librairie Dieterich, 1883), 2ème série, tome VIII, p. 446. See also *Legislative Texts ... (op. cit.)*, treaty No. 146.

[600] The Convention entered into force on the date of its signature, according to article 15 of the Convention.

[601] See U.S.S.R. Ministry of Foreign Affairs, *Sbornik deistvuiushchikh dogovorov, soglashenii i konventsii, zakliuchennykh SSR s inostrannymi gosudarstvami*, vol. XV, p. 21. See also *Legislative Texts ... (op. cit.)*, treaty No. 251.

[602] See paras. 866–870.

[603] The Agreement entered into force on 23 April 1955.

[604] See Switzerland, *Recueil officiel des lois et ordonnances de la Confédération suisse*, Year 1955, p. 611. See also *Legislative Texts ... (op. cit.)*, treaty No. 231.

[605] See D. A. Caponera, *op. cit.*, p. 276.

[606] See *Convention concernant une modification de la frontière dans le Val di Lei*, signed at Berne on 25 November 1952, in Switzerland, *Recueil officiel des lois et ordonnances de la Confédération suisse*, Year 1955, p. 629.

[607] This reservoir will collect the natural flow of the Reno di Lei, water taken from the Averserrhein, the Madrisenheim and the Emetbach, which will be brought to it by an underground pipe, and also water pumped from a balancing reservoir near Innerferrera (art. 1, second para.).

[608] See the exchange of notes of 23 April 1955 concerning the facilities granted with a view to making better use of the alpine pastures which the concessionnaire of the two Governments would have to give to the "Consorzio della Valle di Lei" (see *Recueil officiel des lois et ordonnances de la Confédération suisse*, year 1955, p. 618, or *Legislative Texts ... (op. cit.)*, treaty No. 233).

(e) *Allocation of the electrical power produced. Transport and export of power.* Taking into account the water and gradients to be used on the respective territories, it is agreed that 70 per cent of the hydraulic power produced shall be attributed to Switzerland and 30 per cent to Italy. Each of the two States is to have the right, in that proportion, to the electrical power produced by the generating station. The Agreement also contains provisions concerning the transport and export of the power produced (art. 5). The additional Protocol amplifies some of the provisions relating to the export of electrical power to Italy (Protocol, section 2).

794. *Provisions concerning the granting of rights to use water power:*

(a) *Deeds of concession (approval, alterations, transfer, withdrawal).* Rights to use water power are to be granted, in the territory of each of the two States, by the competent authorities. The two deeds of concession must be based on identical plans and the conditions of the concessions must be fixed so that they agree on all points which concern the interests of the two States (art. 6). The two Governments are to transmit to each other their decisions with regard to the deeds of concession and these are to become operative only when the two Governments have reached agreement on the conditions set. The same is to apply to any subsequent alteration of the provisions of the deeds of concession and to any transfer of a concession or withdrawal of the operation rights granted (art. 7).

(b) *Causes of the lapse of concessions.* In the case of failure to complete the power-station, interruption of its operations or any other cause of non-performance as prescribed in the deeds of concession, the two Governments will jointly take appropriate measures and if necessary grant a new concession (art. 8).

(c) *Re-examination of the question before expiry of the concessions.* Ten years before the period covered by the concession expires, the two Governments are to agree on whether: (*a*) the operation of the generating station should be continued after that period has expired; (*b*) the operation of the generating station should cease (art. 9).

(d) *Inspection during the period of operation.* During the period of operation, inspection will be carried out according to the conditions laid down in the deeds of concession. Each Government will assist the officials of the other State in carrying out their inspection duties (art. 11).

795. *Settlement of disputes (diplomatic channel; arbitration).* If a dispute arises between the two Governments with regard to the application or interpretation of the Agreement or of one of the concessions referred to in the Agreement, and if it has not been settled within a reasonable period of time through diplomatic channels or by other amicable means, it is to be submitted to an arbitration tribunal, the award of which will be binding. This tribunal is to consist of two members and a referee. The Agreement lays down the procedure to be followed for the appointment of the referee. In addition, it is expressly provided that any difference concerning the interpretation or execution of the award of the arbitration tribunal is to be submitted for judgement to that same tribunal (art. 13).

Rhine (lower reaches of the Old Rhine)
(GERMANY AND THE NETHERLANDS)

Treaty[609] between the Kingdom of the Netherlands and the German Empire concerning the raising of the level of the former mouth of the Old Rhine near Lobith, signed at Berlin, on 29 August 1918[610]

796. *Discharge of water as a protection against floods.* The Netherlands shall be entitled to close off the old mouth of the Rhine near Lobith to the flow at high water (art. 1).

797. *Execution of works. Costs.* Any works which may be necessary in the Netherlands Territory for the closing off of the old mouth of the Rhine shall be carried out by the Netherlands Government at its sole discretion and at its sole expense (art. 2). Neither State shall be required to contribute to the maintenance of works carried out in the territory of the other State[611] (art. 5).

798. *Raising the level of the river.* The Netherlands Government shall be required to raise the level of the old mouth of the Rhine so that the Rhine waters cannot run off through the old Rhine (art. 3).

Rhine (GERMANY AND SWITZERLAND)

(1) *Convention[612] between Switzerland and the Grand Duchy of Baden regarding navigation on the Rhine from Neuhausen to below Basle, signed at Basle on 10 March 1879[613]*

799. This Convention was concluded with the object of regulating suitably the use of the waters of the Rhine, from Neuhausen to below Basle, in accordance with the legislation in force in the two countries, particularly as regards industry and the requirements of communications. In addition to navigation, the provisions of the Convention deal with timber-floating and the installation of hydraulic works. The provisions relating to timber-floating appear to have been confused with those relating to navigation.

800. *Provisions concerning timber-floating:*

(a) *Right to float timber. Conditions for the exercise thereof.* All persons are allowed to engage in timber-floating. It is subject only to the restrictions imposed by tax and Customs regulations or by police requirements for the safety and regularity of communications. Exclusive private rights to float timber are abolished (art. 1). Persons engaged in timber-floating will not be subject to the payment of any due based solely on the fact that the water of the river is used (art. 3).

(b) *Regulation of timber-floating by the police (preliminary agreement).* The two Governments shall issue, each for its

[609] The exchange of ratifications took place at Berlin on 28 August 1922.

[610] See G. F. de Martens, ed., *op. cit.* (publication of the Institut de droit public comparé et de droit des gens) (Leipzig, Theodor Weicher, 1926), 3ème série, tome XIV, p. 472.

[611] However, notwithstanding the provisions of article XI of the frontier treaty of 7 October 1816 (see para. 889(*a*) below), if the angle of the dike near Bimmen in Prussia is set back, the Netherlands Government shall be required to contribute to the costs and to pay to Prussia the amount fixed by the Treaty (art. 4).

[612] The Convention entered into force on 1 January 1880.

[613] Switzerland, Federal Chancellery, *op. cit.* (Berne, 1953), vol. 13, p. 488. See also *Legislative Texts ... (op. cit.)*, treaty No. 217.

own territory, the police regulations required for the safety and regularity of floating. Their regulations are to take identical form on all essential points, on the basis of a preliminary agreement between the two Governments (art. 2).

801. *Provisions concerning hydraulic works.* The joint ownership in law arising out of the rights of neighbouring owners established on the basis of this Convention[614] was subsequently strengthened by a new Convention between Switzerland and Germany, signed on 28 March 1929.[615]

(a) *Construction of works without hindering communications and without damage to the other State.* If any work of construction or if any hydraulic power-station or any embarkment is built on the river or if such works are subsequently changed each Government shall cause the necessary measures to be taken within the limits of its own territory to prevent communications being hindered or endangered or any damage being done to the bank belonging to the other State (art. 5, first para.).

(b) *Safeguarding the interests of the two States in the case of work likely to affect water flow.* The two Governments are also to ensure that no works shall be constructed or substantially modified if this is liable to produce a detrimental effect on the flow of the water in the river or on its banks, before the plan for the projected work has been transmitted to the competent authority of the other State, in order to safeguard the interests involved and to arrive if possible at an understanding[616] (art. 5, second para.).

(2) *Convention[617] between Germany and Switzerland regarding the regulation of the Rhine between Strasbourg-Kehl and Istein, signed at Berne on 28 March 1929[618]*

802. Germany and Switzerland concluded this Convention with the object of carrying out the regulation of the Rhine between Strasbourg-Kehl and Istein in accordance with the resolution of the Central Commission for Rhine Navigation dated 29 April 1925.[619] Germany's undertaking to regulate the Rhine downstream from Basle for navigation has a corollary in the agreement to undertake to establish a main waterway from Basle to Lake Constance and in the assurances given by Switzerland regarding the granting of generating power concessions in this section of the river. Articles 1 to 5 of the Convention deal with the regulation of the Rhine between Strasbourg-Kehl and Istein in accordance with the scheme approved in the resolution of the Central Commission for Rhine Navigation mentioned above. These articles specify how the cost of the work and the cost of upkeep for the sections regulated are to be divided and contain the undertakings of the Parties regarding the obligation that the work should not hinder navigation and the obligation to remedy any prejudicial consequences which may be involved.

803. *Measures to promote the establishment of a main waterway from Basle to Lake Constance.* The Swiss and

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[614] Since this Convention was concluded, protocols and agreements concerning the utilization of the generating power of the Rhine have been completed between Baden and Switzerland or some of the cantons of the latter country. They refer to the granting of concessions for the development of the generating power of the river. The deeds of concession granted were similar in content, subject to conditions particular to the administrative law of each State. On this subject, K. Schulthess, in *Das internazionale Wasserrecht* (Zürich, Zürcher Post, 1915), enumerates the following agreements and protocols: (*a*) Agreement between Baden and Switzerland (Basel-Land) concerning the hydro-electric power-station at Birsfelden, of 1889 (see *Bundesblatt der schweizerischen Eidgenossenschaft*, 1890, vol. I, p. 604); (*b*) Agreement between Baden and Switzerland (Aargau) concerning the hydro-electric power-station at Rheinfelden, of 1889 (*ibid.*, p. 605); (*c*) Agreement between Baden and Switzerland (Aargau) concerning the electric power-station at Laufenburg, of 1891 (*ibid.*, 1892, vol. I, p. 1015); (*d*) Protocol between Baden and the Canton of Zürich on the utilization of the generating power of the Rhine near Rheinau, of 2–3 June 1896 (see *Gesetzessammlungen der Schweizerischen Kantonen*, Zürich, vol. 26, p. 80); (*e*) Protocol between Baden, the Canton of Zürich and Schaffhausen on the utilization of the generating power of the Rhine near Rheinau, of 21–28 October 1904 (*ibid.*, vol. 27, p. 447); and (*f*) Agreement between the Cantons of Basel-Land, Basel-Stadt, Aargau and Baden on a concession for the establishment and operation of a hydro-electric power-station near Agst-Wyhlen, of 20 April 1907 (*ibid.*, Basel-Land, vol. 15, p. 369). In addition, in fulfilment of the provisions of the Convention of 10 May 1879, Switzerland and Baden concluded the Agreement concerning the hydro-electric power-station at Rheinfelden, of 20 December 1890, amended and amplified by the Agreement of 7 September 1893 (see M. Huber, "*Ein Beitrag zur Lehre von der Gebietshoheit an Grenzflüssen*", in *Zeitschrift für Völkerrecht und Bundesstaatsrecht* (Breslau, 1907), vol. I).

[615] Convention between Germany and Switzerland on the regulation of the Rhine between Strasbourg-Kehl and Istein, signed at Berne, 28 March 1929 (see paras. 802–805 below).

[616] "On this rather scanty legal basis, which did not necessarily make the establishment of hydraulic installations along the Rhine subject to an agreement, the two States developed an administrative practice resulting in increasingly close collaboration. Noteworthy evidence of this can be found in the Agreement of 1890, amended and added to in 1893, between the same two States, regarding the hydro-electric power-station at Rheinfelden. Agreement between the concessions, plans and conditions was laid down in it on all points which affected the interests of the two Parties simultaneously. The two Governments were to transmit to each other reciprocally the text of their concession and affirm, through an exchange of statements, that all the requirements were satisfied; the concession was not legally valid for the operator until he had received notification of this agreement from the authorities of the two States. The close agreement of the concessions was still further attested by the following provisions: 'If necessary alterations to hydraulic installations or to their accessories are subject to official approval, in accordance with the law of either State, the authorities of the two Parties must proceed according to the principles applicable to a concession granted for the first time'. Furthermore, even for urgent reasons of public interest, neither Government can withdraw or limit a concession without the prior agreement of the other. This agreement establishes the important principle that each of the two Governments has the right 'to the use on its own territory of half the water-power made available by the concessionaire by means of hydraulic power stations'. And above all, the two contracting States undertake to apply the same rules in the future; the Agreement states: 'If a similar hydraulic power-station is to be established in another place along the Rhine frontier between Baden and Switzerland, the same principles shall be followed as far as possible for the allocation of hydraulic power between the two territories of the States, without distinction as to whether the turbines are installed on Swiss or Baden territory'. These principles have been constantly followed subsequently and they have resulted in the establishment of a legal system based on condominium regarding the generating power of a vast stretch of water, where it is no longer possible, after it has been converted into electrical energy by the power stations, to determine what proportion of the water originates from Switzerland or from Baden, and therefore on equal utilization of this motive power and on the relationships in law of neighbouring owners. They have been taken so far that the two riparian States have adopted the practice of granting concessions alternately, always on conditions fixed jointly, to a company in Switzerland, and then to a company in Germany, following the order of the stretches open to operation between Basle and Lake Constance. A joint system of operation of the hydraulic power of the Rhine has thus been set up, permitting the conclusion that at least the two riparian States have never been opposed to the idea of a condominium between them, not over the river itself, but over the generating power which can be used." (See G. Sauser-Hall, *op. cit.*, pp. 574–576.)

[617] The exchange of instruments of ratification took place at Berne on 7 June 1930.

[618] See League of Nations, *Treaty Series*, vol. CIV, p. 23. See also *Legislative Texts ... (op. cit.)*, treaty No. 219.

[619] See *Les Actes du Rhin ... (op. cit.)*, pp. 36 and 37.

German Governments agree that endeavours shall be made to establish a main waterway from Basle to Lake Constance in connexion with the regulation of the Rhine between Strasbourg-Kehl and Istein. Provision is made for the conclusion of a convention between Switzerland and Baden determining the participation by Switzerland in this work. For this purpose, Switzerland agrees to give assurances regarding the development of the generating power in this part of the river (art. 6).

804. *The granting of new generating power concessions.* The Swiss Federal Council agrees to carry on jointly with the Baden Government and on the basis of the principles hitherto adopted, negotiations concerning the granting of new generating power concessions[620] between Basle and Lake Constance and to accelerate such negotiations as much as possible[621] (art. 6, third para., sub-para. (1)). In agreement with the Baden Government, the Swiss Federal Council is to impose in future concessions the conditions previously adopted in the interests of important navigation (art. 6, third para., sub-para. (2)).

805. *Facilities for the construction of hydro-electric works. Export of electrical power.* The Swiss Federal Council is to promote the construction of hydro-electric works and, in so far as Swiss national interests allow and if the construction of power works depends thereon, to authorize as far as possible the export of quotas of Swiss electrical power which could be put to better use outside Switzerland (art. 6, third para., sub-para. (3)).

[620] Judging from the principles reported in the records of Baden–Swiss negotiations since 1889, the two partners were perfectly clear, at the time the Convention was concluded, about the electrical power stations which still had to be installed to promote the establishment of a main waterway, and knew what new concessions it was intended to grant. The hydro-electric works to be carried out or still to be finished were: Birsfelden, Neu-Rheinfelden, Schwörstadt, Säckingen, Albruck-Dogern, Koblenz-Kadelburg, Reckingen, Rheinau and Neu-Schaffhausen; in addition, new concessions were envisaged for Birsfelden, Neu-Rheinfelden, Säckingen, Koblenz-Kadelburg, Rheinau and Neu-Schaffhausen. For most stretches of the river, including the Rheinau stretch, projects for the production of power and navigation already existed in 1927, and therefore at the beginning of the German–Swiss negotiations leading to the conclusion of the 1929 Convention. These were the "planned hydraulic power-stations" mentioned in the message from the Federal Council to the Federal Assembly concerning the 1929 Convention. Therefore it did not seem necessary to specify in the 1929 Convention which were the concessions still to be granted (see P. Guggenheim, "The Rheinau Power-Station Case", *Annuaire suisse de droit international—Schweizerisches Jahrbuch für internationalen Recht, 1953* (Zürich, 1954), vol. X, p. 196).

[621] After the conclusion of the Convention, Germany and Switzerland granted concessions for the electrical power-station at Rheinau. Switzerland granted its concession for the Rheinau Power Station on 22 December 1944 and Baden on 14 November 1947. After the Second World War, the Swiss Federal Council, in its decision of 24 June 1952, concerning the transfer of the concession from the Rheinau electrical power-station to the Usine electrique de Rheinau S.A. and the request for a withdrawal of the concession submitted by the Council of State of the Canton of Schaffhausen, pronounced in favour of the transfer. In this connexion, it stated: "Since Switzerland and Germany have granted concessions for Rheinau with a content which agrees to a large extent, a community of interests has resulted, based on relations between neighbours, so that the effect of each concession goes beyond the limits of domestic law and extends to international law. A unilateral decision by a riparian State with regard to a concession which it has granted is ruled out in principle if it is prejudicial to the other State.... The concession can only be withdrawn with the assent of the other riparian State, even if the two deeds of concession contain no provision on the exercise of the right of withdrawal on grounds of public interest." For extracts from the legal arguments advanced by the Federal Council, see P. Guggenheim, *op. cit.*, p. 193. For the contents of the concessions, see G. Sauser-Hall, *op. cit.*, pp. 580 and 581.

Rhine (Germany (Federal Republic of) and France)

Convention[622] between the Federal Republic of Germany and the French Republic on the regulation of the upper course of the Rhine between Basle and Strasbourg, and attached Protocol, signed at Luxembourg on 27 October 1956[623]

806. This convention establishes a more equitable régime with respect to the Federal Republic of Germany, without adversely affecting the intrinsic rights regarding the taking of water and the production of hydraulic power granted to France under article 328 of the Treaty of Versailles.[624]

807. *Regulation of the river by France for the production of hydro-electric power:*

(a) *Methods of regulation defined in the Convention.* Contrary to article 358 of the Treaty of Versailles, this Convention no longer leaves the planning of hydro-electric projects to the sole discretion of France. The essential features of these plans are defined in the Convention itself. Down-stream from the Vogelgrün canal reach, regulation shall be effected by having recourse to a method midway between the system of "dams plus power-plants" and that of "navigable derivation canals". It shall comprise four successive reaches (Marckolsheim, Sundhouse, Gerstheim and Strasbourg, each of which will in turn be subdivided into two substantially equal sections. The up-stream section will use the bed of the Rhine, the level of which will be raised by means of a retaining weir, its water being contained by means of lateral dikes, and any dead arms or "old Rhines" being taken up in the counter-canals along the dikes. The down-stream section shall consist of a navigable derivation canal situated on French territory and leading to a unit comprising, as in the case of the works undertaken before 1956, a system of locks and a hydro-electric power plant. But this unit itself is to be followed by a connecting canal to the Rhine, linking each reach to the succeeding one[625] (art. 1). This procedure avoids the need for a number of hydro-electric stations, each of low output, but it is more expensive to carry out than the system of "navigable derivation

[622] The Convention entered into force on 21 December 1956.

[623] Federal Republic of Germany, Federal Ministry of Justice, *Bundesgesetzblatt Nr. 36, 1956*, part II, (Bundesanzeiger), p. 1864. See also *Legislative Texts ... (op. cit.)*, treaty No. 180.

[624] Under the provisions of article 358 of the Treaty of Versailles (see above, para. 484), the Rhine was economically annexed to France along the entire length of the Franco–German frontier. The international character of the river remained unaffected only as far as navigation was concerned. France was moreover entitled to choose the technical methods for the hydro-electric development of the Rhine. The solution adopted by the French Government consisted in diverting the economically usable portion of the flow of the Rhine, as from the Swiss frontier, into a navigable canal, the "*Grand Canal d'Alsace*". The successive reaches of this canal were to have been connected by means of locks, each with its corresponding hydro-electric power station, the water thus withdrawn being returned to the natural river bed only at the height of the port of Strasbourg, which was considered as the lowest point down-stream to which it would be practical to regulate the Rhine for energy-producing purposes. The French plan for a power station up-stream, known as the Kembs generating station, was approved in a resolution adopted by the Central Rhine Commission on 16 December 1921. A concession in respect of the Kembs drop was granted to a French company in 1927 (see above, foot-note 430). After the Second World War, the three succeeding reaches of the "*Grand Canal d'Alsace*", those of Ottmarsheim, Fessenheim and Vogelgrün, in their turn became the subject of concessions granted to the Service national d'Electricité de France (see J. L'Huillier, *op. cit.*, pp. 699–701).

[625] *Ibid.*, pp. 701 and 703.

canals" adopted by the French Government in 1920. In compensation for this increased expenditure, France, contrary to the provisions of article 358 of the Treaty of Versailles, is no longer bound to make any payments to the Federal Republic of Germany for the power produced by the plants erected (art. 11, para. (3)).

(b) *Execution of the regulation works.* The works shall be executed by France and shall be carried out in the most rational manner possible, with a view to securing the maximum economic efficiency in the production of electric power[626] (art. 2). The entire cost of the works shall be borne by France.

(c) *Recognition of rights with a view to the regulation of the river (right of support, right of way and right of occupation).* The Federal Republic of Germany recognizes the possession by France of the right of support, the right of way and the right to occupy lands along the bank of the river which may be required in order to survey, to build and to operate the works, taking into account German legislation on temporary occupation and expropriation (art. 6).

(d) *Operation of subsequent dams.* France shall operate the retaining dams and shall be responsible for their upkeep throughout their entire length. The lateral dikes and embankments on the German bank shall be maintained jointly by France and the Federal Republic of Germany (art. 7, para. (1)). France shall have the exclusive right to the hydro-electric power produced (art. 11, para. (1)).

(e) *Determination of "reserved flow" in the Convention.* The "reserved flow", that is to say, the flow of water that must be kept up in the river down-stream from each barrage, is specified in the Convention (art. 9). Furthermore, the Convention permits the installation of fixed sills or mobile works for the purpose of producing a series of sheets of water approximately re-establishing the natural contour of the river in each of the sections of the bed of the Rhine from which water is to be diverted (art. 8).[627]

(f) *Establishment of a Joint Technical Commission.* A Joint Technical Commission, established by the Convention and consisting of representatives of both Governments, shall be kept informed of plans, work programmes and the progress of work. It may submit its comments before the start of the work, the execution of which it will supervise[628] (art. 5).

808. *Authorizations, rights and compensation granted to the Federal Republic of Germany:*

(a) *Taking of water for agricultural or industrial purposes.* Reviewing the provisions of article 358 of the Treaty of Versailles, the Convention authorizes the Federal Republic of Germany henceforth to take, or to authorize the taking of, water on the right bank of the Rhine in certain cases for agricultural or industrial purposes (art. 9).

(b) *Construction of "agricultural dams".* The Federal Republic obtains the right to construct one or two dams for agricultural purposes up-stream from Brisach, after the Vogelgrün canal has been placed in service. France is to authorize the construction of these dams on its territory and to place the necessary land at the Federal Republic's disposal. The latter shall bear the cost of building, operating and maintaining these dams (art. 10).

(c) *Indemnities payable.* France shall pay equitable compensation to the Federal Republic of Germany in respect of any damage caused by the canals from Kembs to Vogelgrün inclusive (art. 22). Any possible damage to crops is excluded from such compensation (Protocol, art. 1).

809. *Settlement of disputes (arbitration).* Disputes regarding the interpretation or application of the Convention shall as far as possible be settled by the competent authorities of the two Parties. If a dispute cannot be settled in this way, it shall be submitted to a court of arbitration at the request of one of the Parties. The decisions of the court shall be binding on the Parties (articles 25–28).

Rhine (Austria and Switzerland)

Treaty[629] between Switzerland and Austria-Hungary for the regulation of the Rhine from the confluence of the Ill, up-stream, to the point down-stream where the river flows into the Lake of Constance, signed at Vienna on 30 December 1892[630]

810. Austria-Hungary and Switzerland concluded this treaty with a view to eliminating the threat of flooding, of preventing both banks of the Rhine from being transformed into marshland and, for that purpose, of correcting the meandering course of that river from the mouth of the Ill, up-stream, as far as the point down-stream where the Rhine flows into the Lake of Constance, on the basis of a general plan drawn up by mutual agreement. In order to provide for the continuation and completion of the work of regulation undertaken pursuant to this Treaty, Switzerland subsequently concluded two new treaties with the Republic of Austria, one of which was signed at Vienna on 19 November 1924,[631] and the other at Berne on 10 April 1954.[632] The latter enumerate the works still remaining to be carried out, but, while they are concerned with the programming, technical principles, maintenance and organization of the

[626] Moreover, the works must be carried out in conformity with the resolutions of the Central Commission for navigation on the Rhine with respect to navigation. The plans are to be communicated to that Commission as soon as they have been drawn up (art. 2, para. (1) and art. 3). See paras. 484–487 above.

[627] The purpose of these provisions of the Convention is to prevent the Rhine from taking on the appearance of a dead river in the sections down-stream from every reach, as is now the case as regards that portion of its course of which the water has been diverted into the *Grand Canal d'Alsace* (see J. L'Huillier, *op. cit.*, p. 703).

[628] In certain respects, this Technical Commission resembles the joint supervisory commissions established by a large number of conventions on the use and operation of international rivers. However, the supervision, properly speaking, of the execution of the work and of the operation of the finished works remains solely a matter for the French administration, whose agents may carry out their duties even on works situated in German territory, in accordance with articles 16 and 17 of the Convention (*ibid.*, p. 704).

[629] The instruments of ratification were exchanged at Vienna on 21 July 1893.

[630] See *British and Foreign State Papers, 1891–1892* (London, 1898), vol. 84, p. 690. See also *Legislative Texts . . . (op. cit.)*, treaty No. 141.

[631] The instruments of ratification were exchanged at Vienna on 2 November 1925 (for the text see League of Nations, *Treaty Series*, vol. XXXIX, p. 33, *Legislative Texts . . . (op. cit.)*), treaty No. 142).

[632] This treaty entered into force on 22 July 1955 (for the text see *Recueil officiel des lois et ordonnances de la Confédération suisse*, new series, year 1955, p. 741, or *Legislative Texts . . . (op. cit.)*, treaty No. 143).

works, as well as with the settlement of the financial questions that they involve, the Treaties of 1924 and 1954 in the main merely bring the provisions laid down in the Treaty of 1892 up to date.

811. *Works to be undertaken:*

(a) *Jointly at the expense of both States.* The Treaty specifies the work to be carried out jointly by both Governments (cuttings, widening, canals, regulation work and deepening of the bed) for the purpose of regulating the Rhine (art. I, section A). The technical basis on which these joint works shall be carried out is incorporated in the Treaty (art. III). In addition, the Treaty lays down the time-limits and stages in which the work is to be carried out (art. IV), and provides for the apportionment of the expenses (art. V) and additional costs (art. VI).

(b) *Jointly at Switzerland's expense.* The channelling of all the waters (surface, percolated and sub-soil waters) of the Diepoldsau Basin between the old and new beds of the Rhine as far as the special drainage canal at Koblach (Austria) will be undertaken in common, but all the costs shall be borne by Switzerland (art. I, section B; art. II, second para.).

(c) *By each Government at its own expense.* Each Government shall bear the cost of the measures required on its territory to ensure the proper draining of the inland waters resulting from the cuttings undertaken in common (art. II, first para.). The Koblach drainage canal shall be constructed by Austria at that country's expense (art. II, second para.).

812. *Upkeep of the works.* The upkeep of the works carried out in common shall be undertaken jointly and the resulting expenditure shall also be borne equally by the two Governments. Furthermore, each Government shall see to the upkeep of the portion situated on its own territory of works executed jointly at the cost of both Governments. With regard to the Diepoldsau derivation canal, Austria shall be responsible for the upkeep of the part situated on its own territory, but Switzerland shall pay, once and for all, for the upkeep a fixed lump sum to be determined by mutual agreement (art. VIII).

813. *Establishment of a Joint Commission.* The regulation of the Rhine and all matters connected therewith shall be supervised by a Joint International Commission for the Regulation of the Rhine. The Treaty makes provision for the membership, procedure and powers of the Commission (art. IX). Two local offices have been established to manage the works to be jointly undertaken in conformity with the decisions of the Commission, one in Swiss and one in Austrian territory (art. X). Each Government has the right to inspect and exercise control over the joint enterprise by means of "special bodies" (art. XI).

814. *Use of the old bed of the Rhine to lead off inland waters.* The former bed of the Rhine shall serve as a canal to lead off the inland waters of both countries and particularly those of the Swiss bank, into the Lake of Constance (art. XIV).

815. *Use of the waters and bed of the river (special agreements).* Any agreements regarding fisheries, shipping, extraction of sand, gravel or stones or any other matters, the conclusion of which may appear desirable, shall form the subject of special negotiations (art. XV).

816. *Regulation of torrents for the purpose of maintaining the regulated course of the river in good condition.* Both Parties shall take all necessary measures to reduce the discharge of silt into the Rhine and to maintain the regulated stretch of that river in good condition by making the necessary constructions in the basins of the tributaries of the Rhine (art. XVII).

817. *Settlement of disputes.* Any disagreement between the two Parties with regard to the interpretation or application of the provisions of the Treaty shall be referred to a court of arbitration (art. XVI).

Rhine (France and Switzerland)

Convention[633] regulating the relations between Switzerland and France with regard to certain clauses of the legal régime of the future Kembs derivation from the Rhine, signed at Berne on 27 August 1926[634]

818. The questions involved in the utilizations of the power resources of the Rhine were mainly concerned with Franco–German relations and had been settled in 1919 by article 358 of the Versailles Treaty.[635] But this utilization was closely linked to the improvement of the navigability of the Rhine, which was a question of primary interest to Switzerland.

819. The projects adopted by the French Government called for the diversion of the water of the river into a navigable lateral canal, the Grand Canal of Alsace, starting with a dam situated a few kilometres from the point where the Rhine leaves Swiss territory. The rise in water-level produced by this dam exposed the port of Basle and its approaches to the navigation difficulties which the establishment of the Grand Canal of Alsace had done away with down-stream. Switzerland was interested in the height of the dam being raised so that the entire port of Basle would be included in the deep and quiet water zone created by the rise in water-level. But raising the dam would necessarily increase the output of the future Kembs power station; this increase, originating from a change in the level of the river mainly situated on Swiss territory, could be realized only under the domestic law of the Swiss Confederation and exclusively for its benefit. The operation also concerned Germany, in that the raising of the water-level of the Rhine would subject the banks of the river, on the Baden side, to a more extensive servitude than that which would have resulted from the mere execution of the provisions of the Versailles Treaty.[636]

820. As early as 10 May 1922, an agreement in principle on the extension of the flood level of the Kembs weir as far as the Birse junction was concluded between the German, French and Swiss delegations to the Central Rhine Navigation Commission and approved by a resolution

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[633] The Convention entered into force on 29 December 1927 by the exchange of instruments of ratification.

[634] See League of Nations, *Treaty Series*, vol. LXXI, p. 63. See also *Legislative Texts . . . (op. cit.)*, treaty No. 198.

[635] See para. 484 above.

[636] See J. L'Huillier, *op. cit.*, pp. 695 and 696.

of this Commission,[637] but this agreement did not eliminate the need for France and Switzerland to regulate the conditions in which the additional output procured for the Kembs power station by this extension would be utilized. This matter was regulated by the Convention concluded on 27 August 1926.[638]

821. *Granting of concessions. Sole concessionnaires.* The general principle on which the Convention rests is that the French concession must prevail over the Swiss concession, which is purely accessory. Thus, while the Swiss concession had to be granted subject to the formalities and conditions laid down by Swiss legislation, the concessionnaire would have to be nominated by the French Government[639] (art. 1).

822. *Distribution of the electric power produced by the power station to be constructed.* The proportion of the electric power produced by the Kembs station due to Switzerland is fixed at 20 per cent of that power, representing the power from the fall produced on Swiss territory by this rise in the water-level. The power due to Switzerland will be conveyed freely to that country under exactly the same conditions as if it were produced in Swiss territory (art. 2).

823. *Preparation of the scheme for the power station (preliminary consultation).* The French Government will communicate to the Swiss Government the principal plans and calculations concerning the proposed scheme for the Kembs power station as a whole. The Swiss Government may submit its observations before the work is carried out, and the French Government, after consulting the technical Committee provided for in the Convention, will take these duly into consideration (art. 3).

824. *Joint supervision of the execution of the work and of the operation of the power station. Establishment of a joint Committee.* A joint Committee of engineers is established, consisting of four members, two nominated by the Swiss Government and two by the French Government. During the period of construction, this Committee will supervise the execution of the work at the power station and, during the period of operation, it will be competent to examine and settle any questions which concern both the French and Swiss concessions. It will also take steps to see that its decisions are duly carried out. France and Switzerland undertake to apply, in their respective territories, the decisions taken by the Committee, within the scope of the deeds of concession in regard to the concessionnaire company (art. 4). These decisions will require unanimity[640] (Additional Protocol).

825. *Provisions concerning the deeds of concession:*

(a) *Entry into force of the concessions.* The concessions will come into force as soon as the Convention takes full effect, and the two Governments have ascertained that there is conformity between the conditions of these concessions on all points (art. 5).

(b) *Time-limits for the execution of the work, transfer to a new concessionnaire, renewal, redemption, forfeiture and expiry of the concessions.* The provisions of the Convention establish the time-limits which are to be fixed in the deeds of concession for the execution of the work (art. 6), the transfer of the concession to a new concessionnaire (art. 7), the renewal of the concessions (art. 8) and the right of redemption (art. 9), forfeiture of the concession as provided in the deeds of concession (art. 10) and the termination of the concessions (art. 11).

826. *Settlement of disputes (diplomatic channel; Permanent Court of International Justice).* Any dispute which, in the opinion of either Party, concerns the application or interpretation of the Convention, and which it has not been possible to settle within a reasonable period through the diplomatic channel, will be submitted to the Chamber of the Permanent Court of International Justice which, in accordance with the terms of Article 29 of the Statute of the Court, will determine the question by summary procedure. Nevertheless, at the request of one of the Parties, the dispute will be submitted to the Court at a plenary session (art. 12).

Rhine, Esche, Frickgraben and Spiersgraben
(AUSTRIA AND LIECHTENSTEIN)

Treaty[641] between Austria and Liechtenstein regarding the regulation of the Rhine and tributary waters, signed at Vaduz on 23 June 1931[642]

827. This Agreement was concluded between Austria and Liechtenstein with the intention of continuing the regulation of the Rhine on Liechtenstein and Austrian territory up to the mouth of the Ill river with uniform points of view and of regulating the construction of the Liechtenstein inland canal and the erection of drainage works within range of the Austro–Liechtenstein boundary.[643]

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[637] See paras. 488 and 489 above.

[638] "The state of the domestic law of the States concerned, to which the Convention refers, was very different from that which existed in 1913 [at the conclusion of the Convention concerning the power station at Pougny-Chancy, signed at Berne on 4 October 1913 (see paras. 842–845 below)]. Since that time, the utilization of hydraulic power had, in fact, been the subject in Switzerland of the Federal Act of 22 December 1916 and in France of the Act of 16 October 1919. Hence, the 1926 Convention is more complete than its predecessor and provides more satisfactory solutions . . ." (See J. L'Huillier, *op. cit.*, p. 696.)

[639] "Through this clause which . . . excluded any recognition of two concessionnaires, the Swiss Confederation unquestionably alienated a part of its territorial competence to France. But this alienation, the exceptional character of which it is unnecessary to stress, is justified by the fact that the activities of the concessionnaire of the Kembs fall, with respect to the execution of the works for the development of this fall had to be carried out mainly and perhaps entirely on French territory . . . But Switzerland's rights remained intact in so far as the disposal of the power produced by the extension of the flood level of the weir to Basle territory was concerned." (*Ibid.*, p. 697.)

[640] Should the French and Swiss members be unable to agree, the dispute, if it has not been settled within a reasonable period through the diplomatic channel, will be decided by an arbitrator appointed jointly by the two Governments (Additional Protocol).

[641] The exchange of instruments of ratification took place on 20 October 1931.

[642] See *British and Foreign State Papers 1931* (London, 1936), vol. 134, p. 581. See also *Legislative Texts . . . (op. cit.)*, treaty No. 140.

[643] "The Principality of Liechtenstein in 1946 decided to divert the upper reach of the Samina stream, a tributary of the Austrian river Ill, for the purpose of generating electric power, and came to an agreement with the down-stream parties affected in Austria on a suitable indemnity. Austria did not object to this procedure, since no serious prejudice to public interests was involved." (See United Nations,

828. *Co-operation with a view to the regulation of the Rhine.* The two States shall at all times act in agreement with regard to the improvement and upkeep of the weirs and banks of the Rhine from the mouth of the Ill upwards, and for this purpose they shall communicate to each other their building and repair programmes annually for approval. The necessary data for examining the levels of the water and the condition of the construction works shall be obtained by regular surveys of the high water level and periodical recording of the Rhine bottom levels. Special attention will be given to the organization and development of the service for reporting high waters and for damming the water of the Rhine (art. 1). In addition, the two States undertake to keep in good condition the weirs and banks on the Rhine in the section covered by the Treaty (art. 3, para. 1).

829. *Co-operation with a view to the construction of the Liechtenstein inland canal and the regulation of the Spiersgraben.* The projects for the construction of the Liechtenstein inland canal, as well as for the regulation of the Spiersgraben, require the approval of both States, whereupon they shall be binding on them (art. 4). The Treaty foresees certain conditions regarding the construction of the canal (art. 5). Whether any disadvantage or damage has been caused by the canal works, the two States shall settle the question by negotiation (art. 6). Liechtenstein shall bear the cost of all canal works and for the maintenance of these works (art. 7). The regulation of the Spiersgraben, without its lateral affluents, must be completed by Austria (art. 8). Liechtenstein undertakes to pay a contribution to regulate the Spiersgraben (art. 9).

830. *Co-operation with a view to the regulation of the Frickgraben.* The cost of the regulation and maintenance of the Frickgraben along the boundary between both countries shall be shared equally by the two States, in accordance with a project to be agreed upon at a later date (art. 10).

831. *Co-operation with a view to the regulation of the Esche.* Austria guarantees to contribute to the cost of the regulation of the Esche, in accordance with a project to be drawn up, in common, at a later date and in proportion to the benefit resulting to the Austrian territory from this regulation (art. 11).

832. *Joint organization of the works to be carried out.* A mutual control of all works carried out on the Rhine, the Liechtenstein inland canal, the Spiersgraben, the Frickgraben and the Esche, shall be undertaken jointly by technical authorities appointed by both Governments (art. 12).

833. *Settlement of disputes.* In case of disagreement concerning the measures to be taken for the purpose of carrying on the building operations or regarding the interpretation or application of the Treaty, the matter shall be decided by an arbitral tribunal. If the joint designation of the umpire fails to take place, his selection shall be effected in accordance with the procedure prescribed in article 45 of the Hague Convention for the pacific settlement of international disputes of 1907 (art. 13).

ECE, "Legal Aspects of Hydro-Electric Development of Rivers and Lakes of Common Interest" (E/ECE/136-E/ECE/EP/98/Rev. 1), para. 86.) For the negotiations which preceded the fixing of the indemnities to be paid by the Principality to the Austrian parties, see Liechtenstein, *Rechenschafts-Bericht der fürstlichen Regierung an der hohen Landtag für das Jahr 1949*, p. 51; *ibid., 1950*, p. 51; *ibid., 1955*, p. 48. For the decision fixing the amount of indemnity, *ibid., 1956*, p. 48.

Rhine and Lower Bodensee (GERMANY AND SWITZERLAND)

Convention[644] between the Grand Duchy of Baden and Switzerland concerning fishing in the Lower Lake Constance and the Rhine, with Regulations, concluded at Konstanz on 3 July 1897[645]

834. Switzerland and the Grand Duchy of Baden concluded this Convention in order to make the fishery legislation of the Lower Lake Bodensee and the Rhine conform to the Convention concluded at Bregenz on 5 July 1893 between Austria-Hungary, Baden, Bavaria, Liechtenstein, Switzerland and Württemberg establishing uniform provisions concerning fishing in Lake Constance.[646] The Convention contains the "Fishery Regulations for the Lower Lake Constance and the Rhine", which are applicable to all the Lower Lake and the Rhine, from the bridge which crosses the Rhine at Konstanz to the point where the Baden boundary diverges from the Rhine below Stiegen, and to some parts of the Aach, Allensbach and Markelfingen waterways, to the canal called Schlattgraben and to 100 metres from the mouth of all tributaries and canals permanently connecting with the Lower Lake and the Rhine (art. 1). The Regulations include detailed provisions concerning fishing methods, gear and nets and fish the capture of which is prohibited.[647] Furthermore, they regulate fishing, the policing of fisheries and the conservation and increase of fish species.

835. *Exercise of the right of fishing (identity cards; fishermen's books).* The Regulations list the Swiss and Baden localities in which the inhabitants are authorized to fish (art. 2), provided that they carry a fishing identity card. These cards, which are issued by the office of the prefect of Constance, may be denied or withdrawn in accordance with the provisions of the Regulations (art. 5). In order to fish by net or hook, it is necessary to be entered in a fishermen's book (articles 6 and 9) as an independent fisherman (art. 7) or in any case in the employee-fishermen's

[644] The Convention entered into force on 1 January 1898.

[645] Switzerland, Federal Chancellery, *op. cit.* (Berne, 1953), 14th volume, p. 219. See also *Legislative Texts . . . (op. cit.)*, treaty No. 218.

[646] See paras. 430–434 above. See also the Convention of 18 May 1887 between Switzerland, the Grand Duchy of Baden and Alsace-Lorraine, establishing uniform provisions concerning fishing in the Rhine and its tributaries, including Lake Constance, paras. 458–463 above.

[647] For example, provisions concerning: the fish called *Zockfischerei* (art. 9a); ban on fishing and prohibited gear (art. 11); the size of the mesh (art. 12); minimum length of fish capture of which is authorized (art. 13); protected periods for fish (art. 14); prohibition of fishing at night (art. 19); the number of large floating nets which may be spread at one time (art. 22); specifications of large drift or bag nets (art. 23); restrictions on the use of large bag nets at certain times (art. 24) and in certain places (art. 25); the number of bag nets or anchor nets which it is permissible to use at the same time (art. 26); specifications of set nets, anchor nets and trawls (art. 27); capture of *Gangfische* (articles 30 and 31); requisite distances between set nets (art. 32); protection of spawn (art. 38); protection of crawfish (art. 39), etc.

list (art. 8). The right to fish in a given place belongs to the first occupant (art. 21).

836. *Innovations in fishing tackle.* Any innovation in fishing tackle in use at the time the Regulations were promulgated may be introduced only with the authorization of the prefect of Constance (art. 10).

837. *Provisions concerning artificial fish-breeding.* Authorization to take certain species of fish during the period in which fishing for these fish is prohibited may be granted by way of exception when the purpose is the securing of elements for the reproduction of these fish and the artificial fertilization of the spawn obtained. The fertilized spawn are then sent to hatcheries designated by the office of the prefect of Constance for incubation and are deposited in places in the Lower Lake or the Rhine which are suitable for incubation and the development of the little fish (art. 16).

838. *Provisions concerning scientific research.* The office of the prefect of Constance may grant special fishing permits for scientific research. In these cases, no consideration is given to the mesh opening of the nets or gear used, to the minimum length which a fish must have before it can be taken, or to the periods during which its capture is prohibited (art. 18).

839. *Introduction of new fish species.* New fish species may not be introduced into the Lower Lake or the Rhine unless the approval of both the Swiss Federal Council and the Minister for the Interior of the Grand Duchy of Baden has been obtained (art. 42).

840. *Policing of fisheries. Fishery inspector and guards. Fishery Commission.* The office of the prefect of Constance shall be responsible for the supervision of fisheries. A fishery inspector is appointed by the Grand Duchy of Baden. He is assisted by fishery guards appointed by one or other of the two States. The office of the prefect of Constance will obtain advice and support from a Fishery Commission composed of the prefect or his deputy, as chairman, and four other members—two Swiss fishermen and two Basle fishermen (art. 4). The office of the prefect of Constance alone is competent to take proceedings in respect of petty offences under the criminal law and to levy fines (articles 41 and 40).

841. *Relations between the Regulations and private fishing rights.* The provisions of the Regulations are also applicable to private fishing rights based on authentic deeds. The value of these rights is governed by the authentic deeds on which they are based.

Rhône (France and Switzerland)

Convention[648] between France and Switzerland for the development of the water power of the Rhone between the power-station planned at La Plaine and a point to be specified up-stream of the Pougny-Chancy bridge, signed at Berne on 4 October 1913[649]

842. Rival schemes for the harnessing of the Rhône prepared in 1913[650] stipulated that the French State and the Canton of Geneva had equal rights over the waters and the fall of the river in the first section, that the Canton of Geneva had exclusive rights in the second section, and furthermore, that the harnessing of the hydraulic power and the use thereof in a single generating station was to be the subject of an international convention taking into account the differences in the legislation of the two States. Thus, it was the purpose of the Convention of 4 October 1913 to provide for the development of the so-called Pougny-Chancy fall. It specified that it was for the two Governments jointly to build, or to cause to be built, the works necessary for the construction of the fall and the harnessing thereof, and to undertake jointly to share the available hydraulic power, each being subsequently left free to use as it thought fit, in accordance with the principles of its own legislation, the power thus devolving upon it.[651]

843. *Construction, maintenance and operation of a dam and power-station by concessionnaires for the production of hydro-electrical energy. Control by the Governments. Deeds of concession.* The concessionnaires of the two Governments are to construct on the Rhône, at a point to be specified, a mobile dam capable of creating a reservoir the level of which must not exceed the outlet of the discharge canal of the projected hydro-electric station of La Plaine. It must have a free outlet to the overflow channel, adequate in the event of major flooding to enable the water to run off without the risk of creating a higher level above the points fixed as the limit of the raised level (art. 1). The dam will be designed under the most suitable conditions for the construction of the hydro-electric station (art. 2). The plan for the execution of the work will be drawn up by the concessionnaires and then submitted for acceptance by the two Governments, which reserve the right to supervise the work (art. 3). The dam will be maintained and operated by the concessionnaire.[652] It will be operated in accordance

[648] The Convention entered into force on 14 June 1915 by the exchange of instruments of ratification.

[649] See J. Basdevant, *Traités et conventions en vigueur entre la France et les puissances étrangères*, vol. III, (Japan–Venezuela) (Paris, Imprimerie nationale, 1920), p. 551. See also *Legislative Texts ... (op. cit.)*, treaty No. 197.

[650] As far back as 1913, the city of Geneva and a group of French industrialists had simultaneously envisaged the construction of a hydro-electric station using the difference in level of the waters of the Rhône over a section of its course, of which the down-stream part constituted the frontier between the two States, while the up-stream part lay completely within Swiss territory. At that time, the use of hydraulic power had not yet been the subject of any intervention by the legislator in France. In Switzerland, an article 24 *bis* added in 1908 to the Federal Constitution of 29 May 1874 placed this use "under the high supervision of the Confederation" and allowed federal legislation to enact "the general provisions necessary to safeguard the public interest and to ensure the rational use of hydraulic power". But in 1913 no federal law had yet been passed for that purpose. (See J. L'Huillier, *op. cit.*, p. 693.) For an analysis of Swiss law pertaining to the use of the hydraulic power of international rivers before and after promulgation of article 24 *bis* of the Federal Constitution in 1908, see H. Thalmann, *Grundprinzipien des modernen zwischenstaatlichen Nachbarrechts* (Züricher Studien zum internationalen Recht, No. 19) (Zürich, Polygraphischer Verlag, 1951).

[651] As regards the development of the Rhône for navigational purposes and the need for a prior Franco–Swiss agreement to prescribe the rules and regulations applicable to the river, and the conditions for its use, the level of Lake Geneva, the free ports and the régime of the sluices, see C. Rousseau, "*Les frontières de la France*", *Revue Générale de droit international public* (Paris, 1954) vol. LVIII, pp. 365–367.

[652] From the point of view of French law, this was a bold innovation which anticipated legislative reforms then still being studied. No hydroelectric station had been constructed in France before under the concession system, with the exception of the single Jonage station leased as an appurtenance to a navigation canal by a law of 7 July 1892 (see J. L'Huillier, *op. cit.*, p. 694).

with rules agreed between the two Governments with a view to avoiding any risk of flood and any damage to the power station up-stream, and so far as possible, mitigating down-stream the detriment which may result from the variations in the water flow (art. 4). Two concessions are therefore established by the French State and the Canton of Geneva and granted to two different concessionnaires.[653]

844. *Distribution of the energy produced. Checking of the apportionment.* Both riverain States are entitled to a share of the energy produced. The Canton of Geneva will be entitled to all the energy in the area where it possesses both banks, and each of the two States will be entitled to half of the corresponding energy in the area where the left bank is Swiss and the right bank French. Each of the two States may dispose of the energy either by using it itself or by conceding or leasing it to third parties. The Convention provides that, where some of the energy assigned to one of the States cannot be used on its territory, the energy thus available may be used on the territory of the other State. For the purpose of checking the apportionment, the two Governments will provide each other with all the information concerning the generation and use of the energy[654] (art. 5).

845. *Terms and conditions for co-operation between the Governments concerning the deeds of concession.* The Convention prescribes the terms for co-operation between the Governments relating to the conditions of the concessions and their expiry and, if the case should arise, the grant of new concessions (articles 7–9).

Roggia Molinara (Italy and Switzerland)

Convention[655] between the Swiss Confederation and the Italian Republic concerning the correction of the Roggia Molinara (Communes of Chiasso and Como), concluded at Chiasso on 5 April 1951[656]

846. Switzerland and Italy concluded this Convention with a view to canalizing the Roggia Molinara by means of a permanent construction and for that purpose rectifying the winding course of the river, the waters of which caused swamps in the neighbouring lands, and floods during rainy weather.

847. *Construction of a new canal to correct the course of the river. Apportionment of cost.* The construction of a new canal will be undertaken for the purpose of correcting the Roggia Molinara between the communes of Chiasso and Como in accordance with a plan prepared and approved by the communes in question (art. 1). The Convention contains provisions concerning the apportionment of the cost of building the canal (art. 2) as well as the manner in which the work is to be undertaken (articles 3 and 4).

848. *Approval of the work carried out. Maintenance of the canal. Apportionment of cost.* The competent Italian and Swiss authorities will inspect the new works as soon as they are finished. This inspection implies the final acceptance of the works. From that time, the two countries undertake to maintain the canal in good condition, and to assume the cost of maintenance in the portions of the works under their respective sovereignty (art. 5).

Spöl[657] (Italy and Switzerland)

Convention[658] between the Swiss Confederation and the Italian Republic concerning the use of the water power of the Spöl, and an additional Protocol, signed at Berne on 27 May 1957[659]

849. As far back as 1948, Switzerland began negotiations with Italy for the development of the hydraulic power of the Spöl. Two projects had been drawn up at that time, one by a Swiss company, the Société suisse de la centrale électrique de l'Engadine (KEK) and the other by the Italian Montecatini Company of Milan. Subsequently, fresh projects were submitted by the Azienda elettrica municipale of Milan and by the Usines électriques de l'Engadine, S.A.[660] Finally, the two States concluded this Convention of 27 May 1957, which in its preamble proclaims that the utilization of the waters of the Spöl is of major interest to the development of the electrical resources of Italy and Switzerland. The Convention provides for the construction of a reservoir in the valley of the Livigno on Italian territory, which would collect the water from that part of the valley of the Spöl which is situated in Italy and from its tributary Ova dal Gall, and for the construction of an electrical generating station on Swiss territory to use the water accumulated in this basin. Furthermore, provision is made for the construction of a canal on Italian territory to divert some of the water of the Spöl on the Italian side

[653] This solution implied only a minimum of restrictions on the sovereignty of States in question. Nevertheless, it was unsuitable from the technical and economic points of view. Any drawbacks which might have arisen in the operation of the same plant by two different concessionnaires, were, however, avoided at the outset by the setting up of two companies, one in accordance with French law and the other in accordance with Swiss law, but controlled by the same financial group. Subsequently, the singleness of operation which this arrangement had made possible was to be broken by the nationalization of electricity carried out in France by the law of 8 April 1946. The French concessionnaire company was not nationalized, but the majority of its shares, which were included in the holdings of a nationalized company, was thus transferred to the State undertaking, Electricité de France. As for the Swiss company, the majority of its shares escaped transfer. It was recently partly taken over by the Canton of Geneva and a Swiss bank from the French bank which had been the owner (*ibid.*, pp. 694 and 695).

[654] This embodies neither the doctrine of the priority of appropriation nor the doctrine of riparian rights, but rather a settlement providing for the rights of neighbours (see G. Sauser-Hall, *op. cit.*, p. 559).

[655] The Convention entered into force on 18 April 1953. The signing of this Convention was accompanied by the signing of a Convention for the rectification of the frontier along the Roggia Molinara, also signed at Chiasso on 5 April 1951, "with a view to simplifying the winding course of the frontier, to facilitate the Customs supervision service, and also to improve the surrounding land for a recanalization of the Roggia Molinara" (see *Recueil officiel des lois et ordonnances de la Confédération suisse, 1953*, p. 403).

[656] *Ibid.*, p. 406. See also *Legislative Texts ... (op.cit.)*, treaty No. 232.

[657] The Spöl is a tributary of the Inn, which in turn is a tributary of the Danube.

[658] The Convention entered into force on 8 April 1959.

[659] See *Recueil officiel des lois et ordonnances de la Confédération suisse*, 1959, p. 432. See also *Legislative Texts ... (op. cit.)*, treaty No. 235.

[660] For an account of the negotiations, see D. A. Caponera, *op. cit.*, p. 278. See also W. Schaumann, "Die Nutzung der Wasserkräfte an quergeteilten internazionalen Gewässern. Eine nachträgliche Glosse zum Spölvertrag", Annuaire suisse de droit international-*Schweizerisches Jahrbuch für internationales Recht*, 1958 (Zürich, 1959), vol. XV, p. 131.

of the Adda basin to supply a new collecting reservoir of the Azienda elettrica municipale of Milan. The Convention recognizes that both States are entitled to a share of hydraulic power in proportion to the heads of water and the natural flows attributable to them. Consequently, Italy and Switzerland agree to "grant by joint agreement to Italian and Swiss applicants the right to construct the works necessary for the harnessing of the hydraulic power, to fix the shares of hydraulic power to which each of the two States is entitled under the two systems of utilization, and subsequently to exchange on this basis the appropriate shares of power and electrical energy in such a way that each of the producers is able to dispose of the power as far as possible in the same manner as if the water power harnessed came under the sovereignty of one single State".

850. *Provisions relating to the diversion and utilization of some of the waters of the river on the Italian side of the Adda basin for the generation of electrical energy:*

(a) *Consent of Switzerland to the diversion and utilization of the water.* Switzerland agrees to the diversion from its natural course of some of the water of the Spöl flowing from Italian territory into Swiss territory, and the use of the corresponding water power on the Italian side of the Adda (art. 1).

(b) *Granting of concessions to the beneficiary appointed by Italy.* The Italian Government grants the concession to divert and to use the water of the river; this concession will be supplemented by a Swiss concession the subject of which will be that part of the hydraulic power belonging to Swiss territory. The supplementary Swiss concession will be granted to the beneficiary appointed by the Italian Government (articles 1 and 2).

(c) *Construction by the concessionnaire of a collecting canal. Losses of water and energy.* The concessionnaire will construct, in the upper catchment basin of the Spöl, a collecting canal which will make it possible to collect the natural inflows of water and lead them into the San Giacomo and Cancano reservoirs in upper Valtellina (Italy), to be used there. The maximum quantity of water thus diverted is specified by the Convention. Switzerland does not assume liability towards Italy to make good any losses of water and electrical energy which might result in the event of the irregular operation of the works for the intake and diversion of water (art. 3).

(d) *Quantity of energy and power attributed to Switzerland. Transportation of the energy.*[661] The Convention determines the share of hydraulic power attributed to Switzerland. Switzerland will be entitled to a corresponding amount of electrical energy, as the equivalent of that share. Switzerland will be able to dispose of it in whatever form and in whatever conditions it thinks fit. This energy will be conveyed freely to Switzerland in the same manner as if it had been generated on Swiss territory. The electrical energy and power attributed to Switzerland cannot be used outside its territory except in accordance with Swiss law governing the export of electrical energy (art. 4).

851. *Provisions concerning the use of the water of the river for the production of electrical energy by the creation of the Livigno reservoir:*

(a) *Granting of concessions to the beneficiary appointed by Switzerland.* The right to use the water power of the Spöl by creating a collecting reservoir in the valleys of the Livigno and of the Ova dal Gall will be conceded by the competent authorities for the territory of each of the two States (art. 5). The Italian concession, which will extend to the Italian part of the sections of the river, the head and flow of water of which will be harnessed in the Livigno generating station, on Swiss territory, will be granted to the beneficiary appointed by the Swiss Government (art. 6).

(b) *Construction of a reservoir dam by the concessionaire.* The concessionnaire of both States will construct near the junction of the Spöl and Ova dal Gall, a dam capable of creating a reservoir, the dimensions and the maximum capacity of which are laid down by the Convention (art. 7, first para.).

(c) *Supply of water to the collecting reservoir.* The collecting reservoir formed by the dam will be supplied by the water which enters it naturally, as well as by the water fed back by means of pumping installations (art. 7, second para.).

(d) *Conditions for the construction of the dam. Protection against flooding.* The dam will be of a construction giving the maximum safety for Switzerland in accordance with the laws in force in that country. It will be designed in such a way as to afford adequate free outlets for the water, so that flood waters may flow away at all times (art. 8).

(e) *Rights and obligations of the Parties regarding the concessionnaire.* The Italian Government will give the concessionnaire the benefit of the right of expropriation as far as is necessary for the construction and operation of the Livigno collecting reservoir (art. 9).

(f) *Quantity of energy and power attributed to Italy. Transportation of the energy.* The hydraulic power attributed to Italy is laid down by the Convention. As the equivalent of this share, Italy will be entitled to a corresponding amount of electrical energy capable of being generated in the Livigno collecting station, and also to some of the power available at that station. The energy and the power attributed to Italy are laid down by the Convention. Italy may dispose of it in the manner and in the conditions it thinks fit. This energy will be conveyed freely in Italy in the same manner as if it had been generated on Italian territory. The energy and power attributed to Italy cannot be used outside its territory except in accordance with Italian law governing the export of electrical energy (art. 10).

852. *Provisions common to both systems for the use of the river water for the generation of electrical energy:*

(a) *Construction, maintenance and operation of the works.* Projects for the construction of works will be drawn up by the concessionnaires, but they cannot be executed until approved by the competent authorities of both countries. All the works will be operated and maintained by the concessionnaires (art. 11).

[661] This energy and power attributed to Switzerland may be used in Italy in exchange for an equivalent amount of energy generated in Switzerland but attributable to Italy in accordance with article 10 of the Convention (see para. 858 (*f*) below). An additional protocol ensures compliance with the provisions governing the exchange of energy between the two States.

(b) *Deeds of concessions. Harmonization. Conditions.* The Governments of the two States will notify each other of their decisions requesting deeds of concessions. These will not come into effect until the two Governments have signified their agreement to the conditions imposed. These conditions must be in harmony on all points where necessary. The Convention even goes so far as to stipulate that they may deviate from the standards of national legislation if the application of the latter would impede the harmonization of the deeds of concessions. Furthermore, it contains provisions concerning the expiry of concessions, the causes of expiry, withdrawal and the granting of fresh leases (articles 12 and 14).

(c) *Measures intended to facilitate the construction and operation of the works.* Both States will facilitate the construction and operation of the projected works and will take the necessary steps for that purpose. Double taxation will be avoided (art. 13).

(d) *Negotiations before the expiry of concessions. Right of reversion.* Ten years before the expiry of the period of the concessions, negotiations will be commenced between the two Governments with a view to establishing *(a)* whether the concessions are to be renewed and on what conditions; *(b)* whether the two States should each make use of their right of reversion, and if so on what conditions; and *(c)* whether the operation of the works should cease. In any event, the shares of hydraulic power attributed to Switzerland and Italy will be maintained. The right of reversion is applicable to installations situated on their own territory (art. 15).

853. *Creation of a supervisory commission with equal representation of both Governments for the construction work. Checking during the period of operation.* A four-member commission with the equal representation of both Governments will supervise the execution of the works and will report to the Swiss and Italian authorities (art. 16). During the operation, checking will be carried out in the manner provided for in the deeds of concession. Each Government will give every facility to the inspectors of the other State (art. 17).

854. *Settlement of disputes (arbitration).* The Convention contains a provision on this subject, providing for an arbitration procedure similar to the procedure in the Agreement between Switzerland and Italy regarding the concession of the hydraulic power of the Reno di Lei of 18 June 1949.[662]

Sûre (GERMANY (FEDERAL REPUBLIC OF) AND LUXEMBOURG)

State Treaty[663] between the Grand Duchy of Luxembourg and the Land *Rhineland-Palatinate in the Federal Republic of Germany concerning the construction of a hydro-electric power plant on the Sauer (Sûre) at Rosport/Ralingen, signed at Trier on 25 April 1950[664]*

855. *Rights accorded to Luxembourg:*

(a) *Right to construct and operate a hydro-electric power plant. Apportionment of costs.* Luxembourg shall have the right to construct and operate on the Sauer (Sûre) at Rosport/Ralingen, a hydro-electric power plant having a maximum water level fixed by the Treaty itself. The cost of the construction and operation shall be borne by the Government of Luxembourg or by the power-plant undertaking (art. 1). The installations will provide for a dam and a fish-ladder at the dam, and any supplementary works (art. 5).

(b) *Right to utilize the waters for the purpose of hydro-electric power production.* Luxembourg shall have the further right to utilize for the purpose of operating the power plant all water resources of the Sauer (Sûre) (art. 1).

(c) *Ownership of the electric power produced by the plant.* All hydro-electric power produced by the power-plant undertaking shall be the property of the Government of Luxembourg. If additional power plants are constructed, the electric power produced by those plants shall be apportioned (art. 16).

856. *Facilities granted by the* Land *Rhineland-Palatinate for the construction and operation of the power plant.* The *Land* Rhineland-Palatinate undertakes to transfer to Luxembourg, as private property, such land situated on the German side of the river as may be required for the construction and operation of the power plant. Luxembourg will refund to the *Land* Rhineland-Palatinate the purchase price together with costs (art. 4).

857. *Guarantee clauses concerning the construction and operation of the power plant:*

(a) *Water level.* When high water is expected, the power plant shall open the dam mechanisms to ensure that the maximum water level is not exceeded (art. 6, para. 1).

(b) *Preservation of flow.* The bend in the river below the dam shall be continuously supplied from the dam with a minimum quantity of water, which shall be determined by agreement between the river-works authorities of both countries (art. 6, para. 2).

(c) *Protection of waters.* If unsanitary or other undesirable conditions should arise in the water of the dam, Luxembourg will supply such larger quantities of water as are required for purposes of scouring (art. 6, para. 2, *in fine*).

(d) *Protection of river bed and banks.* If the river bed below the dam or the left bank of the river (Germany) proves to be of insufficient strength, the power-plant undertaking shall construct a suitable apron (art. 6, para. 3). In the backwater area, the entire length of the bank of the river shall be kept in good repair and be secured by the power-plant undertaking, through special measures, against the action of the water (art. 9).

(e) *Testing of installations before entry into operation.* The installations will not be put into operation until an acceptance test is carried out with the participation of the Government of the *Land* Rhineland-Palatinate (art. 8).

(f) *Compensation for damage.* In the event of damage caused on the left side of the river in consequence of the construction of the dam, the Government of Luxembourg shall rectify such damage or pay appropriate compensation

[662] See paras. 792–795 above.

[663] The Treaty entered into force on the date of its signature.

[664] *Mémorial du Grand-Duché de Luxembourg* (Luxembourg, Victor Buck 1953), No. 46 (24 July 1953). See also *Legislative Texts . . . (op. cit.)*, treaty No. 201.

(art. 10, para. 1). The power-plant undertaking shall be liable for any damage affecting rights or property of third parties resulting from the construction and operation of the power plant and indemnify the *Land* Rhineland-Palatinate for any claims against the latter by third parties (art. 19).

(g) *Payment of costs occasioned by the construction of a power plant.* The power-plant undertaking shall bear all costs occasioned by such changes in property lines, roads, drainage ditches and sewer installations in the German communities affected by the plant as, in the opinion of the Government of the *Land* Rhineland-Palatinate, are necessary for the purposes of the plant (art. 12).

(h) *Provision for the passage of fish.* In order to permit the free passage of fish, a fish-ladder shall be installed at the dam and shall be kept constantly supplied with sufficient quantities of water. The passage of fish shall be possible at all times (art. 15).

858. *Settlement of disputes (arbitration).* Any disputes arising out of the Treaty shall be settled by an arbitral tribunal. Where the two arbitrators of the Parties are unable to agree, they shall be entitled to choose an umpire, whose decision shall be final. If they fail to agree on such a choice, the umpire shall be appointed by the President of the International Court of Justice (art. 22).

Tana, Anarjokka and Skiettsjamjokka (FINLAND AND NORWAY)

Agreement[665] between the Kingdom of Norway and the Republic of Finland regarding new fishing regulations for the fishing area of the Tana River, signed at Oslo on 15 November 1960[666]

859. The Agreement regulates fishing in the fishing area of the Tana. It provides for the issue of parallel fishing regulations for the Norwegian and Finnish parts of the fishing area and also contains a set of provisions for the part of the fishing area forming the frontier between the two countries.

860. *Parallel national fishing regulations for the respective parts of the fishing area.* Under the terms of article 1, Norway and Finland are to issue separate fishing regulations for the fishing area of the Tana River.[667] These national fishing regulations contain parallel provisions and came into force on the same date. Each set of regulations defines the respective fishing area. Under the Norwegian regulations, the "fishing area of the Tana River comprises the Norwegian parts of the Skiettsjamjokka, the Anarjokka and the Tana River as far as its mouth, together with the tributaries flowing into these rivers as far up as salmon are known to go". According to the Finnish regulations, the fishing area of the Tana River comprises the Finnish parts of the same rivers and tributaries. The Norwegian and Finnish regulations apply to their respective parts of the fishing area of the Tana River. If either country desires to terminate or amend its regulations, notice to that effect must be given to the other country at least one year before such termination or amendment takes effect (art. 2).

861. *Treaty provisions concerning fishing in the fishing area forming the frontier:*

(a) *Inspection.* The Agreement provides for inspection of the part of the river forming the frontier through the establishment of joint Norwegian–Finnish fishery inspection patrols and the introduction of a procedure for consultation between the district bailiffs of the two countries (art. 3).

(b) *Fishing cards.* A person desiring to fish in the part of the fishing area which forms the frontier must, before fishing begins, procure a fishing card entitling the holder to fish in the other country's territory also. In addition, the holder of a fishing card must comply with the regulations concerning entry into the country concerned. A fishing card is procured upon payment of the fees prescribed in the Agreement. The fees shall be divided equally between the two countries. Norwegian and Finnish nationals shall procure fishing cards in their own country, while nationals of other countries may procure fishing cards in either of the two countries (art. 4).

(c) *Division of fishing in the Polmak district.* In the Polmak district, Norwegian and Finnish nationals shall divide the fishing on the two sides of the frontier for three-day periods at a time (art. 6).

862. *Regulation of fishing in national tributaries.* In so far as tributaries lying entirely within its territory are concerned, each country may establish its own fishing regulations and take measures to promote fishing (art. 7).

Timok (BULGARIA AND YUGOSLAVIA)

Protocol of the delegations of the Federal People's Republic of Yugoslavia and the People's Republic of Bulgaria for water economy questions, concerning the beginning of work for the regulation of the frontier sector of the Timok River, signed at Sofia on 4 April 1958[668]

863. *Approval of a project for the regulation of the river.*[669] The two Parties accepted a project for the systematic regulation of the Timok River and agreed on some provisions for the purpose of beginning work (clauses 1 and 2).

864. *Establishment of a sub-commission.*[670] A sub-com-

[665] The Agreement entered into force on 1 January 1961. This Agreement supersedes the Agreement between Norway and Finland regarding fishing regulations for the fishing area of the Tana river of 20 May 1953 (see United Nations, *Treaty Series*, vol. 173, p. 176) and the Agreement of 2 June 1959 regarding arrangements for fishing at Storfossen (Alaköngäs) in the Tana river in the Polmak district (see United Nations, *Treaty Series*, vol. 338, p. 373).

[666] See United Nations, *Treaty Series*, vol. 383, p. 178. See also *Legislative Texts . . . (op. cit.)*, treaty No. 170.

[667] The regulations contain provisions concerning the catching of fish, tackle, protection of fishing, prohibition of fishing during certain periods, water pollution, etc.

[668] See Yugoslavia, *Federativne Narodne Republike Jugoslavije, Medunarodni Ugovori*, 1958, No. 11, p. 59. See also *Legislative Texts . . . (op. cit.)*, treaty No. 162.

[669] Two projects for the regulation of the Timok River were prepared in accordance with the "Protocol of the Yugoslav and Bulgarian delegations established to consider joint measures for the regulation of the frontier sector of the Timok River", signed at Zajecar on 18 December 1955 (see Yugoslavia, *op. cit.*, 1957, No. 59, p. 1).

[670] The Sub-Commission functions as a sub-commission of the "Yugoslav-Bulgarian Water-Economy Commission", established by the Agreement concerning water-economy questions between the Government of the Federal People's Republic of Yugoslavia and the Government of the People's Republic of Bulgaria, signed at Sofia, on 4 April 1958 (see para. 517 above).

mission shall be set up for the organization of the preliminary work, preparations for construction and supervision to ensure the proper execution of the work, in accordance with the adopted project (clauses 3 and 4).

865. *Settlement of frontier-line questions raised by the adopted project.* Since the execution of the adopted project will alter the existing situation on the frontier sector of the Timok River, the competent authorities of both countries should hold separate negotiations to consider questions relating to the frontier line and all other boundary matters arising from the regulation of the course provided for in the adopted project. Execution work may not begin until the boundary questions have been settled[671] (clause 5).

Tisza (HUNGARY AND THE USSR)

Convention[672] between the Government of the Union of Soviet Socialist Republics and the Government of the Hungarian People's Republic concerning measures to prvent floods and to regulate the water régime on the Soviet–Hungarian frontier in the area of the frontier River Tisza, signed at Ushgorod, on 9 June 1950[673]

866. The purposes of the Convention are to prevent floods and to ensure proper regulation of the water régime of the Tisza River basin in the Soviet–Hungarian frontier area.

867. *Prohibition of unilateral activity which may adversely affect the territory of the other Party.* Each Party pledges itself not to undertake any unilateral activity in the water under the existing drainage conditions adversely affecting the floodwater area of the other Party (art. 1).

868. *Construction of regulating works to prevent floods.* The Parties undertake to carry out works for the purpose of regulating the water systems and to develop the existing hydraulic installations and construct new ones in order to protect their territories against floods. The extent and nature of the works shall be determined by agreement between the Parties. The works shall be carried out by each Party in its own territory (art. 2). The Convention contains also some provisions concerning the necessary planning and survey works, the sharing of expenses, the time-limits for the construction of works and the exchange of data for planning and carrying out survey works (art. 3–6).

869. *Provision for entrusting to the other Party the execution of regulating works.* Should either Party wish to entrust to the other Party the execution of regulating works, as well as the necessary planning and survey works, the consent of the other Party shall be registered through the signature of a protocol concerning the execution and cost of the works and the procedure for the reimbursement of expenses. The Parties shall not entrust the execution of the said works to any third State (art. 8).

870. *Appointment of Commissioners. Duties and powers (right of access).* Each Party shall appoint one Commissioner and two Deputy Commissioners. The Commissioners shall be entitled to call in experts as necessary (art. 10). The Convention enumerates some of the functions to be performed by the Commissioners (art. 11). The results of negotiations between the Commissioners shall be recorded in bilateral protocols. The decisions recorded in such protocols shall be submitted to the competent authorities of each Party for confirmation (art. 12). The Commissioners, Deputy Commissioners and experts shall cross the frontier in accordance with the provisions set forth in the Convention (art. 14).

Ijssel (GERMANY AND THE NETHERLANDS)

Convention[674] between the Netherlands and Prussia to improve the frontier sector of the Oude Ijssel, concluded at the Hague on 10 March 1894[675]

871. The purpose of the Convention is to regulate the frontier sector of the Oude Ijssel.

872. *Construction of a dam.* A movable dam shall be constructed on the Ijssel River above the opening of the Cleve ravine, at a site fixed by the Convention in accordance with the general plan approved by the two countries (art. 1, first para.).

873. *Levelling of the river bed.* Above and below the dam the river bed shall be levelled to a steady gradient according to specifications laid down in the Convention (articles 2 and 3).

874. *Level of the water retained by the dam.* The water retained by the dam may not exceed the prescribed datum lines. The two Governments reserve the right to make special arrangements to regulate the future use of overfalls, having in mind the need for the timely opening of the dams at the onset of high water (art. 4).

875. *Steps to facilitate the execution of works.* The two Governments shall ensure, in their respective territories, that the sites required for the execution of the works referred to in the Convention are made available as soon as possible (art. 5).

876. *Execution, operation and maintenance of the works by one of the Parties.* The Prussian Government shall be responsible for executing the works referred to in the Convention (art. 7) and shall provide for the operation and maintenance of the dam (art. 8).

877. *Sharing of the costs of the works.* The costs of the works shall be shared in accordance with the length of the river-bank in each territory (art. 6).

878. *Regulation of the Prussian sector of the river.* If it is subsequently decided to regulate differently the portion of

[671] According to article 1 of the Convention of 16 June 1956 on the upkeep, maintenance and renewal of the border line, border markings and border signs on the Yugoslav–Bulgarian border (see United Nations, *Treaty Series*, vol. 391, p. 13), in those places where the border line follows the river stream it remains unchanged as marked, regardless of eventual changes of the river stream, and the Parties shall in the future undertake essential hydro-technical measures in order to regulate river streams forming the border lines.

[672] The Convention entered into force on the date of its signature, according to article 15 of the Convention.

[673] USSR, Ministry of Foreign Affairs, *Sbornik deistvuiushchikh dogovorov, soglashenii i konventsii, zakliuchennykh SSR s inostrannymi gosudarstvami*, vol. XIV, p. 71. See also *Legislative Texts . . . (op. cit)*, treaty No. 227.

[674] The exchange of the instruments of ratification took place at the Hague on 18 March 1895.

[675] See E. G. Lagemans, *Recueil de traités . . . (op. cit.)*, 1895, tome 12, p. 79. See also *Legislative Texts . . . (op. cit.)*, treaty No. 207.

the river situated in Prussian territory, the cost of such development works shall be borne by the Prussian Government (art. 1, second para.).

879. *Maintenance of the river flow.* The maintenance of the sector of the river the flow of which is to be regulated under the terms of this Convention shall be ensured, in the portion of the river forming the frontier, by each country in its own territory. Where the two banks are in Prussian territory, maintenance shall be ensured by Prussia (art. 9).

2. Bilateral treaties containing provisions concerning the utilization and use of international rivers in Europe[676]

(a) PROVISIONS OF TREATIES RELATING GENERALLY TO CONTIGUOUS AND SUCCESSIVE RIVERS IN THE TERRITORIES OF BOTH STATES

Germany and Austria

Navigation Agreement[677] between Austria and Bavaria, concluded on 2 December 1851[678]

880. *Removal of obstacles to navigation.* The Parties undertake, within their respective territories, to remove all obstacles to navigation and to permit no construction on the stream or its banks which would endanger the security of navigation (mill or other machinery) (art. 12, second and fourth paras.).

881. *Construction of works in contiguous rivers.* On those sections of the rivers which form the frontier between the two States, no works shall be built in the water or on the banks, except by mutual agreement, and to that end the plans for such works shall be communicated to the other Government concerned. However, the agreements and usages relating to joint works on individual rivers or sections of rivers shall remain in force (art. 12, sixth and seventh paras.).

Germany and Belgium

Agreement[679] between Germany and Belgium concerning the common frontier, signed at Aix-La-Chapelle on 7 November 1929[680]

882. *Provisions regarding water. Water supply.* This Agreement was concluded for the purpose of rounding off and amending the provisions dated 6 November 1922 concerning the frontier between Belgium and Germany.[681] It relates to the regulation of watercourses, in particular the water system of the Dreilägerbach and Weser basins, and the water supply of specified sectors along the frontier (articles 55–64 and 70). In addition, the Agreement deals with the catching of water for the supply of the communes of Kalterherberg (Germany), Udenbreth (Germany) and Bullange (Belgium) (articles 65–69).

883. *Drainage (Land Drainage Boards).* The owners of parcels of land situated on either side of the frontier are authorized to let the water in sewers and underground drains laid down for the drainage of these dams flow across the frontier at the places where they ran out at the time when the Agreement was concluded. Provision is further made for the Land Drainage Boards, acting on behalf of the owners, to participate in the drainage of the dam (articles 71–74).

884. *Settlement of disputes (Joint Administrative Commission; arbitration).* Such differences of opinion with regard to the interpretation and application of the provisions of the Agreement relating to water as cannot be amicably settled by the Administrations concerned shall be adjusted by a Joint Administrative Commission. In the case of a tie within the Commission, the casting vote shall be given by an umpire who shall be appointed by the Government of the Netherlands and shall be a national of a third State (art. 94).

Germany and France

Treaty[682] between France and Germany regarding the delimitation of the frontier, signed at Paris on 14 August 1925[683]

885. *Provisions regarding non-navigable frontier rivers:*

(a) *Modifications to the course of the rivers and the flow of water (previous agreement).* No modification may be made in the course of non-navigable rivers forming the frontier. No construction of or material alteration in weirs, installations or buildings liable to modify the flow of water may be undertaken without previous agreement between France and Germany (art. 13).

(b) *Maintenance and cleaning (local regulations and usages).* The upkeep and cleansing of non-navigable rivers forming the frontier shall be arranged for simultaneously on either bank by the natural or legal persons responsible therefor in conformity with local regulations and usages (art. 42).

886. *Provisions concerning rivers crossing the frontier and tributaries of frontier rivers:*

(a) *Upkeep of the normal flow of water.* Rivers which intersect the frontier or discharge into a frontier river shall be maintained in a state of repair such as to ensure their normal flow (art. 43).

887. *Provisions concerning non-navigable frontier rivers, tributaries of frontier rivers and rivers crossing the frontier:*

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[676] In addition to the bilateral treaties containing provisions concerning the utilization and use of international rivers in Europe herein referred to, mention should be made, amongst the provisions concerning water supplies, of article 6 of the Treaty concluded between Italy and the Holy See for the purpose of settling the question of Rome and establishing the Vatican City, signed at Rome on 11 February 1929 (see *British and Foreign State Papers, 1929*, first part (London, 1934), vol. 130, p. 791. See also *Legislative Texts . . . (op. cit.)*, treaty No. 225). That article provides that Italy shall ensure, by the conclusion of the necessary agreements with the interested parties, an adequate supply of water to the Vatican City in ownership.

[677] The instruments of ratification were exchanged on 14 May 1852.

[678] See E. Hartig, *op. cit.*, annex II, p. 46. See also *Legislative Texts . . . (op. cit.)*, treaty No. 133.

[679] The instruments of ratification were exchanged at Brussels on 16 July 1931.

[680] See League of Nations, *Treaty Series*, vol. CXXI, pp. 3–8. See also *Legislative Texts . . . (op. cit.)*, treaty No. 150.

[681] See paras. 465–467 above.

[682] The instruments of ratification were exchanged on 15 May 1928.

[683] See League of Nations, *Treaty Series*, vol. LXXV, p. 104. See also *Legislative Texts . . . (op. cit.)*, treaty No. 178.

(a) *Installations. Flow of water.* Existing or proposed installations for the normal utilization of non-navigable rivers forming the frontier must not obstruct the flow of water or diminish its volume. This clause also applies to rivers which intersect the frontier or discharge into a frontier river (art. 14).

(b) *Cleanness of waterways.* Both parties shall take, in so far as they are concerned, such hygienic measures as are necessary to ensure the purity and salubrity of the waterways (art. 44).

Germany and the Netherlands

Treaty of Limits[684] between their Majesties the King of Prussia and the King of the Netherlands, signed at Cleves on 7 October 1816[685]

888. *General provisions relating to contiguous and successive rivers:*

(a) *Regulation of frontier watercourses. Upkeep of banks. Cleaning of watercourses.* The Treaty contains a provision relating to the regulation of the frontier watercourses and the upkeep of the banks which is similar to that contained in article XXVII of the Boundary Treaty between Prussia and the Netherlands signed at Aix-la-Chapelle on 26 June 1816.[686] With regard to the cleansing of watercourses, however, the Treaty of 7 October 1816 stipulates that this shall be carried out jointly and that the expenses shall be shared, in the absence of any other provisions in existing agreements between communes (art. XXX).

(b) *Flow of water.* The present flow of water in the respective territories of those two countries shall be maintained in the future and no arrangement shall be made which might impede the flow of inland waters *(Binnenwasser)* (art. XXXI).

889. *Provisions concerning the Lower Rhine:*

(a) *Apportionment of hydro-technical works.* All hydro-technical works on both sides of the Lower Rhine shall be undertaken at the expense and under the specific control of the State possessing the territory[687] (art. XI).

(b) *Ban on erection of works hindering the flow of water.* No works likely to hinder the flow of water or prevent the passage of ice and thereby cause damage to the opposite bank may be erected in the bed of the river, in the absence of a previous agreement between the two Parties (art. XII).

(c) *Measures to preserve the normal width of the river (vegetation; fisheries).* The Treaty prohibits the planting of vegetation within the normal width of the river as determined in the Treaty. Existing vegetation encroaching on this normal width shall be uprooted (article XIII). Neither Party shall permit fishing to be undertaken on its bank within the said normal width by methods capable of hindering the flow of water in the slightest degree or of facilitating alluvial deposits (art. XIV).

(d) *Fishing rights.* Sovereignty over fishing on the Lower Rhine shall be determined by a straight line drawn at the point where the river crosses the frontier between the two States in such manner that the portion up-stream of that line shall belong to Prussia and the portion down-stream to the Netherlands (art. XV).

890. *Provision concerning the waters of the La Hetter Polder:*

(a) *Discharge of water. Construction of a lock.* So that the waters of the La Hetter Polder may be evacuated without damage to the adjoining Netherlands territory, the Treaty provides for the construction of a lock in the Sommerdam at Klein Netterden (art. XX, first para.). In addition, the Treaty contains detailed provisions regarding the opening and dimensions of the discharge channel, the walls, the height of the water and sluices of the lock (art. XX, second and third paras., articles XXI and XXII).

(b) *Raising of land on either side of the drainage canal.* The land on either side of the discharge canal shall be raised and levelled on both sides of the canal, no compensation being payable in respect of the areas of land buried under the earth excavated in the course of this work, the cost of which shall be borne by Prussia (art. XXIII).

(c) *Upkeep of the discharge canal and the lock.* Both States shall be responsible for the upkeep of the discharge canal, in so far as it forms the frontier between them, but where the canal is situated entirely on the territory of one State then only that State shall be responsible. Prussia shall be solely responsible for the lock at Nieder-Hetter (art. XXV).

(d) *Preservation of existing locks in good condition.* The existing lock in the main Rhine dyke from Emmerich to Wesel shall not be removed, nor shall their flow capacity be reduced in any way, so that all these locks shall remain in good condition and able to co-operate in the evacuation of a flood or rain waters from all the country lying behind this dyke. Should Prussia consider it necessary to make any changes in the locks, the Governments of the two countries shall consult each other on the matter (art. XXVII)

(e) *Technical co-operation. Appointment of Commissioners.* All the works and constructions shall be inspected twice a year by Commissioners and experts to be appointed by both Parties in accordance with regulations to be drafted by mutual agreement. Such Commissioners and experts shall be empowered to inspect all works to be erected or maintained (art. XXVIII).

Austria and Czechoslovakia

Treaty[688] between the Republic of Austria and the Czechoslovak Republic regarding the settlement of legal questions connected with the frontier described in article 27, paragraph 6, of the Treaty of Peace betwen the Allied and

[684] The instruments of ratification were exchanged on 30 January 1817.

[685] See G. F. de Martens, ed., *Nouveau Recueil de traités, 1808–1818* (Göttingen, Librarie Dieterich, 1877), tome III, p. 45. See also *Legislative Texts . . . (op. cit.)*, treaty No. 204.

[686] See para. 905 below.

[687] See paras. 796–798 above: Treaty between the German Empire and the Netherlands of 29 August 1918.

[688] The Treaty came into force on the expiration of four weeks from 19 September 1930, the date of the exchange of ratifications. The provisions of the Treaty also apply to the Danube, the March and the Thaya, in so far as nothing else is laid down in special agreements (art. 38).

Associated Powers and Austria, signed at Saint-Germain-en-Laye on 10 September 1919 (Frontier Statute)—signed at Prague on 12 December 1928.[689]

891. *Legal position*[690] *with regard to contiguous and successive rivers*[691]

(a) *Existing rights:*

(i) *Recognition of acquired rights (titles, waterways registers).* Legally acquired rights in respect of waterways and the installations belonging thereto or in respect of waterways which are intersected by the frontier shall be recognized by both States as legally existing, provided that they can be proved by the production of official documents. The Treaty includes provisions concerning the production of such proof (art. 19, para. 1). For this purpose, the Contracting States shall take steps with a view to the proper completion of the "waterways registers" and shall transmit certified copies of these entries to each other (art. 23). The recognition of the rights applies to authorizations granted before the coming into force of the Treaty only where the work has already been commenced or is commenced within the period fixed in the deed of concession, and if the work is pursued in a regular manner. Rights which have been claimed but which have not been proved within three years from the coming into force of the Treaty shall be regarded as non-existent and must be made the subject of an express concession (art. 19, paras. 2 and 3).

(ii) *Recognition of private agreements concluded for the purpose of the use of the water.* Private agreements concluded up to the date of the signing of the Treaty between owners of hydraulic installations and other interested parties regarding the use of the water shall remain in force in so far as they are not at variance with the legislation of either State (art. 21).

(iii) *Maintenance charges, servitudes and other obligations arising out of acquired rights.* These obligations shall continue to exist, irrespective of the nationality of the persons who are required to carry them out, it being further immaterial in which of the two States the hydraulic installations to which the acquired rights in question relate are situated (art. 22).

(iv) *Rights of access.* Recognized owners of hydraulic installations shall be granted all possible facilities for crossing the frontier for the purpose of ensuring the operation and upkeep of the installations (art. 25).

(v) *Maintenance and operation of hydraulic installations in accordance with existing obligations and rights.* Each Party shall take steps to ensure that the hydraulic installations are maintained and operated in accordance with the existing obligations, and that the operation of installations situated in the territory of the other State is not interfered with by any arbitrary measures taken on its own territory. Installations situated on ponds in the frontier zone shall be so operated as to safeguard the interests of the riparians resident down-stream in the territory of the other State, in so far as this is not at variance with rights acquired by concession or proved to be of ancient standing (art. 26).

(vi) *Maintenance of existing advantages derived from hydraulic installations.* The Parties shall take steps to ensure that the hydraulic installations are so operated and maintained that the advantages derived therefrom are maintained intact for all the Parties concerned, including those who may now be residing in foreign territory. The Contracting States shall further ensure the maintenance of the artificial watercourses and ponds situated on their own territories, in so far as these serve for the inflow or outflow of water used in hydraulic installations regularly established in the territory of the neighbouring State, and in so far as their maintenance is guaranteed by the deed of concession relating thereto (art. 27).

(b) *Granting of new rights:*

(i) *Division of water along the frontier.* Each of the two States is entitled to dispose of half of the water flowing through frontier waterways. If the low-water level is raised by means of the construction of dams, the volume of water shown to represent the increase thus obtained shall, in the absence of any other arrangement, go to the State which has borne the cost of constructing such dams. The exercise of the new rights shall in no way prejudice rights already acquired (art. 28, para. 1).

(ii) *Change in the supply of water (legitimate interests).* If the construction of an installation is likely to cause any considerable or permanent change in the supply of water of a frontier waterway or of a waterway which intersects the frontier, the Parties shall take account of the legitimate interests of the inhabitants of the other State (art. 28, para. 3).

(iii) *Promotion of the construction of works for the protection and utilization of rivers contiguous to boundaries.* The Parties shall promote the construction of such works as are designed to protect the frontier waterways and the contiguous flood area against floods, and ensure the draining and irrigation of the adjacent territory or, as the case may be, regularize the flow of water, provide the frontier communes with water and ensure the utilization of the water-power supplied by the frontier waterways. In order to enable such works to be constructed in a business-like way, the Parties agree on a number of principles which are specified in the Treaty (art. 29).

(c) *Settlement of disputes:*

(i) *Applicable legislation.* All matters connected with river law relating to frontier waterways or water-

[689] See League of Nations, *Treaty Series*, vol. CVIII, p. 57. See also *Legislative Texts . . . (op. cit.)*, treaty No. 130.

[690] The provisions relating to the use of water generally apply *mutatis mutandis* to the utilization of the waterways for timber-floating (art. 37).

[691] In so far as successive rivers are affected by the boundary line.

ways which intersect the frontier shall be dealt with exclusively in conformity with the legislation of the State on whose territory the installation is situated or is to be constructed (art. 30).

(ii) *Procedures to be followed:*

First instance (administrative authorities). Matters relating to frontier waterways shall, with the exception of criminal cases, in principle be settled by agreement between the waterways services of the two States, whether the territories of both States are affected or not. Decisions in matters relating to waterways which insersect the frontier shall be taken exclusively by the competent authority of the State in question. The desirability of a simultaneous or a co-ordinated procedure and of agreement between the authorities of the two States is stressed in respect of authorizations for the construction of works straddling the boundary line between the two States (art. 31, paras. 1–5).

Second instance (recourse to the higher administrative authorities). If no agreement is reached between the waterways services of the two States acting as authorities of first instance, the question shall be submitted to the competent higher authorities of the two States (art. 31, para. 6).

Final instance (arbitration). Should these supreme authorities be unable to agree, recourse shall be had to the arbitral procedure provided for in the Treaty (art. 31, para. 6, and article 70).

(d) *Water police.* Each state shall provide the water police service in its own territory. The competent administrative authorities in the two countries shall inform one another of water offences committed in frontier waters (art. 36).

892. *Regulations concerning fisheries and pisciculture on rivers contiguous to or flowing across the boundaries:*

(a) *Existing leases (recognition of acquired rights).* Conditions of lease shall not be modified during the current lease period. Upon the expiration of this period, the laws of the State concerned shall come into force as regards the conditions of lease (art. 29).

(b) *Regulations applicable to new leases (territorial jurisdiction).* When the new conditions of lease and of the fisheries generally are determined, the principle that each of the two States shall exercise sovereign rights over the waters in its territory, and consequently over the part of the waters contiguous thereto up to the State frontier, shall apply (art. 40).

(c) *Exercise of fishing rights (domestic legislation).* If the right to exercise fishing rights in one State is granted to a national of the other State, such right shall be exercised in conformity with the laws and decrees of the State in whose territory the person in question fishes. In waterways which cross the frontier, the exercise of fishing rights shall be governed by the laws and decrees of the State in which the fishing rights are exercised (art. 41).

(d) *Co-operation between the two States in matters relating to fishing seasons, methods and appliances.* The two States shall conclude a special agreement uniformly establishing close seasons for fishing and determining the minimum size of the fish that may be taken. Moreover, the Treaty forbids fishing at night and the use of certain fishing methods (poisonous substances, explosives, spears and firearms), and of certain types of fishing tackle (fishing appliances which hinder the free passage of the fish) (articles 42–44).

(e) *Co-operation between the two States in matters relating to the settlement of disputes arising out of fishing.* The competent authorities of either State shall lend every assistance and make available any documents or communications which are needed by the authorities of the other State for the purpose of deciding disputes arising in matters related to fishing rights and to pisciculture in the frontier waters (art. 46).

Belgium and the Netherlands

Treaty[692] of peace between Belgium and the Netherlands, signed in London on 19 April 1839[693]

893. *Drainage of Belgian waters for purposes of flood control.*[694] The two countries shall, in the most appropriate manner, regulate the drainage of Belgian waters, with a view, as far as possible, to preventing flooding. Such land as is necessary may be used for the construction of sluice-gates, provided that the sluice-gates constructed in the territory of the Netherlands shall remain under the sovereignty of the latter and shall not prejudice the defence of its boundaries[695] (art. 8).

894. *Regulations governing the exercise of fishing rights.* Commissioners of the two Governments shall meet to agree upon a general regulation for the exercise of the right of fishing and of trading in fish, on a footing of perfect reciprocity and equality in favour of the subjects of the two countries[696] (art. 9, para. 6).

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[692] The exchange of the instruments of ratification took place in London on 8 June 1839.

[693] See Garcia de la Vega, *op. cit.*, p. 99. See also *Legislative Texts ... (op. cit.)*, treaty No. 153.

[694] The provisions in this Treaty which concern drainage for purposes of flood control (art. 8) and the exercise of fishing rights (art. 9) are similar to those of articles 8 and 9, para. 4, of the Treaty between Belgium, Austria, France, Great Britain, Prussia and Russia concerning the recognition of Belgium, signed in London on 15 November 1831 (see Garcia de la Vega, *op. cit.*, p. 1).

[695] This provision was covered in article 6 of the Treaty of 8 November 1785 between the Emperor of Germany and the States-General, to which reference is made in article 8 of the Treaty under consideration (for the text, see G. F. de Martens, ed., *Recueil de traités, 1785–1790* (Göttingen, Librairie Dieterich, 1818), tome IV, p. 55).

[696] The "Regulations for the application of article 9 of the Treaty of 19 April 1839 relating to fishing and the fish trade" were agreed to between Belgium and the Netherlands at Antwerp and the instruments of ratification were exchanged on 4 August 1843 (see Garcia de la Vega, *op. cit.*, p. 259, and *Legislative Texts ... (op. cit.)*, treaty No. 154). Under these Regulations the inhabitants of both countries are allowed to engage in fishing in certain reaches of the Scheldt, Helleget, Braakman, Zwin and Sloe (art. 1). The Regulations also deal with the formalities with which fishermen must comply in order to prove their nationality of one of the two countries (articles 3 and 4), the issue of fishing licences (articles 5 to 7), the right to grant concessions with respect to artificial mussel-beds (articles 8 to 10), conditions for the exercise of fishing (articles 11 to 13), contraventions (articles 14 and 15), and fishing boats (articles 18 to 22). An additional article concerning the transport of certain species of fish in the Braakman was drawn up and signed at the Hague on 7 August 1843 (see *Legislative Texts ... (op. cit.)*, treaty No. 154, section V).

Spain and France

Additional Act,[697] *concluded between Spain and France, to the Boundary Treaties of 2 December 1856, 14 April 1862 and 26 May 1866, applicable over the whole frontier in either country and relative to the preservation of the boundary marks, to cattle and pasturage, properties divided by the frontier, and the enjoyment of waters common to both countries, signed at Bayonne on 26 May 1866*[698]

895. The provisions of this Act relating to French and Spanish waters are characterized by a mixture of stipulations concerning the limits of sovereignty and clauses relating to legislation covering private rights. This Additional Act regulates in a detailed manner the administration and enjoyment of waters common to both countries along the entire frontier from one sea to the other, including the Llivia enclave.[699]

896. *Territorial competence of riparian States over waters to the extent that exceptions are not provided by treaty.* All stagnant or running waters, whether public or private, are subject to the sovereignty of the country in which they are situated, unless otherwise agreed between the two Governments. Jurisdiction over running waters changes at the point at which they pass from one country to the other, and where waterways serve as frontiers, each State has jurisdiction over the waters up to the median line of the waterway[700] (art. VIII).

897. *Recognition of rights acquired by use. Limitations.* Subject to certain reservations, each Government recognizes the legality of irrigation works, installations and enjoyment for domestic use existing in the other State by virtue of concession, deed or *usucapio*. It is laid down that only the amount of water necessary for satisfying genuine needs shall be used, that abuses shall be suppressed, and that such recognition shall in no way detract from the respective rights of the Governments to authorize works of public utility, provided that the legitimate compensation is paid[701] (art. IX).

898. *Distribution of water available at low-water level.* If, when at its lowest level, water is still available at the frontier, the Additional Act stipulates that it shall be shared in advance between the two countries, in proportion to the area of the irrigable fields belonging to the immediate riparian proprietors concerned after deduction of the area of land already irrigated[702] (art. X).

899. *New works and concessions likely to change the water flow conditions or volume (prior fact-finding procedure).* When it is proposed to carry out work or make new concessions likely to change the water flow conditions or volume of a waterway whose down-stream section or opposite bank is used by riparian proprietors of the other country, prior notice shall be given to the higher administrative authority of the department or province under whose jurisdiction the riparian proprietors in question come by the corresponding authority under whose jurisdiction it is proposed to carry out the projects in question,

[697] The instruments of ratification were exchanged at Paris on 12 July 1866. The provisions of this Act were supplemented by the second part of the Final Act of 11 July 1868 (see paras. 979–984 below).

[698] See *British and Foreign State Papers 1865–1866* (London, 1870), vol. 56, p. 226, or Spain, Ministry of Finance, *Recopilación de Acuerdos internacionales con Francia y Portugal sobre límites y otros servicios de frontera* (Madrid, 1948), p. 101. See also *Legislative Texts ... (op. cit.)*, treaty No. 185.

[699] The interpretation of this Act and of the Boundary Treaty of the same date was the subject of an arbitration judgement concerning the utilization of the waters of Lake Lanoux. (See paras. 1062–1068 below. See also F. Duléry, "*L'Affaire du lac Lanoux*", *Revue générale de droit international public* (Paris, 1958), vol. LXII, pp. 483–498.) "As the compatibility of this project with the provisions of the Boundary Treaties for the Pyrenees frontier, which had been contested by the Spanish Government, was recognized by the arbitrators in their award of 16 May 1957, all that remained was for the matter to be settled by an international agreement on the conditions of execution. This was done by the Convention of 13 July 1958, to which were attached technical regulations specifying the methods of measuring the amounts of water diverted and returned. The Madrid Convention provides for the return to the Carol of a volume of water equal to the natural inflow diverted from the basin of that river, but in any case not less than 20 million cubic metres per year. The technical regulations lay down that the calculation of the diverted flows and of the amounts of water to be supplied in order to compensate for them shall be carried out each week, the restoration of the volume of water diverted or accumulated during each week being carried out, in principle, during the following week. Adjustments of these weekly returns shall be carried out every four weeks, and any difference between the returns made during any given year and the guaranteed minimum of 20 million cubic metres of water shall, if the case arises, be supplied to Spain between 15 July and 31 August. In addition, the Madrid Convention provides for the setting up of a six-member joint committee responsible for supervising the execution of engineering works and the regularity of the compensation agreed on between the parties (articles 3 and 4). It is also laid down that access to the works being carried out under the concession shall always be freely given to a representative of the Spanish consulate at Toulouse". (See J. L'Huillier, *op. cit.*, pp. 710 and 711.)

[700] The territorial competence of each riparian State is geographically defined by these provisions; it extends over that part of the waterway which passes through the territory of the State, and extends up to the median line of the stream if the waterway forms a frontier. This competence is exclusive to each State; the idea of undivided sovereignty jointly exercised by the two riparian States over a waterway which forms a frontier is set aside. Those who drafted the boundary treaties and complementary Acts between France and Spain considered that it was a question of sharing, in each case, a single mass of water which did not lend itself, by its very nature, to the geographical distribution applied to the territory through which it flowed; they were thus led to think that each waterway, viewed in the form of the mass of water which it carried along, constituted a single unit, calling, in certain respects, for a single set of regulations, in spite of the division imposed by the frontier on the bed of the waterway. They were thus led to make, in the case of waterways, certain allowances or exceptions from the usual consequences of the territorial competence of the riparian State. This is shown by art. VIII of the Additional Act of 26 May 1866, which, after stating the principle of the sovereignty of the country in which the "stagnant and running waters" were situated, added the reservation: "unless otherwise agreed between the two Governments". (See J. Basdevant, "Contribution à l'étude du régime juridique de l'utilisation domestique, agricole et industrielle des eaux", *L'évolution du droit public, Etudes offertes à Achille Mestre* (Paris, Recueil Sirey, 1956), pp. 12 and 14.)

[701] This recognition by each Government implies that the rights of usage thus referred to shall also be recognized by the administrative or judiciary authorities of the Government in question, and that, consequently, they shall apply to all riparian proprietors or other interested parties coming under the jurisdiction of the said authorities (*ibid.*, p. 16).

[702] The Additional Act is based upon the regulation of water, the purpose of which is not the allotment of water among specified users but between the two countries, taking into account ... the general utility and the principles of irrigation ... This apportionment is to be carried out "in proportion to the area of the irrigable fields belonging to the respective immediate riparian proprietors, after deductions of the area of land already irrigated ... The criterion of distribution applies not to the extent of the respective banks, but to the irrigation needs" ... This criterion is based on the general interest rather than on the title of riparian proprietorship; the fact of dwelling on the river bank, however, also has an influence, as only the "irrigable fields belonging to the respective immediate riparian proprietors are eligible" (*ibid.*, p. 17).

so that any complaints can be made in good time and all interests can be safeguarded. This procedure may even include a prior joint visit to the site by engineers of the two countries[703] (art. XI).

900. *Flow of water*

(a) *Prohibition of obstruction of natural watercourses.* In the natural course, the lower reaches receive the waters which flow down from the upper reaches in the neighbouring country. No obstacles of any type shall be constructed on the lower reaches which might prejudice the interests of the riparian proprietors of the upper reaches. The latter are likewise prohibited from interfering with the flow of water to the lower reaches (art. XII).

(b) *Procedure for the removal of obstacles due to natural causes.* If some alteration or hindrance in the watercourse arises from natural causes, the injured parties may have recourse to the competent judicial authority in order to ensure that clearing or repairs are carried out by those responsible in the case (art. XIV).

901. *Execution of work for repairs or protection.* In rivers which serve as frontiers, any riparian proprietors may, subject to the authorization necessary under the laws of his country, carry out work for repairs and protection on his bank of the river. Such work, however, must not bring about any change prejudicial to his neighbour nor encroach on the land washed by the water at ordinary high-water level[704] (art. XIII).

902. *Collaboration between the competent administrative authorities of both States.*[705] The administrative authorities of the two countries must come to an agreement to settle any difficulties, other than legal questions coming entirely within the competence of ordinary courts, which may arise between riparian proprietors of different nationalities concerning the use of the waters (art. XV). Prefects and civil governors may, if they consider it convenient, jointly set up, with the approval of their Governments, elected councils consisting of equal numbers of French and Spanish riparian proprietors to supervise the carrying out of the regulations and bring any person contravening those regulations before the competent tribunals (art. XVII). The anxiety to ensure joint administrative action is seen once more in the stipulation, in the Additional Act, that the higher administrative authorities of the frontier departments and provinces shall co-operate in the exercise of their right to issue regulations in the general interest or to modify their regulations whenever such interests are at stake; if they fail to agree, the issue shall be submitted to the two Governments (art. XVI). Such collaboration has taken place above all in matters of the administrative regulation of water. An international Commission of engineers is responsible for verifying acquired rights regarding the use of water and allotting in each case only the amount of water necessary; it must, further, determine, with a view to its distribution, the volume of water remaining available and the extent of the irrigable land, carry out the demarcation of the bed of the Raour and propose measures to ensure the correct execution of the regulations[706] (art. XVIII).

(*b*) Treaty provisions relating generally to contiguous rivers in the territories of two States

Austria and Germany

Treaty[707] *between Austria and Bavaria concerning the régime of the frontier line and other territorial relations between Bohemia and Bavaria,*[708] *concluded 24 June 1862*[709]

903. *Diversion of water for purposes of irrigation:*

(a) *Recognition of existing rights subject to certain claims.* Conduits or watercourses out of frontier brooks serving to supply waterworks and water for land irrigation shall continue on both sides, provided that they do not leave the frontier book dry (art. 58, para. 1). All those existing conduits or watercourses shall remain subject to any claims arising out of treaties and State timber-floating regulations (art. 58, para. 9).

(b) *Construction of new watercourses.* In the future, new watercourses out of frontier brooks shall be made only with the approval of both sides (art. 58, para. 2). No new conduit or watercourse may be constructed without permission (art. 58, para. 5).

(c) *Control.* All watercourses shall be inspected by two experts on behalf of the two Parties, and wherever water is drawn off a sluice shall be fixed at the expense of the person using the water so diverted, and upon the said sluice shall be branded with a marking iron the lowest position allowed for the fall-board, so that the bed of the brook may always be covered with water (art. 58, para. 3). The person using

[703] This is a fact-finding procedure which may even include a joint visit to the site by engineers from both countries. Such a visit is a preliminary procedure, but leaves the territorially competent State the power to take a decision on its own responsibility; the consent of the other riparian party is not required by this text . . . This is a method which has been successfully used by the United States and Canada in their frontier relations, and of which a further good example is provided by the Pyrenees Commission between France and Spain (*ibid.*, pp. 20 and 21).

[704] In the same article, it is provided that on the River Raour, which does not have any well-defined natural banks, the zone in which it is prohibited to carry out repair or defence work shall be duly marked.

[705] Although, in the application of these treaty regulations on the use of the water, the boundary treaties do not interfere with the judicial competence of the two countries as regards the settlement of disputes between water users, nevertheless they depart from certain consequences which normally result from territorial sovereignty in administrative matters. Under ordinary law, the State carries out alone, through its own organs and without having to accept the collaboration of another State, the functions within its competence, and thus conforms of its own accord with its international obligations. Any interference which it refuses to accept from another State in the exercise of its own powers would be an attack on its independence. The State may, however, undertake by treaty not to do certain things except in consultation with or with the assistance of another State, and that is the system adopted here in the administrative matter (*ibid.*, p. 22).

[706] The result of the work of the Commission took the form of a series of regulations regarding the enjoyment of waters common to France and Spain, which constitutes the second part of the Final Act of 11 July 1868 (see paras. 979–984 below).

[707] The instruments of ratification were exchanged at Vienna on 30 July 1862.

[708] Reproduced in view of the similar treatment given to the Mühlviertel.

[709] See E. Hartig, *op. cit.*, annex 6, p. 57. See also *Legislative Texts . . . (op. cit.)*, treaty No. 135.

the water shall maintain the sluice and give due attention to the branded height of the fall-board (art. 58, para. 4). Any person who alters the channel of a frontier brook in order to draw water off more easily or infringes other provisions of article 58 of the Treaty shall be liable to an appropriate punishment (art. 58, paras. 6 and 11).

Germany and Luxembourg

Boundary treaty[710] between Their Majesties the King of Prussia and the King of the Netherlands, signed at Aix-la-Chapelle on 26 June 1816[711]

904. This Treaty was concluded between the King of Prussia and the King of the Netherlands for the purpose of settling the frontier on the right bank of the Moselle and along the borders of the Grand Duchy of Luxembourg.

905. *Régime of the frontier waters. Cleaning of the watercourses. Upkeep of the banks. Changes in the course of the rivers. Diversion of water.*[712] Whenever streams or rivers form the frontier, they shall be common to the two States. The cleaning of the watercourses shall be undertaken jointly and the expenses shared, but each State shall be exclusively responsible for the preservation of the banks on its own side. No alteration may be made in the course of the rivers or in the existing state of the banks, nor may any concession be granted or diversion of water authorized without the co-operation and consent of the two Governments (art. XXVII, first para.). The use of the Our shall be free and common to both States throughout the sector which flows along the frontier (art. XXVII, second para.).

906. *Fishing. Awarding of rights.* Fishing shall be common and rights shall continue to be awarded publicly to the highest bidder on behalf of the two States. The awarding of rights shall take place alternately in a frontier commune of the Kingdom of Prussia and a frontier commune of the Kingdom of the Netherlands. The local authorities of the two States shall come to an agreement on the procedure to be followed and the places where the awarding shall take place (art. XXVII, fourth para.).

German Democratic Republic and Poland

Agreement[713] between the Government of the Polish Republic and the Government of the German Democratic Republic concerning navigation in frontier waters and the use and maintenance of frontier waters, signed at Berlin on 6 February 1952[714]

907. *Definition of frontier waters.* The expression "frontier waters" means sectors of rivers, canals and streams over which the frontier line passes, and lakes and other standing waters intersected by the frontier line[715] (art. 26.)

908. *Provisions regarding installations, engineering works and power stations:*

(a) *Preservation of existing works. Exceptions (prior consent).* Existing engineering works on frontier watercourses shall be preserved. If they are in use, each of the two Parties shall at its own expense keep them in good condition up to the frontier line, unless the two Parties conclude a separate agreement on the subject. If the need arises to alter any of these works and the alteration may cause a change in the water level in the territory of the other Party, the other Party's consent to the execution of the necessary works must be obtained (art. 18, first and second paras.).

(b) *Construction of new works (prior consent).* The prior consent of the other Party will be necessary for the construction of new works or installations (art. 18, third para.).

(c) *Works serving common purposes.* If the projected works may serve common purposes, the competent authorities shall agree upon the plans thereof and the acceptance (art. 18, fourth para.).

(d) *Repair and construction of power installations (by agreement).* The use, operation and repair of existing power installations, the restoration of destroyed power installations and the construction of new power installations on frontier waters shall be regulated by agreement (art. 18, fifth para.).

909. *Joint precautions against flooding and ice floes:*

(a) *Flooding. Joint action by the Parties.* Each Party shall take precautions against flooding on its own territory. If a dike bursts, the two Parties shall immediately combine their efforts to repair the damage, furnishing the necessary facilities. The Party which asks for assistance shall bear the cost involved (art. 21).

(b) *Ice. Co-operation by the Parties.* The Parties shall co-operate with each other to prevent the formation of potentially dangerous ice barriers. The technical direction of works for protection against ice shall be undertaken by Poland in accordance with the terms laid down in the Agreement (art. 19). In the event of damage or accident during operations, each Party shall come to the other's assistance, subject to reimbursement of the expenses entailed (art. 20).

910. *Floating of timber on frontier waters:*

(a) *Definition of rafts.* The term "rafts" means logs of wood suitably bound and attached lengthwise and crosswise for the purpose of floating (art. 28, second para.).

(b) *Use of frontier waters for floating.* The Parties grant each other, on a basis of complete equality, the right of floating on frontier waters. Rafts authorized for navigation

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[710] The Treaty entered into force on 31 January 1817.

[711] See G. F. de Martens, ed., *Nouveau Recueil de traités, 1808–1818* (Grötingen Librairie Dieterich, 1877), tome III, p. 24. See also *Legislative Texts . . . (op. cit.)*, treaty No. 203.

[712] See para. 888 (*a*) above.

[713] The Agreement entered into force on 2 August 1952 by the exchange of the instruments of ratification at Warsaw.

[714] See United Nations, *Treaty Series*, vol. 304, p. 160. See also *Legislative Texts . . . (op. cit.)*, treaty No. 213.

[715] For the purposes of the Agreement, the Zatoka Nowowarpieńska and the Zalew Szczeciński are also considered to be frontier waters. The division of the waters in the sector of the river Oder below the village of Zatoń Górna (Hohensaaten) is to be carried out by the Polish authorities in agreement with the competent German authorities (art. 23). The dam at Widuchów is to be administered by Poland. Poland is to issue regulations concerning the times of opening and closing of the dam in accordance with provisions contained in an Additional Protocol to the Agreement.

by either Party may use the full width of the frontier waters of the Oder and the navigable part of the Lausitzer Neisse (art. 1, first and second paras.). The Agreement contains provisions regarding the regulation and control of navigation on frontier waters (articles 1–16), some of which apply equally to the floating of rafts.

(c) *Damage suffered by third parties as a result of rescue operations.* If third persons suffer damage as a result of rescue operations, each Party shall enable the said persons to claim in its territory compensation under the law in force in the territory of the Party in which the damage was sustained (art. 6, third para.).

(d) *Damage as a result of culpable acts or negligence.* If any installations, engineering works, vessels or rafts of one Party are destroyed or damaged through the culpable act or negligence of the person in charge of a raft belonging to the other Party, the person having the ownership or possession of the raft shall be liable in accordance with the law applicable to the injured Party (art. 7, first para.).

(e) *Procedure for determining compensation.* The competent authorities of the two Parties shall determine by agreement the amount of any compensation claimed. Where serious damage is sustained, the liability for compensation and the amount thereof shall be examined by a mixed commission convened for the purpose and composed of representatives of both Parties (art. 7, second para.).

(f) *Measures to ensure the safety of floating.* The two Parties shall bear joint responsibility for the removal of obstructions in the fairway and for the marking of the fairway (art. 15).

911. *Measures to maintain the frontier waters in proper condition (flow, water level, cleaning and pollution).* In order to maintain the frontier waters in proper condition, each Party undertakes not to alter or obstruct the natural flow of the water, not to cause a fall in the water level necessary for navigation, and to clean out frontier watercourses regularly. The Parties further undertake to prevent the contamination of the Oder and the Lausitzer Neisse by physical, chemical or bacteriological impurities which will adversely affect the use of the water for domestic, industrial or agricultural purposes, cause installations, the bed and the banks to become covered with slime, or adversely affect the normal development of flora and fauna (art. 17).

912. *Fishing in frontier waters. Prohibition of certain methods of fishing.* The inhabitants of each Party shall be permitted, in accordance with the provisions in force in its territory, to fish in frontier waters up to the frontier line. However, they must not use explosive, poisonous or narcotic substances, fish during the night or interfere with navigation (art. 24).

913. *Extraction of gravel and sand.* Permission for the extraction of gravel and sand from the river bed in the frontier sectors of the Oder and the Lausitzer Neisse shall be granted by the competent authorities of the Parties after consultation with each other (art. 25).

914. *Co-operation between the Parties. Establishment of a mixed commission to prepare a code of rules concerning navigation, etc.* The determination of the procedure for dealing with special questions shall be entrusted to a Mixed Polish–German Commission, to which each Party shall appoint three representatives. The Commission may co-opt experts. It shall prepare and submit to the Parties for approval a code of provisions concerning navigation in and the maintenance and use of frontier waters (art. 30). A Final Protocol specifies the contents of the code of rules to be prepared by the Mixed Commission. On completion of the code of rules, the Commission shall be dissolved.

Germany (Federal Republic of) and the Netherlands

Treaty[716] between the Kingdom of the Netherlands and the Federal Republic of Germany concerning the course of the common frontier, the boundary waters, real estate property situated near the frontier, traffic crossing the frontier on land and via inland waters, and other frontier questions (Frontier Treaty), signed at The Hague on 8 April 1960[717]

915. *Definition of boundary waters.* Boundary waters within the meaning of the treaty are surface waters, including their banks, which cross or, in some of their sections, form the frontier between Germany and the Netherlands[718] (art. 56, para. 1).

916. *Use and management of water resources which may affect the boundary waters. Consultations.* The Parties agree to conduct regular consultations on all questions relating to the use and management of water resources in so far as they affect the boundary waters within the territory of the neighbouring State, with a view to solving such questions in a manner satisfactory to both Parties. Such consultations shall be held in a Permanent Boundary Waters Commission established by the treaty (art. 57).

917. *General obligation to safeguard the interests of the other Party in the boundary waters.* The Parties undertake to give due regard, in the performance of their tasks of water management, to the neighbouring State's interests in the boundary waters. To that end, they agree to take or to support all measures required to establish and to maintain within the sections of the boundary waters situated in their respective territories such orderly conditions as will mutually safeguard their interests, and they shall neither

[716] At the date of drafting of the present report, this treaty had not yet come into force.

[717] See Netherlands, *Tractatenblad van het Koninkrijk der Nederlanden, 1960 (The Hague)*, No. 68, p. 3. See also *Legislative Texts ... (op. cit.)*, treaty No. 212.

[718] The provisions shall not apply to the Rhine, the Ems and the Dollard (art. 56, para. 2). An Annex A contains special provisions dealing with: (*a*) the regulation of the Wurm river and the existing rights of use of the water (section 8); (*b*) the permission to conduct water into the Rodebach and changes in existing conditions (section 12); (*c*) the Dinxperlo drainage system and its alterations (section 33); (*d*) restoration and maintenance of drainage conditions in Zwillbrock/Eibergen (section 34); (*e*) development of the Rammelbach by a special agreement (section 40); and (*f*) protection against the run-off of high water from the Walchum and Brualer Schloots into Netherlands territory (section 44). Provisions concerning the regulation of streams of the Amstelbach and Bleyerheider Bach, the Mühlenbach, the Rothenbach and the Rammelbach, in the frontier sections are set forth in Annex B to the Treaty (sections 2–5).

take nor tolerate any measures causing substantial prejudice to the neighbouring State (art. 58, para. 1).

918. *Safeguards of the other Party's interests in the boundary waters.* In performing the general obligation mentioned above, the Parties shall in particular take or support all measures required to secure and maintain the adequate drainage of the boundary waters to prevent inundations, diversion of water, or extraction of sand which may cause substantial prejudice to the neighbouring State and the pollution of the boundary waters or may substantially impair the customary use of the waters by the neighbouring State (art. 58, para 2.)

919. *Improvements in the use and management of the boundary waters.* The Parties shall endeavour to effect such improvements in the use and management of the boundary waters within their respective territories as will serve their mutual interests, and to participate financially, where such participation is equitable, in measures taken in respect of the boundary waters within the territory of the neighbouring State (art. 58, para. 3).

920. *Establishment of a Permanent Boundary Waters Commission.* To promote co-operation in matters relating to boundary waters, the Parties establish a Permanent Netherlands–German Boundary Waters Commission (art. 64). The Treaty set forth provisions concerning the composition and functions of the commission (articles 65 and 66). The Commission is authorized to make recommendations to the Governments, provinces, municipalities and asociations under public law which have jurisdiction *ratione loci* in matters relating to the boundary waters (art. 66, para. 7). If the Commission fails to reach agreement on a recommendation, the two Governments shall endeavour to come to an agreement. The Governments may bring the matter before an arbitral tribunal established by the Treaty (art. 67). The Commission shall decide the establishment of sub-commissions for individual boundary waters, if need be (art. 68).

921. *Notification of the Permanent Boundary Waters Commission of the intention to carry into effect measures affecting the use and management of water resources of the other Party.* If it is intended to carry into effect, within the territory of one of the Parties, any measures liable substantially to affect the use and management of water resources in the territory of the other Party, the Permanent Boundary Waters Commission shall be notified thereof as soon as possible (art. 60).

922. *Presentation to the Permanent Boundary Waters Commission of objections to measures taken by the other Party which may cause damage.* Each Party may, within an appropriate period of time, present to the Permanent Boundary Waters Commission its objections to any measures or to any cases of non-performance of an obligation on the part of the other Party which are liable to cause, or have already caused, substantial damage. Such objections must be founded on the fact or the expectation of a violation of obligations entered into (art. 61).

923. *Suspension of the execution of measures to which objections have been raised by the other Party.* Each Party shall be bound, pending the conclusion of the deliberations of the Permanent Boundary Waters Commission or of the deliberations between the two Governments, to suspend the execution of any measures planned by it to which objections have been raised by the other Party, unless the latter consents to some other arrangement. This shall not apply in cases which the non-execution of the measures objected to endangers seriously the interests of the Party concerned (art. 62).

924. *Compensation for damage.* If one of the Parties, notwithstanding the objections raised by the other Party, acts in violation of its obligations under the Treaty, thereby causing damage within the territory of the other Party, it shall be liable for such damage as was sustained after the objections were raised (art. 63).

925. *Conclusion of special agreements.* For the purpose of implementing the provisions laid down in the Treaty, the Parties agree to conclude such special agreements in respect of individual boundary waters as may be required (art. 59, para. 1).

926. *Continuance in effect of existing agreements.* Existing agreements shall continue in effect, even if they are at variance with the provisions of the Treaty[719] (art. 59, para. 3).

927. *Settlement of disputes (arbitral tribunal; applicable law).* An arbitral tribunal having jurisdiction shall be established for the settlement of all disputes between the Parties which involve the interpretation or application of

[719] It should be noted here that, in addition to the treaties between Germany and the Netherlands referred to in this document, a number of agreements concerning frontier waters have also been concluded between local authorities in those two countries, *inter alia* between: (*a*) the "de Berkel" drainage authority (administering body of the "Boven-Slinge" division) and the Regierungs-Präsident at Muenster, dated 10 November 1898 (Winterswijk), concerning the improvement and maintenance of the Willinkbeek stream for the discharge of German waters; (*b*) the Het Schoonbekerdiep drainage authority and the Kreis Grafschaft Bentheim, dated 9/14 August 1929 (Schoonebeek/Bentheim), amended on 8 June 1956, concerning the improvement and maintenance of the Schoonebeekdiep canal; (*c*) the commune Arcen en Velden and the Straelener Veengenossenschaft, dated 26 June 1931 (Straelen/Arcen), amended on 5 October 1931 and 18 April 1932, concerning the improvement and maintenance of the Lingsforter stream or Zandhoeksche Beek and the Straelener Leitgraef; (*d*) the Nijmegen drainage authority–German frontier and the Deichverband Clèves-frontier, dated 28 June 1932 (Nijmegen), concerning the removal of water from the land between Clèves and Nijmegen; (*e*) the Overyssel province and the Kreis Grafschaft Bentheim, dated 4 August 1933 (Zwolle), concerning the improvement of the lower Dintel; (*f*) the commune Bergen (L.) and the Hülmer Heide Genossenschaft, dated 28 April 1933 (Bergen), concerning the improvement and maintenance of the Eckelsche Beek and Horster Beek streams; (*g*) the "de Berkel" drainage authority and the Kreis Ahaus, dated 1936 (Lochem-Ahaus), concerning the improvement and maintenance of the Ramsbeek stream; (*h*) the "de Berkel" drainage authority and the commune Armelö, dated 5 November 1937 (Winterswijk), concerning drainage; (*i*) the Radowijker and Baalder drainage authority and the Wasser- und Bodenverband Radewijker-Niederung, dated 22 February 1943 (Hardenberg-Wilsum), amended on 8 April 1953, concerning the improvement and maintenance of the Radewijkerbeek stream; (*j*) the "de Geleen en Molenbeek" (with tributaries) drainage authority and the Kreiskommunalverband Geilenkirchen-Heinsberg, dated 20 April 1944 (Sittard-Geilenkirchen), concerning the improvement and maintenance of the Rode Beek stream; (*k*) the "de Oude Yssel" drainage authority and the Deichschau Oberhessen, dated 15 November 1947 (Praest), concerning the maintenance of the Kleefsche Graef canal; (*l*) the "de Oude Yssel" drainage authority and the Amt Liedern-Werth, dated 1951–1952, concerning the maintenance of the Keupenbeek stream; (*m*) the commune Swalmen and the Wasser- und Bodenverband der Schwalm, dated 1955, concerning the removal of plants. (Information furnished by the Netherlands Government in its reply to the Secretary-General's letter EC/533/2, dated 18 February 1960.)

the Treaty and of the special agreements to be concluded (art. 69). The Treaty contains provisions concerning the composition and organization of the arbitral tribunal and the submission of claims by the Parties (articles 70 and 71). In deciding upon a case, the tribunal shall apply the pro-provisions of the Treaty and of the special agreements concluded and the general principles of international law. The procedure before the tribunal shall be governed by the provisions of articles 63 to 82 of the Hague Convention for the Pacific Settlement of International Disputes of 18 October 1907 (art. 72). Provisions relating to interim measures to be taken before the appointment of the arbitrations and the sharing of costs by the Parties are also laid down by the Treaty (art. 72, para. 2, and art. 73).

Austria and Italy

Agreement[720] *between Italy and Austria concerning economic relations between the frontier zones of the two States, signed at Rome on 28 April 1923*[721]

928. *Delimitation of boundary waters.* Boundary waters are deemed to be the waters flowing along the boundary and the waters traversing the boundary, for the sector which is to be delimited by agreement between the joint commissions (art. XV, first para.).

929. *Use of boundary waters (protection of existing rights).* Neither of the two States shall, in the boundary waters, cancel or restrict by means of works or utilization the existing users' rights of industrial estates or installations situated in the other State (art. XV, second para.).

930. *Modifications of the conditions or use of boundary waters (mutual agreement).* Whenever it is necessary to construct water-power installations in the boundary waters, to modify the conditions or the hydraulic use of these waters, or to execute on them new protection or canalization works, the two States shall proceed by mutual agreement, where necessary through the establishment of a joint commission (art. XV, third para.).

931. *Fishing:*

(a) *Protection of fishing rights (fishing permits).* Existing rights of fishing in boundary waters shall be respected if these rights are substantiated by fishing permits issued and certified by the competent authorities (art. XII).

(b) *Protection of fishing rights and of fish.* In granting concessions for the use of the frontier waters for industrial or power-producing installations or for the execution of works for the protection of the waterways, efforts shall be made not to impair fishing rights in the area or destroy the fish (art. XIV).

(c) *Prohibition of certain methods of fishing.* The use of substances which are explosive, caustic, narcotic or in any way toxic is strictly forbidden (art. XIII, second para.).

(d) *Co-operation between the two States.* Regulations concerning the destruction of animals harmful to fishing shall be adopted by mutual agreement between the Governments of the two States. Special arrangements for the settlement of technical fishing questions shall be adopted by common agreement between the local authorities of the two States (art. XIII, first and third paras.).

Belgium and Luxembourg

Convention[722] *fixing the frontier between Belgium and the Grand Duchy of Luxembourg, signed at Maastricht on 7 August 1843*[723]

932. *Joint sovereignty over the sectors forming the frontier.* In all places where rivers form the frontier, sovereignty thereover is common to both States, except in cases where the converse is expressly stipulated. Each State shall, on its part, see to their preservation and maintenance (art. 29).

933. *Water intakes (respect for existing rights; grant of new concessions).* Existing water intakes on the rivers serving as the boundary shall be preserved in their present state. No new intake and no concession or innovation whatever entailing any alteration of the rivers forming the frontier, or of the present condition of the banks, shall be introduced without the consent of both Governments (art. 30).

France and Spain

Treaty[724] *between France and Spain to determine the frontier from the mouth of the Bidassoa to the point where the department of the Basses-Pyrénées, Aragon and Navarre border on each other, signed at Bayenne on 2 December 1856*[725]

934. *Use of the waters (domestic uses; watering).* Inasmuch as the dividing line from the mouth of the Bidassoa to the eastern extremity of Navarre follows watercourses at several places, it is agreed that such waters shall be common, and that their use shall be free to the herds of livestock and inhabitants of both sides of the frontier[726] (art. XII).

Spain and Portugal

(1) *Frontier treaty*[727] *between Spain and Portugal, signed on 29 September 1864*[728]

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[720] The Agreement entered into force on 20 July 1923.

[721] See *British and Foreign State Papers, 1923*, second part (London, 1926), vol. 118, p. 691. See also *Legislative Texts . . . (op. cit.)*, treaty No. 139.

[722] The exchange of the instruments of ratification took place at The Hague on 3 October 1843.

[723] See Garcia de la Vega, *op. cit.*, p. 339. See also *Legislative Texts . . . (op. cit.)*, treaty No. 152.

[724] The instruments of ratification were exchanged at Paris on 12 August 1857.

[725] See *British and Foreign Papers 1856–1857* (London, 1866), vol. 47, p. 765, or Spain, Ministry of Finance, *Recopilación de Acuerdos internacionales con Francia y Portugal sobre límites y otros servicios de frontera* (Madrid, 1948), p. 13. See also *Legislative Texts . . . (op. cit.)*, treaty No. 183.

[726] Articles XX to XXV of the Treaty broadly define the legal position of the Bidassoa, the centre line of the main course of which forms the Franco–Spanish frontier over a distance of some twelve kilometres. These articles regulate the use of the river for purposes of navigation and fishing. The provisions concerning fishing are not reproduced here, because they were subsequently modified and defined in greater detail by the Convention of 18 February 1886 and the successive amendments thereto (see paras. 617–626 above).

[727] The exchange of the instruments of ratification took place at Lisbon on 19 May 1866.

[728] See Spain, Ministry of Finance, *Recopilación de Acuerdos internacionales con Francia y Portugal . . . (op. cit.)*, p. 279. See also United Nations, *Legislative Texts . . . (op. cit.)*, treaty No. 241.

935. *Regulation of the construction of works on the banks.* The two Parties agree that after the necessary studies have been completed a special code of regulations shall be drafted which shall establish and fix for the future appropriate rules governing the construction of works of any kind on the banks of border rivers, particularly on those of the Minho and on its islands (art. 26).

936. *Utilization of the water.* As the international line follows the watercourses and touches certain springs, it is agreed that such waters and springs shall be used jointly by the towns of both countries (art. 28).

(2) *Regulations*[729] *annexed to the Frontier Treaty between Spain and Portugal of 29 September 1864, signed at Lisbon on 4 November 1866*[730]

937. Annex I of the Regulations is related to the conterminous rivers between Spain and Portugal. Pursuant to the stipulations in articles XXVI and XXVIII of the Frontier Treaty of 29 September 1864,[731] it is provided that the waters of conterminous rivers shall be used in common and that the construction of works on the banks of those rivers shall be regulated. These regulations were concluded in order to prevent the artificial diversion of the course of the rivers and to make the common use thereof practicable according to "the recognized principles of international law in the matter".

938. *Utilization of the water.* The rivers which serve as the international frontier between Spain and Portugal shall be used in common by the people of the two countries, though by the moiety of their currents they still belong to the two nations (art. I).

939. *Usage and custom (existing treaties and customs; change in the conditions for the utilization of the rivers).* Besides the common use of the conterminous rivers for navigation, the inhabitants of the two countries may likewise make use of the waters for all purposes that suit them, provided that they do not infringe the existing public agreements or the recognized customs amongst the people of the two banks, nor alter in the very least the conditions of the rivers in regard to their fitness for the public and common use (art. II).

940. *Prohibition of the construction of works that might interfere with the utilization of the water.* It is unlawful to construct in the rivers or on their banks works of any kind that may prejudice navigation or alter the course of the waters, or damage in any manner the condition of the rivers for the common and public use. As a general rule, the construction of certain kinds of works, such as mills or watermills, fixed or movable moles, dikes, fisheries, canals, palisades, or any other works whatever that may cause an obstacle or injury to the public interest in the aforesaid respects, is prohibited (art. IV).

941. *Construction of works which do not interfere with the utilization of the water (special permission).* If the private owners of either bank wish to construct any kind of works and such works can be executed without any prejudice to the common use of the countries, the respective authorities may grant special permission for the purpose (art. V), in virtue of the requirements and proceedings laid down by the Regulations (VI and VII). If the work is considered prejudicial at the time or in the future to the interests of the riparian inhabitants, or to the common use of the river, the permission solicited shall be refused.

942. *Measures to put an end to violations:*

(a) *Inspection.* Contraventions of the provisions of the Regulations may be denounced either by private persons in legal form, or by the wardens and other agents, or by the local authorities. Without prejudice to the information and proceedings to which infractions or abuses committed may give rise at any time, and for the purpose of maintaining and preserving the good condition of the rivers, the Spanish and Portuguese municipal administrators shall examine annually the fluvial part of the frontier to the extent appropriate to their jurisdictional department, in conformity with the provisions contained in the Regulations (art. VIII).

(b) *Penalties for violations.* Those who construct works in the rivers without having obtained proper permission to do so shall be obliged: (*a*) to destroy at their own expense all the works done, and to restore everything entirely to its original state; (*b*) to pay a fine in proportion with the cost of the work and with the damages which it might have occasioned; (*c*) to pay all the expenses incurred in the proceedings and measures taken by the authorities until the demolition of the work. The same or similar penalties will be incurred by all those who turn or alter the current of the waters or deteriorate in any other way the condition of the rivers in respect to the common use thereof by the inhabitants of both countries (art. IX).

(3) *Convention*[732] *between Portugal and Spain delimiting the frontier between both countries, from the confluence of the river Cuncos with the Guadiana to the mouth of the latter, signed at Lisbon on 29 June 1926*[733]

943. According to article 11 of this Convention, the part of the frontier between the two countries, from the confluence of the river Cuncos with the Guadiana to the mouth of the latter, shall be subject to the principles laid down in the Frontier Treaty of 29 September 1864 and the Regulations of 4 November 1866 annexed thereto,[734] in respect of watercourses and springs, without prejudice to any special provisions that the two Governments may see fit to adopt.

Finland and the USSR

Agreement[735] *between the Government of the Republic of Finland and the Government of the Union of Soviet*

[729] The instruments of ratification were exchanged at Lisbon on 20 November 1866.

[730] See *British and Foreign State Papers, 1871–1872* (London, 1877), vol. 62, p. 952. See also *Legislative Texts . . . (op. cit.)*, treaty No. 242.

[731] See paras. 935 and 936 above.

[732] Ratification exchanged at Lisbon on 17 June 1927.

[733] See Spain, Ministry of Finance, *Recopilación de Acuerdos internacionales con Francia y Portugal . . . (op. cit.)*, p. 430. See also *Legislative Texts . . . (op. cit.)*, treaty No. 247.

[734] See paras. 935–942 above.

[735] The Agreement entered into force on 5 October 1960. This Agreement replaces the Agreement concluded between the two countries concerning the régime of the Soviet–Finnish frontier, signed at Moscow, on 9 December 1948 (see United Nations, *Treaty Series*, vol. 217, p. 158).

Socialist Republics concerning the régime of the Finnish–Soviet State frontier, signed at Helsinki on 23 June 1960[736]

944. *Frontier waters:*

(a) *Delimitation.* A strip of water on either side of the frontier line, of a width specified in the Agreement, is deemed to be "frontier waters". Those sections of rivers and the narrow sections of lakes along which the frontier line runs are deemed to be frontier waters in their entirety (art. 11).

(b) *Protection of the waters (pollution).* The two States are to ensure that the frontier waters are kept clean and are not polluted or fouled in any way (art. 15).

(c) *Protection of the banks.* The Parties are to take measures to prevent wilful damage to the banks of frontier waters (art. 15, *in fine*).

(d) *Utilization of the waters (respect for the rights and interests of the other Party; compensation for damage).* In the use of frontier waters, the rights and interests of the other Party are to be respected. Where failure to comply with the requirements of the Agreement occasions material loss to one Party, compensation for that loss shall be paid by the Party to whose negligence the loss is attributable (art. 16).

(e) *Exchange of information with a view to averting danger from flooding.* The competent authorities of the Parties shall, as far as possible, exchange such information concerning the water level, water volume and ice conditions in frontier waters as might avert danger from flooding or the breaking up of drifting ice (art. 17).

(f) *Floating of timber (special agreements).* The Agreement does not affect the floating of timber, which is settled by special agreement (art. 18).

(g) *Fishing (exercise of fishing rights; prohibited methods; protection of fish).* Nationals of the two Parties may fish in frontier waters up to the frontier line in accordance with the regulations in force in their respective territories. They are, however, prohibited from using explosive or poisonous substances or resorting to other means that result in the large-scale destruction of fish, and also from fishing at night. The preservation and breeding of fish in frontier waters, prohibitions against the catching of fish of particular species in specified areas, fishing seasons and other measures concerning fishing may be regulated by special agreement between the competent authorities of the Parties (art. 21).

Hungary and Czechoslovakia

Treaty[737] *between the Czechoslovak Republic and the Hungarian People's Republic concerning the régime of State frontiers, signed at Prague on 13 October 1956*[738]

945. *Frontier waters:*

(a) *Definition.* Rivers, streams or canals along which the frontier line runs shall be deemed to be frontier waters (art. 9, para. 1).

(b) *Use of the waters.* The Parties shall take appropriate steps to ensure that when frontier waters are used by persons residing in their territories the provisions of the Treaty are observed and the rights and interests of the other Party are respected (art. 9, para. 2).

(c) *Flow of the waters.* The natural flow of frontier waters may not be altered or obstructed by the erection of installations or structures in the water or on the banks, or by any other works, unless the Parties so agree (art. 14).

(d) *Displacement of the river bed.* The position of the beds of frontier watercourses shall as far as possible be maintained unchanged. To this end, the two Parties shall take the necessary steps to remove such obstacles as may cause displacement of the river bed or obstruct the natural flow of water, ice or alluvia. In order to prevent displacement of the beds of rivers, their banks shall be strengthened and corrective action shall be taken jointly by the Parties. These operations shall be carried out in conformity with the Agreement of 16 April 1954 between Czechoslovakia and Hungary[739] (art. 13).

(e) *Cleaning out of the beds.* The beds of frontier watercourses shall be cleaned out on sectors to be determined jointly. The substances removed shall be placed at such a distance as to prevent any obstruction of the beds or any reduction in the flow of water (art. 15).

(f) *Floating of timber (right of access; temporary installations).* The two Parties may freely engage in the floating of timber over the whole length of the frontier water, including those places where both banks belong to the territory of the other Party. In order to ensure the normal floating of timber, landings on the bank belonging to the other Party shall be permitted for the purpose of the construction of temporary installations for the floating of timber (articles 16 and 17).

(g) *Removal and construction of installations (prior agreement).* Existing structures and installations shall be maintained. No removal of any such structure or installation which is liable to entail a change in the bed or in the level of the water in the territory of the other Party may be carried out except with the consent of both Parties. New hydraulic structures and installations shall not be erected except by agreement between the two Parties (art. 19).

(h) *Fishing (right to fish; forbidden methods; the protection of fish).* Fishing in frontier waters is permitted up to the frontier line, unless the Parties agree otherwise. The use of explosive or poisonous substances and fishing at night are forbidden, except in the river Danube in cases where prior authorization has been granted. Arrangements for the protection and breeding of fish, the prohibition of fishing for certain species, and the dates of the fishing season shall be determined by special agreement between the Parties (art. 22).

[736] See United Nations, *Treaty Series*, vol. 379, p. 330. See also *Legislative Texts . . . (op. cit.)*, treaty No. 177.

[737] The Treaty entered into force on 10 February 1958, the date of the exchange of the instruments of ratification. With reference to the Danube, see the Convention regarding the régime of navigation on the Danube of 18 August 1948 (see paras. 470–473 above).

[738] See United Nations, *Treaty Series*, vol. 300, p. 150. See also *Legislative Texts . . . (op. cit.)*, treaty No. 164.

[739] See paras. 536–542 above.

Norway and the USSR

Agreement[740] *between the Royal Norwegian Government and the Government of the Union of Soviet Socialist Republics concerning the régime of the Norwegian–Soviet frontier and procedure for the settlement of frontier disputes and incidents, signed at Oslo, on 29 December 1949*[741]

946. *Use of the frontier waters (respect for the rights and interests of the other Party).* Each State shall take the necessary measures to ensure that the provisions of the Agreement are observed in the use of frontier waters[742] and that the rights and interests of the other Party are respected (art. 7, para. 2).

947. *Floating of timber.* Both Parties may float timber freely along the Pasvik river and certain lakes formed by it, including reaches where both banks belong to one Contracting Party (art. 10, para. 1). The Agreement contains a number of provisions which govern timber-launching and floating (art. 10, para. 2, and articles 11 and 12).

948. *Fishing (right to fish; forbidden methods; the protection of fish).* The persons living on either bank may fish in frontier waters up to the frontier line. It is prohibited to use explosive substances, to spear fish and to fish at night (art. 13, para. 1). The preservation and hatching of fish, the fishing seasons and other measures in connexion with fishing may be regulated by special agreement between the Parties (art. 13, para. 2).

949. *Protection of the waters (pollution).* The Parties shall ensure that the frontier waters are not artificially polluted or fouled in any way (art. 14, para. 1).

950. *Protection of the banks.* The Parties shall also take measures to prevent damage to the banks (art. 14, para. 1, *in fine*).

951. *Construction and management of installations (special agreements).* Questions relating to the construction or management of any work capable of affecting the level and volume of the waters shall be settled by special agreement between the Parties (art. 14, para. 2).

952. *Co-operation for the purpose of averting danger from flooding or ice.* The authorities of the two Parties shall regularly exchange information concerning the level and volume of the waters and concerning ice conditions with a view to averting danger from flooding or ice (art. 15).

Poland and the USSR

Agreement[743] *between the Government of the Polish Republic and the Government of the Union of Soviet Socialist Republics concerning the régime of the Soviet–Polish State frontier, signed at Moscow on 8 July 1948*[744]

953. Articles 11, 14–22 and 25 of this Agreement contain provisions governing the definition of the term "frontier waters", the use and proper upkeep of such waters, the maintenance of the position and direction of the rivers, the cleaning out of the watercourses, the protection of the waters against pollution, hydraulic installations, flood control measures, the floating of timber and fishing, which are similar to the provisions of the Treaty between the Government of the Union of Soviet Socialist Republics and the Government of the Hungarian People's Republic concerning the régime of the State frontier, signed at Moscow on 24 February 1950.[745]

Romania and the USSR

Treaty[746] *between the Government of the Union of Soviet Socialist Republics and the Government of the Romanian People's Republic concerning the régime of the Romanian–Soviet frontier, signed at Moscow on 25 November 1949*[747]

954. Like the Agreement of 8 July 1948 between the Government of Poland and the Government of the Union of Soviet Socialist Republics concerning the régime of the Polish-Soviet frontier, this Agreement contains provisions[748] which are similar to the provisions of the Treaty between the Government of the Union of Soviet Socialist Republics and the Government of the Hungarian People's Republic concerning the régime of the State frontier, signed at Moscow on 24 February 1950.[749]

Romania and Yugoslavia

Protocol[750] *between the Federal People's Republic of Yugoslavia and the People's Republic of Romania governing the crossing of the frontier by officials of the water control services, signed at Belgrade on 31 December 1948*[751]

955. This Protocol was concluded in order to restore co-operation between the water control services of the two countries in measures and works necessary for the maintenance and improvement of the water control systems traversed by the frontier.

956. *Right of access.* Officials of the water control service of either State may enter the territory of the other State in accordance with the provisions of the Protocol (art. 1). These officials shall jointly visit specified places for the purpose of co-ordinating measures and works (art. 13). For the purpose of urgent action to protect dams from collapse or to guard against high water and flood peril, frontier residents and crews of workers shall be allowed to

[740] The Agreement entered into force on 30 October 1950.

[741] See United Nations, *Treaty Series*, vol. 83, p. 342. See also *Legislative Texts . . . (op. cit.)*, treaty No. 238.

[742] The Agreement defines the frontier waters which comprise a stretch of the river Patso (Pasvik) and certain lakes formed by it (art. 7, para. 1).

[743] The Agreement entered into force on 20 January 1949, the date of its ratification by both Contracting Parties, in accordance with article 38.

[744] See United Nations, *Treaty Series*, vol. 37, p. 66. See also *Legislative Texts . . . (op. cit.)*, treaty No. 240.

[745] See paras. 597–606 above.

[746] The exchange of the instruments of ratification took place at Bucharest on 20 June 1950.

[747] USSR, Ministry of Foreign Affairs, *Sbornik deistvuiushchikh dogovorov, soglashenii i konventsii, zakliuchennykh SSR s inostrannymi gosudarstvami*, vol. XIV, p. 157. See also *Legislative Texts . . . (op. cit.)*, treaty No. 250.

[748] See articles 11, 14–22 and 25.

[749] See paras. 597–606 above.

[750] The Protocol entered into force as from the date of signature.

[751] See United Nations, *Treaty Series*, vol. 116, p. 122. See also *Legislative Texts . . . (op. cit.)*, treaty No. 252.

cross the frontier with the necessary material (arts. 16, 17 and 19).

(c) Provisions of treaties relating to one or more specific rivers

Aa, Kleine-Vechte, Radewyk and certain frontier aqueducts and conduits (Germany and the Netherlands)

Treaty[752] concerning the frontiers between the Netherlands and Hanover, concluded at Meppen on 2 July 1824[753]

957. *Flow of water. Drainage.* The Treaty laid down provisions concerning the clearing of the Aa river, the so-called Kleine Vechte, the Radewyk stream and some aqueducts[754] situated near the boundary in order to ensure the unobstructed flow of the water (articles 19, 23, 25 and 27). It also provided for the drainage from the territory of one country in the direction of and through the territory of the other country[755] (articles 34 and 35). Each Party shall be free to take all measures, on its own side, which shall be required for the protection of the conjointly owned Aa river, but such measures shall not obstruct the drainage through the river (art. 37). Drainage into the Aa river, as a jointly owned boundary river, shall be free (art. 40).

Anarjokka[756] (Finland and Norway)

Agreement[757] between Norway and Finland, concerning the construction and maintenance of a bridge across the Anarjokka, signed at Helsinki on 28 June 1957[758]

958. *Compensation for damage.* Compensation for any damage or inconvenience caused to the watercourse by the construction of the bridge as provided for by the Agreement is to be payable by the State in whose territory the damage or inconvenience is caused, in accordance with the legislation of that State (art. 10).

Angoustrine and Llivia (canal) and Puigcerdá (canal) (Spain and France)

Boundary Treaty[759] between Spain and France, finally establishing the common frontier and the rights, usages and privileges of the populations living on the frontier of the two countries between the department of the Pyrénées-Orientales and the province of Gerona, from the valley of Andorra to the Mediterranean in order to complete from one sea to the other the work begun and followed out in the Treaties of Bayonne of 2 December 1856 and 14 April 1862, signed at Bayonne on 26 May 1866[760]

959. *Ownership of the Puigcerdá canal. Utilization of waters.* The canal carrying the waters of the Aravo to Puigcerdá, situated almost entirely in France, is the private property of the Spanish town of Puigcerdá. The relations between the owner and those who have the right to use the waters for irrigation purposes will be defined by the international commission of engineers to be appointed to settle any questions relating to the utilization of water[761] (art. XX).

960. *Utilization of the waters of the Angoustrine and Llivia canal.* The inhabitants of both the commune of Angoustrine and the commune of Llivia will have the right to use the waters of the canal for irrigation purposes. The water will be allotted on the principle of rotation (one-half of the week for each group of users). The international commission of engineers[762] which is to be appointed is to draw up rules for the irrigation system and the policing of the canal (art. XXVII).

Basaviga, Douro, Eljas, Minho, Tagus, Tuerto and Sever (Spain and Portugal)

General Act[763] demarcating the frontier between Spain and Portugal from the mouth of the river Minho to the confluence of the Caya and Guadiana, signed at Lisbon on 1 December 1906[764]

961. *Utilization of waters.* The General Act establishes the frontier along the rivers Minho, Douro, Tuerto, Basaviga, Eljas, Tagus and Sever as an imaginary line deemed to be drawn on the surface of the water equidistant from both shores so as to bisect the waters of the said rivers. However, this division shall not prevent the peoples of either State from making use of these rivers in conformity with the boundary Treaty of 29 September 1864 and the Regulation of 4 November 1866 annexed[765] (second part, art. 3).

962. *Special provision concerning the works along the boundary section of the Minho.* Because of the large number of works constructed along the banks of the river Minho, disputes had arisen between the riverside populations in both countries. A large amount of data and background information was accumulated concerning that river in two memoranda, in which all the obligations and rights of the peoples of both States are clearly established (second part,

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[752] The Treaty was ratified by the Netherlands on 18 August 1824 and by Hanover on 24 September 1824.

[753] See E. G. Lagemans, *Recueil des traités . . . (op. cit.)*, 1859, tome 2, p. 131. See also *Legislative Texts . . . (op. cit.)*, treaty No. 205.

[754] The old aqueduct situated in Hanoverian territory, near the so-called Püffershütte, as also the main aqueduct which conducts the water from the Heesterkante in Hanoverian territory into the Veldt (art. 23).

[755] For instance, the drainage of the lands of the Hanoverian settlement Ruitenbrook towards the Aa river in Netherlands territory (art. 34), the installation of a pump in the area of Bourtange (art. 35) and the improvement of the inadequate drainage of the water turbines set up by the Wymeerst Syhlacht (art. 38).

[756] Also known as the Inarijoki.

[757] The Agreement entered into force on the date of signature.

[758] See United Nations, *Treaty Series*, vol. 272, p. 196. See also *Legislative Texts . . . (op. cit.)*, treaty No. 169.

[759] The instruments of ratification were exchanged in Paris on 12 July 1866.

[760] See *British and Foreign State Papers, 1865–1866* (London, 1870), vol. 56, p. 212, or Spain, Ministry of Finance *Recopilación de Acuerdos internacionales con Francia y Portugal . . . (op. cit.)*, p. 93. See also *Legislative Texts . . . (op. cit.)*, treaty No. 184.

[761] See para. 982 below.

[762] See para. 982 below.

[763] Approved by an exchange of notes on 1 December 1906.

[764] See Spain, Ministry of Finance, *Recopilación de Acuerdos . . . (op. cit.)*, p. 303. See also *Legislative Texts . . . (op. cit.)*, treaty No. 245.

[765] See paras. 935–942 above.

art. 4). A thorough survey of the river Minho showed that (*a*) most of the works constructed on both banks of the river do not affect the natural flow of the waters over the section where the river is flanked by rocky escarpments, (*b*) those constructed along the section where the banks are low or consist of earthen embankments have a gradual effect, the consequences of which can only be appreciated over the long term, (*c*) this latter circumstance places an added onus on the respective municipalities of both countries to comply with the provisions of article 8, annex I, of the regulations of 4 November 1866 annexed to the Boundary Treaty of 29 September 1864[766] (second part, art. 5).

Danube (GERMANY AND AUSTRIA)

Agreement[767] *between Austria and Bavaria concerning territorial and frontier arrangements, concluded at Vienna on 2 December 1851*[768]

963. *Demarcation of the frontier along the river. Respect for acquired rights of utilization.* According to article 1 of this Agreement, the main thalweg of the Danube shall, in future, constitute the frontier along the river between the two States. In the part of the section which shall fall within Austrian territory, all royal prerogatives and Crown property shall henceforth belong to Austria. Notwithstanding, individuals, communes and institutions, in particular Bavarian nationals, shall remain entitled, without exception or hindrance, to the free use and enjoyment of the property and other rights falling under Austrian sovereignty (art. 3).

964. *Policing of the river.* The police supervision of the said section of the river shall be exercised by the Parties in accordance with the provisions of a separate agreement concerning police concluded between the two States (art. 4, second para.).

Doubs (FRANCE AND SWITZERLAND)

(1) *Convention*[769] *concluded between the King of France and the Prince-Bishop of Bâle concerning the limits of their respective States, signed at Versailles on 20 June 1780*[770]

965. *Demarcation of the river frontier. Respect for acquired rights of utilization (factories, timber-floating; fisheries).* In that part of the Doubs where the river forms the frontier between France and the Canton of Berne, the river was placed under the sole sovereignty of France (this was a question of the limit of the bank),[771] but the Prince-Bishop of Bâle and his successors were to conserve the tenure to and free operation of the factories which had been established on the right bank of the Doubs and the owners of the factories were also to retain the right to use the vessels and boats necessary for the operation of the factories. Moreover, the Prince-Bishop was to enjoy in perpetuity the right to float timber on the Doubs (art. VI). The seignorial and other rights such as fishing rights which might belong to the riparian landowners were not affected (art. I).

966. *Prohibition of the construction of works which might affect the course of the river.* No works which might have the effect of changing the course of the river, increasing the area or flooding part of the right bank, might be constructed on the right bank (art. VI).

(2) *Procès-verbal of demarcation between France and Neufchâtel, drawn up at Neufchâtel on 4 November 1824*[772]

967. *Demarcation of the river frontier. Right of utilization of the waters. Distribution and diversion of waters (mills and factories; irrigation).* This procès-verbal regulates the use of the waters of the Doubs in all that part of the river which separates France from the Canton of Neufchâtel. The limit of sovereignty is in the middle of the river (art. 1), but the right to use the watercourse for the mills and other factories and for irrigation is not subject to the limit of sovereignty (art. 5). This right belongs to each bank up to the beginning of the half of the volume of running water at the time when the water is lowest. The parties concerned always have the right to request that the works constructed shall be reduced to the form and dimensions calculated to ensure and maintain the equality of the share of water. But, when the diversion of more than half the volume of running water would not deprive the factories or properties on the other side of the river of the quantity of water they need, or reduce the flow of the water to a speed lower than that which they need, it may be carried out with the consent of both Governments (art. 5).

968. *Technical co-operation with a view to the settlement of disputes (right of access).* In case of dispute between the owners of the factories on the two banks, or of the owners of water intakes for irrigation, engineers of the two Governments may inspect both banks and the factories and water intakes for irrigation and take the necessary measures to enable them to inform the authority which will have to decide on the facts of the case (art. 5, *in fine*).

969. *Prohibition of the construction of works likely to affect the course of the river.* The two Governments under-

[766] See para. 942 (*a*) above.

[767] The exchange of instruments of ratification took place at Vienna on 14 May 1852.

[768] See E. Hartig, *op. cit.*, annex. 4, p. 48. See also *Legislative Texts . . . (op. cit.)*, treaty No. 132.

[769] This Convention was ratified by both Parties and the instruments of ratification were exchanged as provided by article XIV. The Convention was ratified by the King of France on 11 July 1780. Under article XIII, the Prince-Bishop of Bâle was required to request and obtain the consent of the Emperor and the Empire with regard to certain provisions of the Convention, and this was ratified on behalf of the Empire in 1785.

[770] See G. F. de Martens, ed., *Recueil de traités 1780–1784* (Göttingen, Librairie Dieterich, 1818), tome III, p. 319. See also *Legislative Texts . . . (op. cit.)*, treaty No. 194.

[771] This provision was reaffirmed in the procès-verbal of demarcation of 12 July 1826 between the Government of France and the Canton of Berne (see C. Rousseau, "*Les frontières de la France*", *Revue de Droit international public* (Paris, 1954), vol. XXV, p. 209). See also O. Nippold, *Rechtsgutachten über die Grenzverhältnisse am Doubs zwischen Frankreich und Kanton Bern* (requested by the Board of Public Works of the canton of Berne) (Berne, Lierow, 1910).

[772] See De Clerq. *Recueil des traités de la France 1816–1830* (published under the auspices of C. de Freycinet, Président du Conseil, Ministry of Foreign Affairs (Paris, A. Durand et Pédone-Lauriel, 1880), tome III, p. 332. See also *Legislative Texts . . . (op. cit.)*, treaty No. 195.

take to prevent any changes in the form or position of the natural bed of the Doubs by the construction of new works (art. 6). In cases where useful works might cause a shift in the position of the river bed without causing damage to the other bank, they may be carried out with the consent of the two Governments (art. 6).

Dunkirk to Furnes and Furnes to Bergues (canals) (BELGIUM AND FRANCE)

Convention[773] *between Belgium and France to settle questions relating to the drying up of the Franco–Belgian polders and drainage works and to the improvement of the Furnes-Bergues or Basse-Colme and Furnes-Dunkirk canals, signed at Brussels on 26 June 1890*[774]

970. *Flow of water.* The Belgian administrative authorities will see that the regulator sluices of the Dunkirk-Furnes and the Furnes-Bergues canals situated in Belgium are operated in such a manner that the canals at no time discharge their flood waters into the circular drainage ditch of the polders (art. 1).

Guadiana and Minho (SPAIN AND PORTUGAL)

Treaty[775] *between Portugal and Spain concerning commercial relations and navigation, signed at Madrid on 27 March 1893*[776]

971. *Fishing operations and policing of fisheries.* Fisheries in the boundary Rivers Minho and Guadiana will continue to be carried out in common by Portuguese and Spaniards, in accordance with the provisions and regulations which may be agreed upon by the competent local authorities and approved by the respective Governments[777] (appendix No. 6, section I, art. 5).

Inn (GERMANY AND AUSTRIA)

Agreement[778] *between Austria and Bavaria concerning the regulation and management of the Inn River from its junction with the Salzach at Rothenbuch to the point where it discharges into the Danube at Passau, of 19 and and 31 August 1858*[779]

972. This Agreement was reached for the purpose of the regulation and rectification of the Inn river from its junction with the Salzach at Rothenbuch to the point where it discharges into the Danube at Passau. The provisions concerning the régime of the works to be carried out jointly (articles 7–17, 25 and 27–29) are *mutatis mutandis* the same as those embodied in the Agreement concerning the Saalach and Salzach rivers concluded on 24 December 1820.[780]

Lys and Semoy[781] (BELGIUM AND FRANCE)

Boundary Treaty[782] *between France and the Netherlands,*[783] *concluded at Courtrai on 28 March 1820*[784]

973. *Provisions concerning the Lys:*[785]

(a) *Clearing and maintenance of the river bed.* Both States, each on its own bank, shall be responsible for the clearing and maintenance of the river bed (art. VI, second para., sub-para. 2).

(b) *Fishing.* For the purposes of fishing, the river shall be divided into two parts. The first part, from Armentières to Deule, shall belong to France; the second part, from Deule to Menin, shall belong to Belgium (art. VI, second para., sub-para. 5).

974. *Provisions concerning the Semoy:*

Removal of obstacles to navigation. The administrators of the waterways of the two States shall be instructed to undertake jointly the removal of the different dams and other works which might impede the free course and use (navigation) of the river. In the future, no one shall be allowed to erect any breakwater or other work of whatever nature which might restrain the passage or prevent the free use of the river (art. 41).

Meuse (BELGIUM AND THE NETHERLANDS)

(1) *Boundary Convention*[786] *between Belgium and Netherlands, signed at Maastricht on 8 August 1843*[787]

975. *Construction of protective works and dams.* Wherever the Meuse forms the border between Belgium and the Netherlands, only protective works for the sole purpose of preserving the banks shall be erected. Any work which might modify the current or any new breakwater, dam or coffer-dam may be constructed only with the consent of both Governments (art. 10, paras. 1–6).

976. *Facilities for the execution of hydraulic protective works.* During hydraulic works for the preservation of the

[773] The exchange of the instruments of ratification took place at Brussels on 8 August 1891.

[774] See J. Basdevant, *Traités et conventions en vigueur entre la France et les puissances étrangères*, tome I (Germany-Ecuador) (Paris, Imprimerie nationale, 1918), p. 408. See also *Legislative Texts ... (op. cit.)*, treaty No. 149.

[775] Ratifications were exchanged at Lisbon on 5 September 1893.

[776] See *British and Foreign State Papers, 1892–1893* (London, 1895) vol. 85, p. 416. See also *Legislative Texts ... (op. cit.)*, treaty No. 243.

[777] See paras. 741–747 above.

[778] The Agreement entered into force on 1 January 1859.

[779] See E. Hartig, *op. cit.*, annex 5, p. 51. See also *Legislative Texts ... (op. cit.)*, treaty No. 134.

[780] See paras. 991–995 below.

[781] Also known as the Semois.

[782] The instruments of ratification were exchanged on 14 June 1820.

[783] At the time when the Treaty was concluded, Belgium formed part of the Netherlands.

[784] See *British and Foreign State Papers, 1864–1865* (London, 1870), vol. 55, p. 395. See also *Legislative Texts ... (op. cit.)*, treaty No. 182.

[785] In accordance with the provisions of article VI of the Treaty, the Lys is free to both countries from the point where it emerges from the territory of Armentières (France) as far as the territory of Menin (Belgium).

[786] The exchange of the instruments of ratification took place on 3 October 1843.

[787] See Garcia de la Vega, *op. cit.*, p. 350. See also *Legislative Texts ... (op. cit.)*, treaty No. 156. Articles 34 and 35 contain general provisions concerning joint sovereignty and dams authorized on the border sections of the rivers, similar to those in the Convention between Luxembourg and Belgium of 7 August 1843 (see paras. 932 and 940 above).

banks, the administrative authorities of both States shall be required to facilitate the extraction of sand from the opposite bank (art. 10, para. 7).

977. *Exercise of fishing. Establishment of fisheries.* Fishing rights in the Meuse, in places where the river forms the boundary, shall be held in common and publicly auctioned for the account of the two States. The administrative authorities of the two States may, by common agreement, allow the establishment of fisheries by means of fish pounds in places where they do not cause any deviation in the thalweg or damage to the banks (art. 12).

(2) *Treaty[788] between the Kingdom of the Netherlands and the Kingdom of Belgium fixing a mining boundary between the coal mines situated along the Meuse on both sides of the frontier, signed at Brussels on 23 October 1950[789]*

978. *Construction of works for the purpose of avoiding inadmissible hydraulic conditions.* To prevent the coal-mining operations in the Meuse valley from creating hydraulic conditions which, in the opinion of the competent services of the two States, are inadmissible, works considered necessary shall be carried out by agreement between the Parties (art. 2, paras. 3 and 4).

Raour, Riou Tort, Riou Tartarès, Vanera and canals of Puigcerdá Angoustrine and Llivia (SPAIN AND FRANCE)

Final Act[790] of the delimitation of the international frontier of the Pyrenees between France and Spain, signed at Bayonne on 11 July 1868[791]

979. This Final Act endorses the water control regulations drawn up by the International Commission of Engineers set up under article XVIII of the Additional Act concluded at Bayonne between Spain and France on 26 May 1866.[792] These regulations, embodied in the second part of the Final Act under the title "Regulations relative to the enjoyment of the waters common to both countries", were prepared by the Commission of Engineers in pursuance of articles XIII, XVIII and XIX of the Additional Act and of articles VI, XX and XXVII of the Treaty of Limits of the same date. As a result of their endorsement by this Final Act, the regulations have assumed the validity of treaty law between Spain and France and of domestic law for the authorities and nationals of the two countries.[793] They concern the demarcation of the bed of the Raour, the use of the waters of the Riou Tort and of the Riou Tartarès, of the Puigcerdá canal, of the river Vanera, and of the Angoustrine and Llivia canal.[794]

980. *Provisions concerning the demarcation of the bed of the Raour.* Section I of the regulations in the second part of the Final Act concerns the demarcation of the bed of the Raour, in accordance with the provision contained in article 13 of the Final Act of 26 May 1866.[795] These provisions are designed both to prevent prejudice to other riparians and to safeguard the integrity of the frontier line.

(a) *Provision prohibiting the maintenance of construction of works.* The erection of any works whatsoever in the zone bounded by the landmarks defined in the Act shall be prohibited. All parts of works which encroach on the said zone shall be destroyed (section I, clause 1).

(b) *Protective works.* The riparian population is allowed to maintain, repair and consolidate existing dikes, provided that due notice is given to the riparian population on the opposite bank, so that the latter may be able to prevent the execution of works which might encroach on the reserved zone in the river bed (section I, clause 2). For the erection of new breakwaters the riparian populations are required to obtain an authorization from the competent authorities of their respective countries and the owners of the opposite bank shall be invited to submit their comments (section I, clause 3).

(c) *Diversion and pollution of the waters forbidden.* The dikes or riverbanks shall not be subjected to cuts or any other treatment designed to divert the water, without previous authorization. The introduction into the bed of the said river of infected or harmful water shall also be prohibited (section I, clause 6).

981. *Provisions concerning the use of the waters of the Riou Tort and the Riou Tartarès.* (Section III of the regulations contains provisions permitting certain water intakes on the Riou Tort and the Riou Tartarès and prohibiting others. The removal of certain existing works is also stipulated). *Distribution of water.* If, following the removal of these works, the inhabitants of the common frontier fail to come to an agreement among themselves concerning the distribution of the waters of the Riou Tort and of the Riou Tartarès, the matter shall be settled in conformity with the rights of the users of both countries, by the Prefect of the Eastern Pyrenees and the Governor of Gerona, following a proposal by the engineers of the two countries appointed for this purpose (section III, art. III).

982. *Provisions concerning the use of the water of the Puigcerdá canal and the International Administrative Commission of that canal.*[796] These provisions are contained in sections IV and V of the regulations set out in the Final Act.

(a) *Distribution and utilization of water.* The distribution of the water of the Puigcerdá canal between French and Spanish users is based on the rotation principle (half a day for each group of users). In principle and except in the

[788] The Treaty entered into force on 11 July 1952.

[789] See United Nations, *Treaty Series*, vol. 136, p. 33. See also *Legislative Texts . . . (op. cit.)*, treaty No. 159.

[790] The instruments of ratification were exchanged in Paris on 11 January 1869.

[791] See *British and Foreign State Papers, 1868–1869* (London, 1874), vol. 59, p. 430, or Spain, Ministry of Finance, *Recopilación de Acuerdos . . . (op. cit.)*, p. 110. See also *Legislative Texts . . . (op. cit.)*, treaty No. 186.

[792] See para. 902 above.

[793] The Act even states that the validity of domestic law shall be accorded to these regulations "by the promulgation of the said Act in each country".

[794] The solution of the questions raised by the regulation of a dam at Font-Bovedo was reserved (second part, section II).

[795] See para. 901 above.

[796] See article XX of the Treaty of Delimitation, signed at Bayonne on 26 May 1866 (para. 959 above).

case of a water shortage, all the water of the canal shall be allocated each day for twelve hours to the town and territory of Puigcerdá and each night for twelve hours for the irrigation of the land situated on French territory (section IV, art. I). It is provided, furthermore, that two French communes may divert a certain volume of water continuously and that the inhabitants of the territories through which the canal passes may use the water at all times for domestic purposes and for the watering of cattle (section IV, art. III).

(b) *Construction of a regulatory dam.* The Act prescribes technical measures to ensure the application of its provisions[797] (section IV, articles IV–IX) and for that purpose requires the construction of a regulatory dam (section IV, articles II and X).

(c) *Organization of the International Administrative Commission of the canal.* An International Administrative Commission consisting of six members, i.e. three from each country, shall be responsible for supervising the application of the regulations governing the use of the waters of the Puigcerdá canal, for approving the execution and financing of maintenance work and for instituting proceedings before the competent courts in case of contraventions and offences[798] (section, V chapters I, II and III).

983. *Provisions concerning the use of the waters of the river Vanera.* These provisions are the subject of regulation VI.

(a) *Distribution and utilization of water.* The water of the Vanera is distributed between the French and Spanish communes by fixing the consecutive days of the week and the hours during which the water will be reserved for the sole use of French or Spanish users. The distribution is effected taking into consideration the domestic and irrigation needs to be satisfied. The utilization of the water is regulated in detail by the Final Act (section VI, articles I–III).

(b) *Interference with the free flow of the water prohibited.* The users up-stream shall not erect any work or place any obstacle which interferes with the free flow of the waters of the river to the prejudice of users down-stream (section VI, art. IV).

(c) *Authorization for new water diversions.* The French Government may authorize new diversions of water above a place indicated in the Final Act, with the reservation that these diversions shall not function at any time when the flow of the river falls below a specified volume of water. All such intakes shall be provided with regulatory mechanisms for measuring the volume of water discharged through these intake canals and that which is flowing in the river (section VI, art. VI).

984. *Provisions concerning the use of the waters of the canal of Angoustrine and Llivia and the International Administrative Commission of that canal:* These provisions are contained in sections VII and VIII of the regulations.

(a) *Distribution and utilization of water.* The distribution and utilization of the water of the Angoustrine and Llivia Canal are regulated in conformity with article XXVII of the Treaty of Delimitation signed at Bayonne on 26 May 1866.[799] The days of the week and the hours during which water shall be at the disposal of French or Spanish users shall be fixed according to irrigation and domestic requirements (section VII, art. II).

(b) *Construction of regulatory works.* For the purpose of measuring the flow of the canal, a regulator shall be erected several metres below its origin (section VII, art. I).

(c) *Apportionment of the costs of maintaining the canal.* The costs of maintaining that part of the canal situated in French territory shall be shared between the French and Spanish users in proportion to the area subjected to irrigation in the two countries. The maintenance of that part of the canal situated on Spanish territory shall be borne exclusively by the Spaniards (section VII, art. IV).

(d) *Provision prohibiting interference with the free flow of the water.* Article V contains a provision similar to that concerning the river Vanera.[800]

(e) *Organization of the International Administrative Commission of the canal.* The organization of this Commission and its functions are similar to those laid down for the control of the Puigcerdá canal[801] (section VIII, chapters I, II and III).

Rhine (Germany and Switzerland)

Treaty[802] between the Swiss Confederation and the Grand Duchy of Baden concerning joint exemption from duties on short overland lines of junction and the regulation and reciprocal reduction of the navigation duties of the two States on the Rhine from Constance to Basel inclusive, concluded at Berne on 27 July 1852[803]

985. *Elimination of obstacles to navigation and timber-floating.* The Parties shall apply themselves to the removal of impediments confronting navigation and timber-floating on the Rhine without, however, assuming any commitment whatever in respect of the expenses which this may entail (art. 9).

986. *Emoluments payable to corporations for navigation and timber-floating.* Where emoluments are to be paid to corporations or companies for specific services in respect of navigation or timber-floating, agreement in this regard is reserved, in the sense that the former provisions shall be

[797] By way of exception, article VII authorizes the Spanish town of Puigcerdá, the owner of the canal, to take advantage, for the acquisition of certain lands, of the French Act of 3 May 1841 on expropriation on grounds of public utility. Article VIII stipulates that the cost of maintenance and repair of that part of the canal situated on French territory shall be shared equally between the French and Spanish users.

[798] "It [the Commission] has technical, administrative and police responsibilities which are similar to those of a municipality, only more specialized.... This arrangement, which is additional to the regulation of the waters but consequent upon it, combining the powers and activities of an international commission with those of the French and Spanish authorities, forms a curious and little-known chapter in international administration. (See J. Basdevant, "Contribution à l'étude du régime juridique de l'utilisation domestique, agricole et industrielle des eaux", *L'évolution du droit public, Etudes offertes à Achille Mestre* (Paris, Recueils Sirey, 1956), p. 24.)

[799] See para. 960 above.

[800] See para. 983 above.

[801] See para. 982 (*c*) above.

[802] The Treaty entered into force on 20 May 1853.

[803] See Switzerland, Chancellerie fédérale, *Recueil systématique des lois et ordonnances 1848–1947* (Berne, 1953), 12ème volume, p. 686. See also *Legislative Texts ... (op. cit.)*, treaty No. 214.

adapted to the needs of the time and that the greatest possible freedom shall be accorded to navigation and timber-floating (art. 8).

Rhine and the Untersee (GERMANY AND SWITZERLAND)

(1) *Convention between the Swiss Confederation and the Grand Duchy of Baden concerning the delimitation of frontiers, concluded at Stuttgart and Zürich on 20 and 31 October 1854*[804]

987. *Fishing rights (respect for existing rights).* Fishing rights based on documents or tradition shall be reciprocally recognized as private rights (art. 2, sub-para. (*c*)).

988. *Fishing and policing of fisheries.* Over the entire extent of the Rhine and the Lower Lake of Lake Constance, the inhabitants of the communes situated on either bank or shore may engage in fishing, in accordance with the provisions of the fishing ordinance of 22 August 1774 and under the supervision of the Baden authority responsible for enforcement. The Convention provides that the said ordinance may be revised by agreement between the Parties (art. 2, sub-para. (*a*)).

(2) *Convention*[805] *between Switzerland and the Grand Duchy of Baden instituting international regulations for navigation and port facilities on the Lower Lake and the Rhine between Constance and Schaffhausen, concluded at St. Gallen on 28 September 1867*[806]

989. *Erection of hydraulic works without impeding navigation.* The two States, each in its own territory, shall ensure that hydraulic structures such as mills, machinery, bridges, ferry cables, electric lines, and the like shall be erected in such a way that navigation is not thereby impeded or interfered with. The States shall communicate the plans which they have prepared for structures of this nature and shall come to an agreement respecting their execution (art. 2).

990. *Policing of timber-floating.* The authorities responsible for supervising navigation and timber-floating have the right and duty to see to it that rafts are in good condition, as prescribed in the regulations. They may prohibit the departure of a raft if it is found to be unsound (art. 7). The pilots of rafts, floating mills or any other establishment situated on the bank or shore, or on the water, must take care that such rafts or establishments do not interfere or cause damage to each other (art. 12, sub-para. (*a*)).

Saalach and Salzach (AUSTRIA AND GERMANY)

Agreement[807] *between Bavaria and Austria concerning the course of the water frontier along the Saale*[808] *and Salzach Rivers, concluded on 24 December 1820*[809]

991. *Construction of regulatory and rectification works.* The two riparian States undertake to ensure that all future works on the water frontier along the Saalach and Salzach shall be carried out in conformity with the system laid down in a technical report attached to the text of the Agreement and by specific mutual agreement. The works in question shall be carried out not only to provide local protection but also, wherever possible, to assist in the approved rectification of the course of the river[810] (art. 7). Any works already constructed but constituting an obvious hindrance to carrying out the rectification system shall, at the request of one Party, be altered or removed by the other Party (art. 8, second para.). The Agreement also contains provisions concerning cuts through bends and serpentines of the rivers (articles 10–13).

992. *Joint control of constructed works.* In order to ensure that in future the system prescribed for the construction of works is not applied unilaterally or altered arbitrarily and, in particular, that no works are constructed without the consent of both Parties, the engineering authorities of the two Parties shall tour the rivers each year and then draw up a joint protocol, which shall be submitted to their respective Governments, listing the works to be undertaken in the coming year (art. 8, first para.). In addition to the engineering authorities, the chief technical authorities of the two States shall be consulted regarding the necessity of altering or removing any existing work (art. 8, third para.). Moreover, both riparian States undertake to ensure the strict enforcement of the regulation in force under which no person may install or carry out works on the Saale and Salzach except under the control of the competent engineering authorities (art. 16).

993. *Construction and control of protective works in case of flood or other accidents.* If large and dangerous breaks in the banks occur as a result of natural phenomena or high water or for any other reason, the threatened Party shall in every case be free to repair the same by constructing works to protect the banks, subject to the condition that if these protective works approach the rectified line, they may consist only of works pointing down-stream and paralleling the rectified line as closely as possible, and to the further condition that the engineering authorities of the other side shall be informed of these works in time to enable them to satisfy themselves, before construction is begun, that the works will not be detrimental to the common objective (art. 9).

994. *Restriction of rights and obligations deriving from private rights (public interest; general principles of law).* Where the rights and obligations deriving from the private ownership of adjacent property or other private rights are not consistent with the purpose of the Agreement, the said rights shall, to the extent required by the public interest, be restricted in conformity with the general principles of law (art. 25).

[804] See Switzerland, Chancellerie fédérale, *op. cit.*, 11ème volume, p. 44. See also *Legislative Texts . . . (op. cit.)*, treaty No. 215.

[805] The Convention entered into force on 1 March 1868.

[806] See Switzerland, Chancellerie fédérale, *op. cit.*, 13ème volume, p. 446. See also *Legislative Texts . . . (op. cit.)*, treaty No. 216.

[807] This Agreement is still considered to be in force by both Parties.

[808] Now usually called the Saalach.

[809] See E. Hartig, *op. cit.*, annex I, p. 40. See also *Legislative Texts . . . (op. cit.)*, treaty No. 131.

[810] The rectification of the Saalach and Salzach shall be carried out in order to constitute the water frontier along both rivers as established under the Munich State Treaty of 14 April 1816 (see G. F. de Martens, ed., *Nouveau Recueil de traités, 1808–1818*, (Göttingen, Librairie Dieterich, 1877), tome III, p. 11). Under article 9 of the Munich State Treaty, the Saalach and the Salzach rivers are the common property of the two riparian States.

995. *Opportunities for the construction of works in the territory of the other Party.* If, by virtue of the Agreement, one State wishes to carry out work in the territory of the other State, such work may in no circumstances be hindered by the judicial, administrative or police authorities on condition that the persons performing such work have an authorization granted by the engineering authorities of the other State (art. 29).

Saar (France and Germany (Federal Republic of)

Treaty[811] between the French Republic and the Federal Republic of Germany concerning the settlement of the Saar question, signed at Luxembourg on 27 October 1956[812]

996. *Use of the water.* Normal use of the water, as prescribed in the regulations in force in the user country, shall be freely permitted in the part of the Saar forming the frontier. Any use which does not meet these conditions must have the joint authorization of the two Governments (art. 7, para. 3).

997. *Construction of works.* In the zone subject to flooding in the common sector of the Saar forming the frontier, no work may be established except under an agreement between the two countries. The foregoing applies equally to modifications to a work which may affect the run-off of flood waters (art. 7, para. 1).

998. *Exchange of information and collaboration to avert the dangers of floods.* The authorities of the two countries shall maintain a water-level reporting service. In the event of a flood warning, the competent services of the two countries shall remain in constant communication until the end of the danger is announced (art. 9).

999. *Fishing (distribution; exercise; inspection, re-stocking).* Fishing in the part of the Saar forming the frontier is within the jurisdiction of France above a point fixed by the Treaty, and within the jurisdiction of the Federal Republic of Germany below that point. The two Governments shall endeavour to ensure that the regulations concerning the inspection and exercise of fishing and the stocking and protection of the fish correspond with each other as much as possible (art. 6).

1000. *Protection of the water (establishment of association).* The two Governments shall take the necessary steps to ensure the purity and salubrity of the waters of the Saar and its tributaries. The establishment of associations having the purpose of maintaining the salubrity of the waters shall be encouraged by the Governments (art. 8).

1001. *Settlement of disputes (diplomatic channel; arbitration).* Articles 89 to 92 of the Treaty provide for an arbitral procedure for the settlement of disputes regarding the interpretation or application of the Treaty which have not been settled through the diplomatic channel.

[811] The Treaty entered into force on 1 January 1957.

[812] See *Journal Officiel de la République française*, 99ème année, No. 8 (Paris, 10 January 1957), p. 460. See also *Legislative Texts ... (op. cit.)*, treaty No. 179.

Thaya (Austria and Czechoslovakia)

Convention[813] between the Austrian and Czechoslovak Republics concerning the delimitation of the frontier between Austria and Czechoslovakia and various questions connected therewith, signed at Prague on 10 March 1921[814]

1002. The Convention deals, among other matters, with the utilization of the hydraulic power of the River Thaya for hydroelectric energy production in the area extending from the beginning of the common frontier near Cizow (Zaisa) to the end of that frontier near Podmol (Baumöl).[815]

1003. *Joint utilization of hydraulic power.* Austria and Czechoslovakia agree that all the water-power of the River Thaya in the section of the frontier shall be utilized as a single undertaking (section I, art. 1, para. 1).

1004. *Establishment of an enterprise for operating purposes.* The operation of the works shall be undertaken by an enterprise the constitution of which was requested by Czechoslovakia (section I, art. 1, para. 1).

1005. *Erection of works.* Works will be built partly on Austrian territory and partly on Czechoslovak territory for the operation of the hydraulic power of the Thaya (section I, art. 1, para. 2).

1006. *Concession granted by Austria to the operating enterprise with a view to the construction and utilization of the works built in its territory (conditions, facilities, access; expropriation; damage, compensation).* The Austrian Government undertakes to grant a valid concession, on behalf of the enterprise which is to utilize the water-power of the Thaya, for the construction and operation of the works built in its territory.[816] The concession is irrevocable The materials for the construction, maintenance and operation of the whole of the works shall not be subject to any taxes or any local duties whatsoever. The works shall be built and operated with due regard to the requirements of public safety.[817] Free access shall be granted to the agents of the enterprise. Austria shall concede to the enterprise the right of expropriation, but the enterprise shall be liable for damage occasioned by its negligence in the construction or maintenance of the works.[818] Czechoslovakia shall require

[813] The Convention entered into force on 10 March 1921. The application of the provisions of the Convention was confirmed by article 28, para. 2, of the Treaty concluded between Austria and Czechoslovakia on 12 December 1928 (see paras. 891 and 892 above).

[814] See League of Nations, *Treaty Series*, vol. IX, p. 358. See also *Legislative Texts ... (op. cit.)*, treaty No. 129.

[815] The Convention also includes provisions concerning the undertaking by Austria to grant a concession for the construction and operation of water-works and minor installations for the supply of the Břeclava municipality (Czechoslovakia) with drinking water and washing water from Föhrenwald (Austria) (section V).

[816] Should Austria fail to make, by a date laid down in the Convention, a declaration finally binding upon it to grant the concession, the Austrian Government undertakes to cede to Czechoslovakia the Austrian territory required for the construction of the works for the exploitation of the whole of the water-power in the frontier area of the Thaya (section I, art. 5).

[817] In the working of the installations, due regard shall be paid to agricultural interests in the Thaya district below Znaim, so that these interests may benefit as much as possible (section I, art. 2, sub-para. (*d*)).

[818] Disputes shall be decided by a court of arbitration, on which the two States shall appoint one arbitrator each and a third member shall be nominated jointly by the two States (section I, art. 2, sub-para. *g*)).

the enterprise to undertake to give full compensation to the owner of the Lower Hardegger weir for the loss caused by the works (section I, art. 2).

1007. *Alteration of the works.* In the event of important alterations in the works, which, according to the laws of either State, require the consent of the authorities, the latter shall be guided by the same principles as were taken into account when granting the concession (section I, art. 3).

1008. *Supply of hydro-electric power to Austria.* Czechoslovakia shall require the enterprise to supply a specified quantity of kilowatt-hours annually at a fixed price to persons concerned residing in lower Austria, delivered at the frontier (section I, art. 4).

Terneuzen (canal of) (BELGIUM AND THE NETHERLANDS)

Treaty[819] *between the Kingdom of Belgium and the Kingdom of the Netherlands concerning the improvement of the Terneuzen and Ghent Canal and the settlement of various related matters, signed at Brussels on 20 June 1960*[820]

1009. *Water pollution (radioactivity).* Without prejudice to any obligations arising from multilateral conventions, Belgium and the Netherlands shall ensure that the waters of the canal in the vicinity of the frontier meet the standards of quality set forth in an annex to the Treaty (art. 27). The two Governments shall co-operate to determine the extent to which the waters of the canal have become radioactive as the result of the discharge of radioactive waste (art. 29).[821] The Belgian and Netherlands technical services shall carry out observations regularly and shall submit a joint report to the two Governments (art. 31).

1010. *Salinity of the waters.* The two Governments shall, in their respective territories, take the necessary measures to ensure that the quantities of fresh and salt water entering the canal are mutually adjusted in accordance with a specified proportion (art. 32).

1011. *Maintenance of the water-level.* The waters of the canal shall be maintained at a specified level. As soon as the waters reach the prescribed maximum level, Belgium shall, at the request of the Netherlands, completely cut off the supply of water to the canal (art. 33).

1012. *Removal of water (authorization; observance of existing rights).* Third parties shall be authorized to divert water from the Netherlands section of the canal only on condition that they restore to the canal the amounts removed (art. 34). This provision shall not apply to any withdrawal of water that was authorized at the time when the Treaty came into force; however, the quantity of water withdrawn may not exceed an amount specified in the Treaty (art. 35).

[819] The Treaty entered into force on 21 December 1961.

[820] See United Nations, *Treaty Series*, vol. 423, No. I-6084. See also *Legislative Texts . . . (op. cit.)*, treaty No. 160.

[821] If in the light of the standards laid down for international waterways by virtue of the Treaty establishing EURATOM, concluded at Rome on 25 March 1957 (see para. 464 above), or by virtue of any other agreement binding upon the two Governments, or in the light of the results of analyses, it becomes necessary to do so, the authorities shall by agreement undertake a revision of the standards of quality laid down with regard to radioactivity (art. 30).

Uzh (CZECHOSLOVAKIA AND THE SOVIET UNION)

Agreement[822] *between the Union of Soviet Socialist Republics and the Czechoslovak Republic concerning the régime of the Soviet-Czechoslovak frontier and the procedure for the settlement of frontier incidents, signed at Moscow on 30 November 1956*[823]

1013. *Use of the frontier waters of the river (rights and interests of the other Party).* Each Contracting Party shall take appropriate measures to ensure that in the use of the frontier waters of the Uzh the provisions of the Agreement are observed and the relevant rights and interests of the other Party are respected (art. 10).

1014. *Protection of the banks and water (pollution).* The Parties shall take measures to prevent damage to the banks and displacement of the river bed. They shall also ensure that the waters are kept clean and are not artificially polluted or fouled in any way (art. 14, para. 1).

1015. *Natural flow of water.* The natural flow of water may not be altered or obstructed to the detriment of the other Party by the erection of buildings either in the water or on the banks (art. 15).

1016. *Cleaning of water.* The watercourses shall be cleaned out where such work is jointly considered necessary. The Parties agree to share the cost of cleaning. The earth and stones removed in the process of cleaning shall not give rise to any danger of obstruction of the river bed or of impediments to the flow of water in time of flood (art. 16).

1017. *Preservation and construction of installations.* Existing dams and installations shall be preserved. The construction of new dams requires the prior agreement of the Parties (art. 17).

1018. *Fishing.* Nationals of both countries may fish in frontier waters up to the frontier line (art. 13).

1019. *Exchange of information to avoid dangers of floods.* The Parties shall regularly exchange information concerning the level and volume of, and ice on, frontier waters, so as to avert damage from flooding (art. 19).

Weser (BELGIUM AND GERMANY (FEDERAL REPUBLIC OF))

Treaty[824] *between the Kingdom of Belgium and the Federal Republic of Germany regarding the rectification of the Belgian–German frontier and the settlement of various problems concerning the two countries, signed at Brussels on 24 September 1956*[825]

1020. *Deflection of the river-bed to prevent pollution of the water.* The Government of the Federal Republic of Germany shall take the necessary steps to prevent pollution of the water of the Weser in the area where the river flows through Germany territory.[826] To that end, the bed of the Weser shall be deflected, to follow a new course which

[822] The Agreement entered into force on 30 March 1957, upon the exchange of the instruments of ratification at Prague.

[823] See United Nations, *Treaty Series*, vol. 266, p. 302. See also *Legislative Texts . . . (op. cit.)*, treaty No. 165.

[824] The Treaty entered into force on 28 August 1958.

[825] See United Nations, *Treaty Series*, vol. 314, p. 196. See also *Legislative Texts . . . (op. cit.)*, treaty No. 151.

[826] See paras. 882–884 above.

will no longer pass through German territory, in accordance with a project to prevent pollution of the upper course of the Weser, the text of which is annexed to the Treaty (art. 7). By agreement, experts of the two countries shall take the necessary steps to carry out the work (art. 8).

Vidaa and its tributaries and the Rudeböl Lake
(DENMARK AND GERMANY)

Agreement[827] *between Germany and Denmark regarding fisheries and reed cutting in the Rudeböl Lake and the Vidaa River, and regarding the cutting of hay and rushes in the Gotteskoog, forming part of the Treaty between the two countries*[828] *concerning the settlement of questions arising out of the transfer to Denmark of the sovereignty over North Sleswig, signed at Copenhagen on 10 April 1922*[829]

1021. *Fishing (respect for existing rights; policing of fisheries).* The present lessees of fishing rights, belonging to the district of Tondern, in the Rudeböl Lake and in the Vidaa River and also in the adjoining waters, are entitled to continue to hold their leases until the expiration thereof. The Agreement also deals with the right of lessees to cross the frontier (art. 2), their right to sell their catch of fish (art. 3) and the customs inspection of the fishing appliances and boats employed (art. 4). The competent Customs and police authorities are empowered to issue the necessary regulations (art. 5).

[827] The Agreement entered into force on 7 June 1922.

[828] See art. I (4) of that Treaty (League of Nations, *Treaty Series*, vol. X, p. 187).

[829] *Ibid.*, p. 242. See also *Legislative Texts . . . (op. cit.)*, treaty No. 167.

Part III

Summary of decisions by international tribunals, including arbitral awards

Chapter I

JUDICIAL DECISIONS

Judgement of 28 June 1937 by the Permanent Court of International Justice on the diversion of water from the Meuse (*Parties:* BELGIUM, THE NETHERLANDS)

1022. "The Meuse is an international river. It rises in France in the Department of the Haute-Marne, leaves French territory near Givet, crosses Belgium, forms the frontier between the Netherlands and Belgium below Lixhe and enters Netherlands territory a few kilometres above Maastricht. Between Borgharen (a few kilometres below Maastricht) and Wessem–Maasbracht, the Meuse again forms the frontier between Belgium and the Netherlands, then below Wessem-Maasbracht both banks of the river are in Netherlands territory."[830]

1023. On 12 May 1863, Belgium and the Netherlands concluded a Treaty, the purpose of which was defined in its preamble as being "to settle permanently and definitively the régime governing diversions of water from the Meuse for the feeding of navigation canals and irrigation channels."[831]

1024. Article 1 of the Treaty provided for the construction, in Netherlands territory below Maastricht, of a new intake from the Meuse which would constitute the feeding conduit for all the canals situated below that town, namely, the Zuid-Willemsvaart, the Canal de la Campine, the Turnhout Canal and the Hasselt Canal, the first of which flows partly in Belgium and partly in the Netherlands, the others being situated in Belgian territory. Article 4 fixed the quantity of water to be taken from the Meuse.

1025. In 1930, Belgium commenced the construction of the Albert Canal, which was intended to connect Liège with Antwerp and to be fed with water obtained from the Meuse in Belgian territory above Maastricht.

1026. The Netherlands, by an application dated 1 August 1936, instituted proceedings against Belgium before the Permanent Court of International Justice, based on the contention that certain of the works which Belgium had constructed or intended to construct for the Albert Canal would constitute a violation of the Treaty of 1863. The Belgian Government, presenting a counter-claim in its counter-memorial, alleged for its part that the Netherlands had infringed that Treaty by establishing a barrage on the course of the Meuse and that the Juliana Canal, constructed by the Netherlands, would be subject, as regards the flow of water to it, to the said Treaty.

1027. In its judgement rendered on 28 June 1937, the Court stated:[832]

In the course of the proceedings, both written and oral, occasional reference has been made to the application of the general rules of international law as regards rivers.[833] In the opinion of the Court, the points submitted to it by the Parties in the present case do not entitle it to go outside the field covered by the Treaty of 1863. The points at issue must all be determined solely by the interpretation and application of that Treaty.

[830] See *P.C.I.J., Collections of Judgements 1937, series A/B, No. 70, 1937*, pp. 9 and 10.

[831] For the text of the Treaty, see *P.C.I.J., Series C, No. 81*, pp. 15 *et seq.*; see also *Legislative Texts . . . (op. cit.)*, treaty No. 157. For a summary of the Treaty, see paras. 736–740 above.

[832] See *P.C.I.J., Collection of Judgements 1937, series A/B, No. 70*, p. 16.

[833] See *P.C.I.J., series C, No. 81*, pp. 138 *et seq.*, pp. 444 *et seq.*, pp. 485 *et seq.*, p. 495, pp. 499 *et seq.*, and p. 502.

1028. Nevertheless, the judgement includes some passages which may be of interest with respect to the development and use of international rivers.

1029. The Court restated one of the submissions which the agent of the Netherlands presented in this case as follows:

In the first submission I *a* of the Netherlands' Memorial, the Agent of the Netherlands Government asks the Court:

"To adjudge and declare that:

"(a) The construction by Belgium of works which render it possible for a canal situated below Maastricht to be supplied with water taken from the Meuse elsewhere than at that town is contrary to the Treaty of 1863."

The intention of this submission is made clearer by the explanations which are given in the Memorial:

"The infringements of the régime established by the Treaty in 1863 forming the subject of the complaint of the Netherlands Government may be classified under two heads:

"(A) Infringements of the Netherlands' privilege of control over diversions of water from the Meuse by means of the Maastricht intake resulting from the construction of works making it possible to feed canals situated below Maastricht with water taken from the Meuse elsewhere than at that town;

"(B) Infringements of the treaty regulations governing the allocation of Meuse water resulting from the feeding of canals situated below Maastricht with water taken from the Meuse in excess of the quantities fixed and allotted to Belgium by the Treaty of 1863."

1030. The Court added:

The nature of this Netherlands claim has not been set out with great precision, either in the written proceedings or in the oral arguments. The Court understands it as a claim to a special privilege going beyond the power of supervision which the Netherlands necessarily derive from the fact that the intake is situated in Netherlands territory. *There can be no doubt that, so far as the right of supervision is derived from the position of the intake on Netherlands territory, the Netherlands, as territorial sovereign, enjoys a right of supervision which Belgium cannot possess.*[834]

What the Netherlands Agent has claimed on behalf of his Government is not merely to be able to control what happens in Netherlands territory, but to control the supply of water drawn from the Meuse to feed the system of canals referred to in the Treaty; the important thing for the Netherlands being, not the ability to supervise the mere working of the Maastricht feeder, but the power to make sure at any time that the quantities of water drawn from the Meuse to supply the canals below Maastricht do not exceed the total quantities fixed in the Treaty. To this end, and in order to effect that full control of all supplies from the Meuse for the feeding of these canals, the right of supervision arising from the position of the intake in Netherlands territory had to be supplemented, and is supplemented, by the obligation *to refrain from certain action* imposed upon Belgium, an obligation not to construct works by means of which it could, apart from the Maastricht feeder, supply one or more canals situated below that town.

[834] Passage italicized by the Secretariat.

1031. The Court concludes:

If, therefore, it is claimed on behalf of the Netherlands Government that, *over and above the rights which necessarily result from the fact that the new intake is situated on Netherlands territory,*[835] the Netherlands possess certain privileges in the sense that the Treaty imposes on Belgium, and not on the Netherlands, an obligation to abstain from certain acts connected with the supply to canals below Maastricht of water taken from the Meuse elsewhere than at the treaty feeder, the argument goes beyond what the text of the Treaty will support.

1032. The Court stated in the following terms another submission formulated in the Netherlands memorial:

The third claim of the Netherlands Government which is formulated in submission I *c* of the Netherlands Memorial prays the Court:

"To adjudge and declare that:

"...

"(*c*) Belgium's project of feeding a section of the Hasselt Canal with water taken from the Meuse elsewhere than at Maastricht is contrary to the said Treaty."

1033. In this connexion, the Court said:

This claim of the Netherlands Government is fundamentally concerned with the construction and putting into operation of the Albert Canal from Liège to Antwerp, though that canal is not mentioned by name. For the line of the Albert Canal, a broad and deep canal of a total length of 125 kilometres, makes use for a certain distance in its course towards Antwerp, between the so-called Curange Lock and the so-called Quaedmechelen Lock, of the bed of the old Hasselt Canal which branches off the Canal de la Campine.

The Netherlands do not contend that the intake at Liège-Monsin which feeds the Albert Canal, is in itself contrary to the said Treaty, or that the Treaty applies to the whole of the Albert Canal.

The line of argument of the Netherlands Government is that when the Albert Canal is brought into operation, the old Hasselt Canal, i.e. that part of it henceforward comprised in the Albert Canal, will be fed, like the latter, with water taken from the Meuse at Liège-Monsin, that is to say elsewhere than at the treaty feeder. The situation resulting from the bringing into use of this section of the Albert Canal would be contrary to the Treaty.

The Court finds nothing either in the arguments of the Netherlands or in the text of the Treaty of 1863 which would prevent either the Netherlands or Belgium from making such use as they may see fit of the canals covered by the Treaty in so far as concerns canals which are situated in Netherlands or Belgian territory, as the case may be, and do not leave that territory. *As regards such canals, each of the two States is at liberty, in its own territory, to modify them, to enlarge them, to transform them, to fill them in and even to increase the volume of water in them from new sources,*[836] provided that the diversion of water at the treaty feeder and the volume of water to be discharged therefrom to maintain the normal level and flow in the Zuid-Willemsvaart is not affected.

[835] Passage italicized by the Secretariat.

[836] Passage italicized by the Secretariat.

Chapter II

ARBITRAL AWARDS

1. Arbitral awards of 19 August 1872 and 10 April 1905 in the Helmand River Delta case (*Parties:* AFGHANISTAN, PERSIA)

1034. "The Helmand River and its principal tributaries originate in the mountains of central Afghanistan. . . . The river flows in a general south-westerly direction through mountainous terrain until it reaches the plains near Girishk. Below this point it enters a trough between two extensive deserts and flows in a wide sweeping arc across south-west Afghanistan to Band-i-Kamal Khan, at which point it turns northward. Down-stream, some 40 miles to

the north at Kohak (Band-i-Seistan), the river divides into two principal channels, through which it flows north and north-westerly to empty into a series of lakes (*hamuns*). The easterly distributary at Kohak, known as the Common River in Afghanistan and as Rud-i-Pariun in Iran, forms the boundary between the two countries for about 12 miles and then divides, flowing to lakes in Afghanistan and Iran. The other distributary at Kohak is the Rud-i-Seistan, which flows westerly and north-westerly to the lakes in Iran."[837]

(*a*) Award of 19 August 1872 rendered by General Goldsmid as arbitrator

1035. A dispute arose between Afghanistan and Persia concerning the delimitation of their boundary and the use of the waters of the Helmand River[838] in the delta region (i.e., in the region below Band-i-Kamal Khan, sometimes called Sistan or Seistan). This dispute was submitted in 1872 to the arbitration of a British Commissioner, General Goldsmid, who gave his award at Teheran on 19 August of the same year.[839] Concerning the Helmand river, the arbitrator decided:[840]

> [Persia] should not possess land on the right bank of the Helmand. ... It appears therefore beyond doubt indispensable that ... both banks of the Helmand above the Kohak Band be given up to Afghanistan. ... The main bed of the Helmand therefore below Kohak should be the eastern boundary of Persian Sistan. ... It is moreover to be well understood that no works are to be carried out on either side calculated to interfere with the requisite supply of water for irrigation on the banks of the Helmand.

(*b*) Award of 10 April 1905 rendered by Colonel MacMahon as arbitrator

1036. In 1902, the question of the partition of the waters of the Helmand was again submitted to the arbitration of a British Commissioner, Colonel McMahon,[841] who on 10 April 1905 rendered an award, the pertinent passages of which are reproduced hereunder:[842]

Paragraph 1—General Sir Frederick Goldsmid, as Arbitrator between Persia and Afghanistan, was called upon to settle the question of rights to land and water of Persia and Afghanistan in Seistan. He delivered an arbitral award on both points in 1872, which was confirmed by Her Majesty's Secretary of State for Foreign Affairs, and accepted by the Persian and Afghan Governments in 1873.

...

5. The condition under which the present arbitration has been agreed to by the Governments of Persia and Afghanistan is that the award should be in accordance with the terms of Sir Frederick Goldsmid's award.

6. In framing my award I am, therefore, restricted by the above condition.

7. Sir Frederick Goldsmid's award on the water question was as follows: "It is to be clearly understood that no works are to be carried out on either side calculated to interfere with the requisite supply of irrigation on both banks of the Helmand." Her Majesty's Secretary of State for Foreign Affairs, in his capacity as the final confirming authority of that award further laid down in 1873, after consulting General Goldsmid, that the above clause should not be understood to apply either to existing canals or to old or disused canals that it may be desired to put in proper repair, nor would it interfere with the excavation of new canals, provided that the requisite supply on both banks is not diminished.

8. The above award is so definite that it is unnecessary to make any attempt to define it further, except on one particular point. This award provides that Persia has a right to a requisite supply of water for irrigation. In order to prevent future misunderstandings, it only remains to define what amount of water fairly represents a requisite supply for Persian requirements.

9. From the careful and exhaustive measurements, observations, and enquiries made by this Mission in Seistan, the following facts have been clearly established:

(*a*) Seistan suffers more from excess than deficiency of water. Far more loss is caused by damage done to land and crops year after year by floods, than is caused by want of water for irrigation.

(*b*) In only very few exceptional abnormal years of low river [level] has any question of sufficiency of water arisen in Seistan, and then Afghan Seistan has suffered equally with Persian Seistan. Moreover, questions as to the sufficiency of water only prove serious when the spring crop cultivation is concerned, when the river is at its lowest, i.e., between the autumn and spring equinoxes, yet it has been ascertained that in only 3 out of the past 35 years has there been any serious deficiency of water in Seistan during that season. It is necessary, therefore, first to consider water requirements during the season of spring crops. Any settlement based on the requirements of that season will meet the case of the remainder of the year also.

(*c*) After carefully calculating the normal volume of the Helmand River during the period between the autumn equinox and the spring equinox, it has been clearly ascertained that one third of the water which now reaches Seistan at Bandar-i-Kamal Khan would amply suffice for the proper irrigation of all existing cultivation in Persian Seistan, and also allow of a large future extension of that cultivation. This would leave a requisite supply for all Afghan requirements.

10. I therefore give the following award:

AWARD

Clause 1—No irrigation works are to be carried out on either side calculated to interfere with the requisite supply of water for irrigation on both banks of the river but both sides have the right, within their own territories, to maintain existing canals, to open out old or disused canals, and to make new canals, from the Helmand river, provided that

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[837] See the report of the Helmand River Delta Commission, *Helmand River Delta Commission, Afghanistan and Iran* (Washington, D.C., February 1951), pp. 19 and 20.

[838] *Ibid.*, p. 22.

[839] On this dispute, see C. V. Aitchison, *A Collection of Treaties, Engagements and Sanads relating to India and neighbouring countries* (Calcutta, Government of India Central Publications Branch, 1933), vol. XIII, 1933, pp. 32 *et seq.*, pp. 209 *et seq.*, who says *inter alia* (p. 33):

> "The Persian Government having expressed a wish for the good offices of the British Government in placing the relations of Persia with Afghanistan with regard to Sistan on a more satisfactory footing, the British Minister at Tehran was, under article 6 of the Treaty of 1857, instructed to offer British arbitration on the question of the sovereignty and boundaries of the whole of Sistan on both sides of the river Helmand, on the basis of ancient right and present possession. The Shah eventually agreed that commissioners on the part of the British Government, Persia and Afghanistan, respectively, should meet in Sistan ... that, when the British Commissioner considered that nothing further could be done on the spot, the commissioners should proceed to Tehran, where the subject would be fully discussed with a view to its settlement, and the British Commissioner would state his opinion as arbitrator and that, should either the Persian or Afghan Government not agree to this opinion, reference should be made to the British Government, whose decision should be final and binding on both Governments. Accordingly ... the opinion of General Goldsmid, the British Commissioner, was delivered in the following August. ... An appeal was preferred by the Persian Government, but eventually the decision of General Goldsmid was accepted unconditionally by the Shah and confirmed by the British Government."

[840] See Majors St. John, Lovett, and Evan Smith and Major-General Sir Frederick John Goldsmid, *Eastern Persia, An Account of the Journeys of the Persian Boundary Commission, 1870–71–72* (London, 1876), vol. I, p. 413. See also *Helmand River Delta Commission ... (op. cit.)*, p. 137.

[841] Concerning this second phase of the dispute, see C. V. Aitchison, *op. cit.*, pp. 35 and 220.

[842] *Ibid.*, p. 283; and *Helmand River Delta Commission ... (op. cit.)*, p. 141.

the supply of water requisite for irrigation on both sides is not diminished.

Clause II—The amount of water requisite for irrigation of Persian lands irrigable from and below the Band-i-Kohak is one third of the whole volume of the Helmand river which enters Seistan.

Seistan, to which Sir Frederick Goldsmid's award applies, comprises all lands on both banks of the Helmand from Bandar-i-Kamal Khan downwards.

Clause III—Persia is therefore, entitled to one third of the whole Helmand River calculated at the point where water is first taken off from it to irrigate lands on either bank situated at or below Bandar-i-Kamal Khan.

Clause IV—Any irrigation works constructed by Afghanistan to divert water into Seistan lands, as above defined, must allow of at least one third of the volume of the whole river being available for Persian use at Band-i-Kohak.

Clause V—To enable both sides to satisfy themselves that this award is being complied with, and at the same time to avoid the necessity of fresh references to the British Government and the expense of special Missions, a British officer of irrigation experience shall be permanently attached to the British Consulate in Seistan. He will be empowered to give an opinion, when required by either party, on any case of doubt or dispute over water questions that may arise. He will, when necessary, take steps to bring the real facts of any case to the notice of the Government concerned. He will be able also to call the attention of either party to any important indications of threatening danger to their water-supply arising from natural causes or their own irrigation works. To enable this officer properly to fulfil the functions of his office, free access shall be given to him by either side to the Helmand river and its branches and the heads of canals leading therefrom.

Clause VI—The maintenance of the Band-i-Kohak is of great importance to the welfare of Persian Seistan. It is possible that the deepening of the river bed at and below the side of the present band may necessitate moving the band a short distance further up the river. Afghanistan should allow Persia to move this band, if necessary, and grant Persia the right to excavate the short canal required for such a new band through Afghan territory to the Rud-i-Seistan.

Similarly, should it become necessary for Afghanistan to move the present Shahgul Band across the Rud-i-Pariun somewhat lower down that stream, Persia should (as has been done before) allow Afghanistan right of way for a canal through Persian territory from that band to the Nad Ali Channel.

Clause VII—It will be noted that the rights to the Helmand river which its geographical position naturally gives to Afghanistan as owner of the Upper Helmand, have been restricted to the extent stated above in favour of Persia in accordance with Sir Frederick Goldsmid's award. It follows, therefore, that Persia has no right to alienate to any other Power the water rights thus acquired without the consent of Afghanistan.

Clause VIII—I cannot close this award without a word of warning to both countries concerned. The past history of the Helmand river in Seistan shows that it has always been subject to sudden and important changes in its course, which have from time to time diverted the whole river into a new channel and rendered useless all the then existing canal systems. Such changes are liable to occur in the future, and great care should, therefore, be exercised in the opening out of new canals, or the enlargement of old canals leading from the Helmand. Unless this is done with proper precaution, it may cause the river to divert itself entirely at such points and cause great loss to both countries. This danger applies equally to Afghanistan and Persia.[843]

NOTE. After 1947, further efforts were made to find a basis for agreement between the two Governments concerned. By the terms of an agreement signed on 7 September 1950,[844] there was established an advisory commission called the Helmand River Delta Commission, having as its purpose:

To recommend to the Governments of Afghanistan and Iran an engineering basis for mutual accord regarding the apportionment of the waters of the Helmand River (known in Iran as the Hirmand), at or below Band-i-Kamal Khan for use in Seistan, Iran and Chakhansur, Afghanistan.

. . .

The Commission shall recommend the technical methods by which the share of the water of the Helmand River to which Iran may be entitled, pursuant to the terms of such mutual accord as may be reached, may be allocated to Iran at or below Band-i-Kamal Khan.

1037. The report of the Commission was published in February 1951.

2. Award of 22 March 1888 by Grover Cleveland, President of the United States of America, as arbitrator, in the San Juan River case (*Parties:* COSTA RICA, NICARAGUA)

1038. On 15 April 1858, Costa Rica and Nicaragua concluded a Treaty (known as the Cañas-Jerez Treaty) for the delimitation of their common boundary. Some passages from articles II, VI and VIII of this Treaty are reproduced hereunder:[845]

Article II. The dividing line between the two Republics, starting from the Northern Sea, shall begin at the end of Punta de Castilla, at the mouth of the San Juan de Nicaragua river, and shall run along the right bank of the said river up to a point three English miles distant from Castillo Viejo, the said distance to be measured between the exterior works of the said castle and the above-named point. From here, and taking the said works as centre, a curve shall be drawn along the said works, keeping at the distance of three English miles from them, in its whole length, until reaching another point, which shall be at the distance of two miles from the bank of the river on the other side of the castle. From here the line shall continue in the direction of the Sapoá river, which empties into the Lake of Nicaragua, and it shall follow its course, keeping always at the distance of two miles from the right bank of the San Juan river all along its windings, up to reaching its origin in the lake. . . .

Article VI. The Republic of Nicaragua shall have exclusively the dominion and sovereign jurisdiction over the waters of the San Juan river from its origin in the Lake to its mouth in the Atlantic; but the Republic of Costa Rica shall have the perpetual right of free navigation on the said waters, between the said mouth and the point, three English miles distant from Castillo Viejo. . . .

Article VIII. If the contracts of canalization or transit entered into by the Government of Nicaragua previous to its being informed of the conclusion of this Treaty should happen to be invalidated for any reason whatever, Nicaragua binds itself not to enter into any other arrangement for the aforesaid purposes without first hearing the opinion of the Government of Costa Rica as to the disadvantages which the transaction might occasion the two countries; provided that the said opinion is rendered within the period of 30 days after the receipt of the communication asking for it, if Nicaragua should have said that the decision was urgent; and, if the transaction does not injure the natural rights of Costa Rica, the vote asked for shall be only advisory.

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[843] Concerning this award, C. V. Aitchison (*op. cit.*, p. 35) says:

"The water award was not accepted in its entirety by the Afghan Government, and was altogether rejected by the Persians, on the ground that they were more favourably treated under the Goldsmid award of 1873. This latter award still governs the distribution of the water of the Helmand river."

In the report of the Helmand River Delta Commission already cited, the following appears (p. 15): "This McMahon arbitration did not prove entirely successful, as the award has been disclaimed by the Government of Iran".

[844] For the text of this Agreement, see *Helmand River Delta Commission . . . (op. cit.)*, p. 3. See also *Legislative Texts . . . (op. cit.)*, treaty No. 82. For a summary of the Agreement, see para. 355 above.

[845] For the text of this treaty see J. B. Moore, *History and Digest of international arbitrations to which the United States has been a party* (Washington, D.C., U.S. Government Printing Office, 1898), vol. V, p. 4706. See also Nicaragua, Ministerio de Relaciones Exteriores, *Derecho de Gentes Positivo de la República de Nicaragua* (Managua, Tipografía Nacional, 1885), pp. 120–122.

1039. A dispute having arisen between them concerning the validity of this Treaty, the Parties concluded on 24 December 1886 a *compromis*, whereby they submitted this dispute to the arbitration of the President of the United States of America.[846]

1040. Under article VI of this *compromis*, if he should determine that the Treaty was valid, the arbitrator should decide upon all other points of doubtful interpretation which should be submitted to him by the parties within a specified period of time.

1041. In his award given on 22 March 1888,[847] the arbitrator, Grover Cleveland, President of the United States, decided that the Treaty in question was valid. With respect to some questions on the interpretation of the Treaty raised by Nicaragua, the arbitrator gave the following opinions:

The Republic of Costa Rica cannot prevent the Republic of Nicaragua from executing at its own expense and within its own territory such works of improvement, provided such works of improvement do not result in the occupation or flooding or damage of Costa Rica territory, or in the destruction or serious impairment of the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same. The Republic of Costa Rica has the right to demand indemnification for any places belonging to it on the right bank of the river San Juan which may be occupied without its consent, and for any lands on the same bank which may be flooded or damaged in any other way in consequence of works of improvement.

...

The Republic of Nicaragua remains bound not to make any grants for canal purposes across its territory without first asking the opinion of the Republic of Costa Rica, as provided in article VIII, of the Treaty of Limits of the 15th day of April one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, it possesses in the soil thereby recognized as belonging exclusively to it; the rights which it possesses in the harbours of San Juan del Norte and Salinas Bay; and the rights which it possesses in so much of the River San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded. . . .[848]

3. Award of 22 August (3 September) 1893 delivered in the Kushk River case by an Anglo–Russian commission with a view to elucidating and completing clause III of Protocol No. 4 of 10 (22) July 1887 (*Parties:* GREAT BRITAIN, RUSSIA)

1042. On 10 September 1885, Great Britain and Russia concluded a Protocol for the delimitation of the boundary between Afghanistan and Russia.[849]

1043. Pursuant to this Protocol, a joint commission was established to undertake the inspection and tracing on the spot of the details of the boundary fixed by the Protocol itself.[850]

1044. Clause III of the final Protocol No. 4, signed by this Commission at Saint Petersburg on 10 (22) July 1887,[851] provided as follows:

The clause in Protocol No. 4 of the 14th (26th) December 1885, prohibiting the Afghans from making use of the irrigating canals in the Kushk Valley below Chahil Dukhter which were not in use at that time, remains in force, but it is understood that this clause can only by applied to the canals supplied by the Kushk. The Afghans shall not have the right to make use of the waters of the Kushk for their agricultural works north of Chahil Dukhter; but the waters of the Moghur belong exclusively to them, and they may carry out any works they may think necessary in order to make use of them.

1045. A dispute[852] having subsequently arisen between the parties concerning the application of this clause, a new Commission was established to settle it. This Commission was made up of Lieutenant-Colonel Yate and Mr. Ignatieff, the British and Russian commissioners respectively.

1046. On 22 August (3 September) 1893, the Commission drew up a final protocol, from which this excerpt is taken:[853]

The Russian and British Commissioners, after having thoroughly examined the question of the canals existing at present on the left (Afghan) bank of the Kushk between Karatappa and Chahil Dukhteran, . . . have come to an agreement on the following arrangements:

...

III. In order to elucidate and complete Clause III of Protocol No. 4 of 10th (22nd) July 1887, the Commissioners have established that the Afghans shall not be able to take off water from the river Kushk, north of the ruins of the Chahil Dukhteran bridge (Pul-i-Kishti), for irrigation by means of either new or disused or closed canals, the Afghans shall not have the right to carry on, below the parallel of Chahil Dukhteran fronting pillar No. 23, for irrigation, the branches of the canals which take off from the Kushk south of the ruins of the Chahil Dukhteran bridge (Pul-i-Khishti), but they shall have the right to make use of the said branches to irrigate their cultivation as far as the parallel of the Chahil Dukhteran frontier pillar No. 23.

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[846] For the text of the *compromis*, see H. La Fontaine, *Pasicrisie Internationale* (Berne, Stämpfle, 1902), p. 298 (English translation in J. B. Moore, *op. cit.*, p. 4704).

[847] For the text of the award see J. B. Moore, *op. cit.*, vol. 2, p. 1964; H. La Fontaine, *op. cit.*, p. 299 and *U.S. Foreign Relations*, 1888, p. 456. See also *Laudo del Presidente de los Estados Unidos, Sr. Grover Cleveland* (Managua, Tipografía Nacional, 1888), p. VI.

[848] The interpretation of article VIII of the Cañas-Jerez treaty of 15 April 1858 and of some passages of this award were the subject of a decision rendered on 30 September 1916 between Costa Rica and Nicaragua by the Central American Court of Justice. For the text of this decision, see *American Journal of International Law* (Washington, D.C., 1917), vol. II, p. 181E, and *La Gaceta, Costa Rica*, 7 October 1916.

[849] For the French text of this Protocol see *British and Foreign State Papers, 1885–1886* (London, 1893), vol. 77, p. 303; C. V. Aitchison, *op. cit.*, p. 243, and H. La Fontaine, *op. cit.*, p. 287.

[850] See C. V. Aitchison, *op. cit.*, p. 216.

[851] For the English text of this Protocol see C. V. Aitchison, *op. cit.*, p. 247. For the French text see H. La Fontaine, *op. cit.*, p. 288 and G. F. de Martens, ed., *Nouveau Recueil général de traités* (Göttingen, Librairie Dieterich, 1888), 2ème série, tome XIII, p. 566. See also paras. 413 and 414 above.

[852] Concerning this dispute, C. V. Aitchison furnishes the following information (*op. cit.*, pp. 217 and 218): "Complaints having been made by the Russian Government in 1891 and 1892 about the irrigation by the Afghans of lands on the left bank of the Kushk, by canals taking off from that stream, in contravention of the terms of the Afghan Boundary Commission Protocol of July 1887, the Government of India addressed the Amir of Afghanistan in the matter. He denied having authorized his subjects to depart in any way from the terms of the Protocol of 1887, and suggested a joint enquiry to ascertain which side had perpetrated a breach of the agreement. The British Government thereupon addressed the Russian Government, proposing a joint enquiry on the spot by a Russian and Afghan representative and a British officer. The Russian Government agreed to the proposal, on the condition that immediate effect should be given to the commission's award in the presence of the commissioners. Lieutenant-Colonel C. E. Yate was deputed to the Kushk valley as British Commissioner. The Russian Government appointed Mr. Ignatieff as its Commissioner. These commissioners, along with the Amir's representative, held a local enquiry. The proceedings of the joint commission were recorded in six protocols. The first protocol recorded the result of the inspection of the locality by the joint commissioners, and the sixth protocol . . . recorded the settlement arrived at by the joint commissioners. Effect was given on the spot to the decision of the joint commission."

[853] For the text of this Protocol, see C. V. Aitchison, *op. cit.*, p. 253.

The Afghans shall also have the right to the free use for irrigation or any other purpose of the waters of springs which exist on the left bank of the Kushk between the hills and the river to the south of the Karatappa frontier pillar No. 22, of up to the points where these springs reach the stream of the river.

To the south of the ruins of the Chahil Dukhteran bridge (Pul-i-Khishti) the Afghans have full rights to all the water of the Kushk and shall not be subject to any restriction whatever.

IV. The want of water in the Kushk, no matter from whatever cause arising, provided that the Afghans maintain the stipulations of Clause III of Protocol No. 4 of 10th (22nd) July 1887, and the arrangements above set forth, cannot give cause for further claims on the part of the Russian authorities.

4. Award in the Faber case by a German–Venezuelan Mixed Claims Commission constituted under the Protocol of 13 January 1903 (*Parties:* GERMANY, VENEZUELA)

1047. The Faber case is one of the cases decided between 1903 and 1905 by the German–Venezuelan Mixed Claims Commission established by the Protocol of 13 February 1903.[854] It dealt exclusively with freedom of navigation on the Zulia and Catatumbo rivers in Venezuela.

1048. The award given in this case by the umpire, Henry M. Duffield, included, however, the following statements which have general significance and may be of some interest in connexion with the problems dealt with by this report:

Most of the advocates of the innocent use of rivers base their claim upon the grounds that the inhabitants of lands traversed by another portion of the stream have a special right of use of the other portions because such use is highly advantageous to them. If the proprietary right of the State to the portion of the river within its boundaries be conceded, as it must be generally, there can be no logical defence of this position. It certainly is a novel proposition that, because one may be so situated that the use of the property of another will be of special advantage to him, he may on that ground demand such use *as a right*. The rights of an individual are not created or determined by his wants or even his necessities. . . .[855]

5. Awards[856] of 16 April 1938 and 11 March 1941 by an arbitral tribunal in the Trail Smelter case[857] (*Parties:* CANADA, UNITED STATES OF AMERICA)

1049. At a place in British Columbia, Canada, named Trail, seven miles from the border between Canada and the United States, there is a large zinc and lead smelter. The smelting process involves the production of large quantities of sulphur dioxide fumes which are emitted through the stacks of the smelter. These fumes, which air currents carry under certain atmospheric conditions over the border, caused damage in United States territory to crops and vegetation in general in the border region.[858]

1050. The case was negotiated by the Governments of Canada and the United States, which on 15 April 1935 signed a "Convention for the final settlement of the difficulties arising through complaints of damage done in the State of Washington by fumes discharged from the smelter of the Consolidated Mining and Smelting Company, Trail, British Columbia",[859] the pertinent provisions of which are reproduced hereunder:

The President of the United States of America, and His Majesty the King of Great Britain, Ireland and the British Dominions beyond the seas, Emperor of India, in respect of the Dominion of Canada,

Considering that the Government of the United States has complained to the Government of Canada that fumes discharged from the smelter of the Consolidated Mining and Smelting Company at Trail, British Columbia, have been causing damage in the State of Washington, and

Considering further that the International Joint Commission, established pursuant to the Boundary Waters Treaty of 1909, investigated problems arising from the operation of the smelter at Trail and rendered a report and recommendations thereon, dated 28 February 1931, and

Recognizing the desirability and necessity of effecting a permanent settlement,

Have decided to conclude a convention for the purposes aforesaid . . .

Article I. The Government of Canada will cause to be paid to the Secretary of State of the United States, to be deposited in the United States Treasury, within three months after ratifications of this Convention have been exchanged, the sum of three hundred and fifty thousand dollars, United States currency, in payment of all damage which occurred in the United States, prior to the first day of January, 1932, as a result of the operation of the Trail Smelter.

Article II. The Governments of the United States and of Canada, hereinafter referred to as "the Governments", mutually agree to constitute a tribunal hereinafter referred to as "the Tribunal", for the purpose of deciding the question referred to it under the provisions of article III. The Tribunal shall consist of a chairman and two national members.

. . .

Article III. The Tribunal shall finally decide the questions, hereinafter referred to as "the questions", set forth hereunder, namely:

(1) Whether damage caused by the Trail Smelter in the State of Washington has occurred since the first day of January 1932, and, if so, what indemnity should be paid therefor?

(2) In the event of the answer to the first part of the preceding question being in the affirmative, whether the Trail Smelter should be required to refrain from causing damage in the State of Washington in the future and, if so, to what extent?

(3) . . .

(4) . . .

Article IV. The Tribunal shall apply the law and practice followed in dealing with cognate questions in the United States of America as well as international law and practice, and shall give consideration to the desire of the High Contracting Parties to reach a solution just to all parties concerned.

. . .

Article VIII. The Tribunal shall hear such representations and shall receive and consider such evidence, oral or documentary, as may be presented by the Governments or by interested parties, and for that purpose shall have power to administer oaths. The Tribunal shall

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[854] For the text of this Protocol see J. H. Ralston, *Venezuelan Arbitration of 1903* (Washington, D.C., U.S. Government Printing Office, 1904), p. 511. See also G. F. de Martens, ed., *op. cit.* (Leipzig, Librairie Dieterich, 1909), 3ème série, tome I, p. 46; and United Nations, *Reports of International Arbitral Awards*, vol. X (United Nations publication, Sales No. 60.V.4), p. 359. For the text of the award, see J. H. Ralston, *op. cit.*, p. 600, and United Nations, *Reports of International Arbitral Awards*, vol. X, p. 438.

[855] See J. H. Ralston *op. cit.*, p. 629, and United Nations, *Reports of International Arbitral Awards*, vol. X *(op. cit.)*, p. 466.

[856] These arbitral awards, which deal with the question of air pollution, have been included, because they expressly consider the analogy between this question and that of the pollution of the waters of an international river.

[857] For the text of these awards, see United Nations, *Reports of International Arbitral Awards*, vol. III (United Nations publication, Sales No. 1949.V.2), pp. 1905–1982.

[858] See J. Andrassy, "*Le droit international de voisinage*", *Recueil des cours de l'Académie de droit international de La Haye*, 1951–II (Paris, 1952), p. 92.

[859] See League of Nations, *Treaty Series*, vol. CLXII, p. 74. See also United Nations, *Reports of International Arbitral Awards*, vol. III (United Nations publication, Sales No. 1949.V.2), p. 1907.

have authority to make such investigations as it may deem necessary and expedient, consistent with other provisions of this Convention.

1051. The Tribunal constituted under the provisions of article II of this Convention was made up of two members: Mr. Charles Warren (appointed by the United States), Mr. Robert A. E. Greenshields (appointed by Canada), and a chairman, Mr. Jan Frans Hostie (appointed by the two Governments jointly). It made two awards, dated respectively 16 April 1938[860] and 11 March 1941.[861]

(*a*) Award of 16 April 1938

1052. Below are some passages from the first award, which finally decided the first of the questions before the Tribunal:

This Tribunal is constituted under, and its powers are derived from and limited by, the Convention between the United States of America and the Dominion of Canada signed at Ottawa, April 15, 1935 (hereinafter termed "the Convention"), duly ratified by the two Parties, and ratifications exchanged at Ottawa, August 3, 1935.

. . .

The Tribunal is prepared now to decide finally question No. 1, propounded to it in article III of the Convention; and it hereby reports its final decision on question No. 1, its temporary decision on questions No. 2 and No. 3, and provides for a temporary régime thereunder and for a final decision on these questions and on question No. 4, within three months from 1 October 1940.

Wherever, in this decision, the Tribunal has referred to decisions of American courts or has followed American law, it has acted pursuant to Article IV as follows: "The Tribunal shall apply the law and practice followed in dealing with cognate questions in the United States of America. . . ".

In all the consideration which the Tribunal has given to the problems presented to it, and in all the conclusions which it has reached, it has been guided by that primary purpose of the Convention expressed in the words of article IV, that the Tribunal "shall give consideration to the desire of the High Contracting Parties to reach a solution just to all parties concerned", and further expressed in the opening paragraph of the Convention as to the "desirability and necessity of effecting a permanent settlement" of the controversy.

The controversy is between two Governments involving damage occurring in the territory of one of them (the United States of America) and alleged to be due to an agency situated in the territory of the other (the Dominion of Canada), for which damage the latter has assumed by the Convention an international responsibility. In this controversy, the Tribunal is not sitting to pass [judgement] upon claims presented by individuals or on behalf of one or more individuals by their Government, although individuals may come within the meaning of "parties concerned", in article IV and of "interested parties", in article VIII of the Convention and although the damage suffered by individuals may, in part, "afford a convenient scale for the calculation of the reparation due to the State" [see *P.C.I.J., Collection of Judgements, 1928, series A, No. 17*, Judgement No. 13, pp. 27 and 28].[862]

. . .

The United States, in its statement (p. 52), presents two further items of damages claimed by it, as follows: (item *e*) which the United States terms "damages in respect of the wrong done the United States in violation of sovereignty"; . . .

With respect to (item *e*), the Tribunal finds it unnecessary to decide whether the facts proven did or did not constitute an infringement or violation of sovereignty of the United States under international law independently of the Convention, for the following reason: by the Convention, the High Contracting Parties have submitted to this Tribunal the questions of the existence of damage caused by the Trail Smelter in the State of Washington, and of the indemnity to be paid therefor, and the Dominion of Canada has assumed, under article XII, such undertakings as will ensure due compliance with the decision of this Tribunal. The Tribunal finds that the only question to be decided on this point is the interpretation of the Convention itself. The United States, in its statement (p. 59), itemizes under the claim of damage for "violation of sovereignty" only money expended "for the investigation undertaken by the United States Government of the problems created in the United States by the operation of the Smelter at Trail". The Tribunal is of opinion that it was not within the intention of the parties, as expressed in the words "damage caused by the Trail Smelter" in article III of the Convention, to include such moneys expended. . . .[863]

(*b*) Decision of 11 March 1941

1053. In its decision of 11 March 1941, the Tribunal says the following:

This Tribunal is constituted under, and its powers are derived and limited by, the Convention between the United States of America and the Dominion of Canada signed at Ottawa, 15 April, 1935, duly ratified by the two parties, and ratifications exchanged at Ottawa, August 3, 1935 (hereinafter termed "the Convention").

. . .

The Tribunal herewith reports its final decisions.

The controversy is between two Governments, involving damage occurring, or having occurred, in the territory of one of them (the United States of America) and alleged to be due to an agency situated in the territory of the other (the Dominion of Canada). . . .

As between the two countries involved, each has an equal interest that if a nuisance is proved, the indemnity to damaged parties for proven damage shall be just and adequate and each has also an equal interest that unproven or unwarranted claims shall not be allowed. For, while the Unites States' interests may now be claimed to be injured by the operations of a Canadian corporation, it is equally possible that at some time in the future Canadian interests might be claimed to be injured by an American corporation. As has well been said: "It would not be to the advantage of the two countries concerned that industrial effort should be prevented by exaggerating the interests of the agricultural community. Equally, it would not be to the advantage of the two countries that the agricultural community should be oppressed to advance the interest of industry."

Considerations like the above are reflected in the provisions of the Convention in article IV, that "the desire of the High Contracting Parties" is "to reach a solution just to all parties concerned". And the phraseology of the questions submitted to the Tribunal clearly evinces a desire and an intention that, to some extent, in making its answers to the questions, the Tribunal should endeavour to adjust the conflicting interests by some "just solution" which would allow the continuance of the operation of the Trail Smelter but under such restrictions and limitations as would, as far as foreseeable, prevent damage in the United States, and as would enable indemnity to be obtained, if, in spite of such restrictions and limitations, damage should occur in the future in the United States.

In arriving at its decision, the Tribunal has had always to bear in mind the further fact that in the preamble to the Convention, it is stated that it is concluded with the recognition of "the desirability and necessity of affecting a permanent settlement".[864]

. . .

The second question under article III of the Convention is as follows:

In the event of the answer to the first part of the preceding question being in the affirmative, whether the Trail Smelter should be required to refrain from causing damage in the State of Washington in the future and, if so, to what extent.

Damage has occurred since January 1, 1932, as fully set forth in the previous decision. To that extent, the first part of the preceding question has thus been answered in the affirmative.

. . .

The first problem which arises is whether the question should be answered on the basis of the law followed in the United States or on

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[860] For the text of this award, see United Nations, *Reports of International Arbitral Awards*, vol. III *(op. cit.)*, p. 1911.

[861] *Ibid.*, p. 1938.

[862] *Ibid.*, pp. 1911–1913.

[863] *Ibid.*, p. 1932.

[864] *Ibid.*, pp. 1938 and 1939.

the basis of international law. The Tribunal, however, finds that this problem need not be solved here, as the law followed in the United States in dealing with the quasi]sovereign rights of the States of the Union, in the matter of air pollution, whilst more definite, is in conformity with the general rules of international law.

Particularly in reaching its conclusions as regards this question as well as the next, the Tribunal has given consideration to the desire of the High Contracting Parties "to reach a solution just to all parties concerned".

As Professor Eagleton puts it (see *Responsibility of States in International Law*, 1928, p. 80): "A State owes at all times a duty to protect other States against injurious acts by individuals from within its jurisdiction". A great number of such general pronouncements by leading authorities concerning the duty of a State to respect other States and their territory have been presented to the Tribunal. These and many others have been carefully examined. International decisions, in various matters, from the Alabama case onward, and also earlier ones, are based on the same general principle, and indeed, this principle, as such, has not been questioned by Canada. But the real difficulty often arises rather when it comes to determine what, *pro subjecta materie*, is deemed to constitute an injurious act.

...

No case of air pollution dealt with by an international tribunal has been brought to the attention of the Tribunal nor does the Tribunal know of any such case. The nearest analogy is that of water pollution. But, here also, no decision of an international tribunal has been cited or has been found.

There are, however, as regards both air pollution and water pollution, certain decisions of the Supreme Court of the United States which may legitimately be taken as a guide in this field of international law, for it is reasonable to follow by analogy, in international cases, precedents established by that Court in dealing with controversies between States of the Union or with other controversies concerning the quasi-sovereign rights of such States, where no contrary rule prevails in international law and no reason for rejecting such precedents can be adduced from the limitations of sovereignty inherent in the Constitution of the United States.[865]

1054. After having considered some cases decided by the United States Supreme Court, the Tribunal concluded:

The Tribunal, therefore, finds that the above decisions, taken as a whole, constitute an adequate basis for its conclusions, namely, that, under the principles of international law, as well as of the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.

The decisions of the Supreme Court of the United States which are the basis of these conclusions are decisions in equity and a solution inspired by them, together with the régime hereinafter prescribed, will, in the opinion of the Tribunal, be "just to all parties concerned", as long, at least, as the present conditions in the Columbia River Valley continue to prevail.

Considering the circumstances of the case, the Tribunal holds that the Dominion of Canada is responsible in international law for the conduct of the Trail Smelter. Apart from the undertakings in the Convention, it is therefore, the duty of the Government of the Dominion of Canada to see to it that this conduct should be in conformity with the obligation of the Dominion under international law as herein determined.[866]

6. Award[867] of 16 November 1957 by an arbitral tribunal in the Lake Lanoux case (*Parties:* SPAIN, FRANCE)

1055. "Lake Lanoux is situated on the south slope of the Pyrénées and on the territory of the French Republic, in the department of Pyrénées-Orientales. It is fed by streams all of which rise on French territory and traverse only that territory. Its waters flow out through a single stream, the Font-Vive, which is one of the sources of the Carol River. This river, after having flowed about twenty-five kilometres measured from Lake Lanoux on French territory, crosses the Spanish boundary at Puigcerdá and continues its course in Spain for about six kilometres before joining the Segre river, which ultimately empties into the Ebro. Before entering Spain, the waters of the Carol feed the Puigcerdá canal, which is the private property of the Spanish town of Puigcerdá".[868]

1056. Regulations governing the administration of the waters common to France and Spain were established by the "Additional Act to the Boundary Treaties concluded on 2 December 1856, 14 April 1862 and 26 May 1866, signed at Bayonne on 26 May 1866."[869]

1057. Starting in 1917, the question of the use of the waters of Lake Lanoux was the subject of repeated exchanges of views and negotiations between the French and Spanish Governments.

1058. In the intervening time, the French Government adopted a development project for Lake Lanoux, submitted by Electricité de France, the main features of which were as follows:

Without any change in the rivers and streams which now feed it, the lake would be transformed, in particular by the establishment of a dam to permit the accumulation of a volume of water which would raise its capacity from 17 to 70 million cubic metres. The water of the lake, which naturally debouches through a tributary stream of the Carol and thereby flows towards Spain, would no longer follow this course regularly. It would be employed to produce electric power through a diversion which would carry it towards the Ariège, a tributary of the Garonne. This water would, therefore, flow into the Atlantic Ocean and not, as at present, into the Mediterranean. To offset this withdrawal of part of the water which feeds the Carol, an underground return tunnel would carry a part of the water of the Ariège to the Carol, to which river the water would be restored in French territory, above the water intake of the Puigcerdá canal.[870]

1059. As the negotiations to which the project in question gave rise did not yield any results, the French Government informed the Spanish Government by a note of 21 March 1956 "of its determination henceforth to exercise its freedom within the area of its rights".[871] Accordingly, the development works for Lake Lanoux, which up to that time had consisted only of the construction of a road and the installation of an aerial cable transport line, resumed on 3 April 1956.[872]

1060. Subsequently, pursuant to the Arbitration Treaty of 10 July 1929 between France and Spain,[873] the French and Spanish Governments, having decided by an agree-

[865] *Ibid.*, pp. 1962–1964.

[866] *Ibid.*, pp. 1965 and 1966.

[867] For the complete text of this award, see *Revue générale de droit international public* (Paris, 1958), tome LXII, p. 79.

[868] *Ibid.*, p. 83.

[869] *Ibid.*, p. 84. For the text of this Act, see *British and Foreign State Papers, 1865–1866* (London, 1870), vol. 56, p. 226. For the Spanish text, see Spain, Ministry of Finance, *Recopilación de Acuerdos Internationales con Francia y Portugal sobre límites y otros servicios de frontera* (Madrid, 1948), p. 93. See also paras. 895–902 above.

[870] See *Revue générale de droit international public* (Paris, 1958), tome LXII, p. 90.

[871] *Ibid.*, p. 92.

[872] *Ibid.*

[873] For the text of this Treaty, see G. F. de Martens, ed., *op. cit.* (Leipzig, Theodor Weicher, 1932), 3ème série, tome XXVI, p. 669.

ment *(compromis)* signed at Madrid on 19 November 1956[874] to submit the case for arbitration, referred the following question to an arbitral tribunal:

Is the French Government justified in its contention that, in carrying out, without a preliminary agreement between the two Governments, works for the use of the waters of Lake Lanoux on the terms laid down in the project and in the French proposals mentioned in the preamble to this *compromis*, it would not commit a violation of the provisions of the Treaty of Bayonne of 26 May 1866 and of the Additional Act of the same date?[875]

1061. In accordance with the provisions of article 2 of the *compromis*, the arbitral Tribunal comprised four members: Mr. Plinio Bolla and Mr. Paul Reuter (appointed by the French Government), Mr. Fernand de Visscher and Mr. Antonio de Luna (appointed by the Spanish Government), and a President, Mr. Sture Petrén (designated by the King of Sweden). It sat at Geneva and gave its award on 16 November 1957.

1062. The Tribunal formulated the requests of the parties in the following terms:

The Spanish Government asked the Tribunal to declare that the French Government could not carry out works for the use of the waters of Lake Lanoux in accordance with the procedures and guarantees established in the Electricité de France project, for if a preliminary agreement was not concluded between the two Governments on the development programme for the said waters, the French Government would commit a violation of the pertinent provisions of the Treaty of Bayonne of 26 May 1866 and of the Additional Act of the same date.

The French Government asked the Tribunal to adjudge and declare that the French Government was justified in its contention that by carrying out, without a preliminary agreement between the two Governments, works for the use of the waters of Lake Lanoux on the terms laid down in the project and in the French proposals mentioned in the preamble to the arbitration *compromis* of 19 November 1956, it would not commit a violation of the provisions of the Treaty of Bayonne of 26 May 1866 and of the Additional Act of the same date.[876]

1063. After setting forth the principal arguments advanced by the Parties, the Tribunal considered the legal aspects of the case:

1. The public works contemplated in the French project are situated entirely in France; the greater part, if not all, of their effects will be felt on French territory; they relate to water which is subject to French territorial sovereignty according to article 8 of the additional Act:

> "All still and running water, whether in the public or the private domain, shall be subject to the sovereignty of the country in which it is situated and, consequently, to that country's laws, except for such amendments as are agreed to by both Governments."

Jurisdiction over running water shall change when the water passes from one country to another and, when the waterways serve as a boundary, each State shall exercise its jurisdiction up to the middle of the current.

This text itself lays down a reservation to the principle of territorial sovereignty ("except for such amendments as are agreed to by both Governments"); provisions of the Treaty and of the Additional Act of 1866 state the most important of these amendments; there may be others. It was contended before the Tribunal that these amendments should be interpreted restrictively, because they derogated from sovereignty. The tribunal could not accept so absolute a statement. Territorial sovereignty acts as a presumption. It must yield to all international obligations, whatever their origin, but only to them.

The question is, therefore, to determine what the obligations of the French Government are in this matter. The Spanish Government has attempted to establish what they are; its arguments should be the starting point for the consideration of the problem.

2. The Spanish Government's arguments present a general character which calls for some preliminary remarks. The Spanish Government bases its arguments first on the text of the Treaty and of the Additional Act of 1866. These arguments thus correspond exactly to the Tribunal's competence as fixed by the arbitration *compromis* (article I). But, in addition, the Spanish Government relies both on the general and traditional features of the Pyrénées boundary system and on certain generally accepted rules of international law to interpret the Treaty and the Additional Act of 1866.

Moreover, the French case (p. 58) considers the question submitted to the Tribunal in the light of "international law". The French countercase (p. 48) does the same, with the following reservation: "although the question submitted to the Tribunal is clearly confined to the interpretation, in the case under consideration, of the Treaty of Bayonne of 26 May 1866 and of the Additional Act of the same date". In his oral pleadings, the agent of the French Government declared: "the *compromis* does not require the Tribunal to determine whether there are on the subject general principles of international law applicable to the present case" (3rd meeting, p. 7) and: "A treaty is interpreted within the context of positive international law at such time as it may be applied" (7th meeting, p. 6).

In an analogous case, the Permanent Court of International Justice [The diversion of water from the Meuse, *P.C.I.J., series A/B, No. 70*, p. 16] declared:

> "In the course of the proceedings, both written and oral, occasional reference has been made to the application of the general rules of international law as regards rivers. In the opinion of the Court, the points submitted to it by the Parties in the present case do not entitle it to go outside the field covered by the Treaty of 1863."

Since the question submitted by the *compromis* relates solely to the Treaty and the Additional Act of 1866, the Tribunal will apply, with regard to each particular point, the following rules:

Clear provisions of treaty law do not call for any interpretation; the text expresses an objective rule which covers the matter to which it applies; when there is matter for interpretation, this should be done according to international law; international law does not establish any absolute and rigid system of interpretation; it is, therefore, permissible to take into consideration the spirit which governed the Pyrénées treaties and the generally accepted rules of international law;

The Tribunal might depart from the rules of the Treaty and the Additional Act of 1866 only if those rules referred expressly to other rules or had been amended by the unequivocal intention of the Parties.

3. This dispute may be reduced to two fundamental questions:

(*a*) Would the works for the use of the waters of Lake Lanoux, on the terms laid down in the project and in the French proposals mentioned in the preamble to the *compromis*, constitute in themselves a violation of the rights granted to Spain by the substantive provisions of the Treaty of Bayonne of 26 May 1866 and the Additional Act of the same date?

(*b*) If the answer to the preceding question is in the negative, would the execution of these works constitute a violation of the provisions of the Treaty of Bayonne of 26 May 1866 and of the Additional Act of the same date, because these provisions made the said execution subject in any circumstances to preliminary agreement between the two Governments or because other rules of article 11 of the Additional Act concerning the negotiations between the two Governments had not been observed?[877]

1064. With respect to the first question stated in paragraph 3(*a*), the Tribunal observed:

In the arbitration *compromis*, [the Spanish Government] had already declared that the French project "alters the natural conditions of the hydrographic basin of Lake Lanoux, by diverting its waters to the Ariège and thereby making the return of the waters to the Carol physically dependent on the will of man, which will lead to the *de facto* pre-

[874] For the complete text of the *compromis*, see *Revue générale de droit international public* (Paris), tome LXII, p. 80.

[875] *Ibid.*, p. 80.

[876] *Ibid.*, p. 92.

[877] *Ibid.*, pp. 98–100.

dominance of one Party instead of the equality of the two Parties contemplated by the Treaty of Bayonne of 26 May 1866 and by the Additional Act of the same date".

The position of the Spanish Government was to be made clear in the course of the proceedings, both written and oral. In the statement of its case (p. 52), it referred to article 12 of the Additional Act:

> The lower parts are compelled to receive from the higher regions of the neighbouring country the water which naturally flows from it, including what that water carries down, without any human assistance. It is not permissible to construct a dike or any obstacle whatever which may prejudice the interests of the riparian population of the higher region, who are likewise forbidden to do anything which aggravates the servitude of the lower water."

According to the Spanish Government, this provision confirms the notion that neither of the Parties may, without the consent of the other, alter the natural order of the water's flow. The Spanish counter-case (p. 77) acknowledges, however, that: "From the moment that the will of man intervenes to carry out any hydraulic development whatever, an extra-physical element acts on the current and alters what Nature established". Consequently, the Spanish Government does not attribute an absolute meaning to respect for natural order; according to the counter-case (p. 96): "A State has the right to use unilaterally the part of a river which traverses it to the extent that this use is likely to cause on the territory of another State a limited harm only, a minimal inconvenience, which comes within the bounds of those that derive from good neighbourliness".

In reality, it seems that the Spanish thesis is twofold and covers, on the one hand, the prohibition, without the consent of the other Party, of compensation between two basins, in spite of the equivalence of withdrawal and return and, on the other hand, the prohibition, without the consent of the other Party, of all actions that may create along with a *de facto* inequality, the physical possibility of a violation of law.

The two points should be examined in order.

8. The prohibition of compensation between two basins, without the consent of the other Party, despite the equivalence of withdrawal and return, would result in a general bar to the taking of water from a waterway belonging to river basin A for the benefit of river basin B, even if this withdrawal was offset by a strictly equivalent return from a waterway of river basin B for the benefit of river basin A. The Tribunal, from the viewpoint of physical geography, cannot disregard the reality of each river basin, which constitutes, as the Spanish case (p. 53) contends, "a whole". But this fact does not justify the absolute consequences which the Spanish thesis seeks to draw from it. The unity of a basin is supported at the legal level only to the extent that it conforms to the realities of life. Water, which is by nature a fungible thing, may be restored without alteration of its qualities from the viewpoint of human needs. A withdrawal with return, as contemplated in the French project, does not alter a state of affairs established in response to the demands of life in society.

The state of modern technology leads more and more frequently to the acknowledgement that water used in the generation of electric power need not be returned to its natural course. The water is taken from a constantly higher point and it is carried still lower, and in the course of this process it is sometimes diverted to another river basin, in the same State or in another country within the same federation or even in a third State. In federations, court decisions have recognized the validity of this latter practice (Wyoming v. Colorado, *United States Reports*, vol. 259, *Cases adjudged in the Supreme Court*, p. 419; and the cases cited by D. J. E. Berber, *Die Rechtsquellen des internationalen Wassernützungsrechts*, p. 180, and by G. Sauser-Hall, "*L'utilisation industrielle des fleuves internationaux*", *Recueil des cours de l'Académie de droit international de La Haye, 1953-II*, vol. 83, p. 544; for Switzerland, *Recueil des arrêts du Tribunal fédéral*, 78, vol. I, pp. 14 *et seq.*).

The Tribunal considers, therefore, that withdrawal with return, as provided in the French project and proposals, is not in conflict with the Treaty and the Additional Act of 1866.

9. In another connexion, the Spanish Government challenged the legality of works carried out on the territory of one of the signatories of the Treaty and of the Additional Act, if they were calculated to enable it, even in violation of its international commitments, to bring pressure to bear on the other signatory. This rule was said to follow from the fact that the treaties in question established the principle of equality among States. Specifically, Spain feels that France does not have the right to procure for itself, by public works, the physical possibility of stopping the flow of the Lanoux water or the return of an equivalent quantity of water. It is not for the Tribunal to judge the reasons or experiences which might lead the Spanish Government to give expression to a certain anxiety. But it is not alleged that the purpose of the works in question, aside from the satisfaction of French interests, is to create a means of at least potential injury to Spanish interests; that would be all the more unlikely as France could only partially exhaust the resources represented by the discharge of the Carol, it would also affect all the French land irrigated by the Carol, and it would be open along the whole boundary to formidable reprisals.

Moreover, the French Government's proposals, which are an integral part of its project, include "the assurance that it will not, in any case, interfere with the régime thus established" (annex 12 of the French case). The Tribunal must, therefore, answer the question submitted by the *compromis* on the basis of this assurance. It could not be alleged that despite this commitment Spain would not have a sufficient guarantee, for it is a well-established general principle of law that bad faith is not presumed. Moreover, it has not been contended that either of the two States at any time intentionally infringed a rule relating to the water economy to the detriment of the other. Moreover, although based on a just spirit of reciprocity, the Treaties of Bayonne established only equality in law and not equality in fact. If it were otherwise, they would have had to forbid on both sides of the boundary any installations and works of a military order which could give to one of the States a *de facto* predominance which it might use to violate its international commitments. But it is necessary to go farther still; man's growing mastery of the forces and secrets of nature has placed in his hands instruments which he may use to violate his obligations or for the common good; the danger of misuse has not resulted, up to the present, in making the possession of these means dependent on the authorization of the States which may be threatened. Even if viewed solely from the standpoint of the relations of neighbours, the political danger alleged by the Spanish Government would be no more exceptional than the technical risk mentioned above. In any case, there is not, in the Treaty and Additional Act of 26 May 1866 or in the generally accepted principles of international law, a rule which forbids a State, acting to protect its legitimate interests, from placing itself in a situation which enables it in fact, in violation of its international obligations, to do even serious injury to a neighbouring State.

It remains still to be determined whether the French project conflicts with the substantive rules laid down by article 11. This question will be examined farther on, in connexion with the general terms of this article (cf. para. 24).

Subject to this last reservation, the Tribunal replies in the negative to the first question, set forth in paragraph 3 *a*.[878]

1065. On the second question, set forth under 3 *b*, the Tribunal said:

10. In the *compromis*, the Spanish Government had already declared that in its opinion the execution of the French project required "the preliminary agreement of the two Governments, and that in the absence of such agreement the country which proposed the project could not have freedom of action to undertake the works.

In the proceedings, both written and oral, the Government developed this approach, completing it in particular by a statement of the principles which should govern the negotiations leading to this preliminary agreement. Two obligations were said to rest upon the State which wished to undertake the proposed works: the most important was to reach a preliminary agreement with the other State concerned; the other which was only secondary, was to observe the other rules laid down by article 11 of the Additional Act.

The arguments submitted by the Spanish Government are put forth, moreover, at two levels: the Spanish Government bases its position, on the one hand, on the Treaty and Additional Act of 1866, and on the other hand on the system of joint community pasturage rights (*faceries* and *compascuités*) which exists at the Pyrénées frontier and on the generally accepted rules of international law. The last two

[878] *Ibid.*, pp. 102–105.

sources would make it possible, first, to interpret the Treaty and Additional Act of 1866, and then, in a broader perspective, to demonstrate the existence of an unwritten general rule of international law. There are said to be precedents establishing that rule in the traditions of the system of joint community pasturage rights in the provisions of the Pyrénées treaties, and in the international practice of States concerning the industrial use of international waterways.

11. Before considering the Spanish arguments, the Tribunal believes it would be useful to make some very general observations on the nature of the obligations alleged to be incumbent on the French Government. To admit that in a given matter competence may no longer be exercised except on the condition of or by means of an agreement between two States is to place an essential restriction on the sovereignty of a State, and it may be allowed only if there is conclusive proof Undoubtedly international practice discloses some specific cases in which this assumption is proved; thus, sometimes two States exercise jurisdiction jointly over certain territories (indivisum, coimperium or condominium); similarly, in certain international institutions, the representatives of States exercise jointly a certain competence on behalf of States or on behalf of organizations. But these cases are exceptional and international case law does not readily recognize their existence, especially when they infringe upon the territorial sovereignty of a State, which would be true in the present case.

In fact, to evaluate in its essence the need for a preliminary agreement, it is necessary to adopt the hypothesis that the States concerned cannot arrive at an agreement. In that case, it would have to be admitted that a State which ordinarily is competent has lost the right to act alone as a consequence of the unconditional and discretionary opposition of another State. This is to admit a "right of consent", a "right of veto", which at the discretion of one State paralyses another State's exercise of its territorial competence.

For this reason, international practice prefers to resort to less extreme solutions, limiting itself to requiring States to seek the terms of an agreement by preliminary negotiations without making the exercise of their competence conditional on the conclusion of this agreement. Thus reference is made, although often incorrectly, to "an obligation to negotiate an agreement". In reality, the commitments thus assumed by States take very diverse forms, and their scope varies according to the way in which they are defined and according to the procedures for their execution; but the reality of the obligations thus assumed cannot be questioned, and they may be enforced, for example, in the case of an unjustified breaking off of conversations, unusual delays, disregard of established procedures, systematic refusal to give consideration to proposals or adverse interests, and more generally in the case of infringement of the rules of good faith. ("The Tacna-Arica Question", in United Nations, *Reports of International Arbitral Awards*, vol. II (United Nations publication, Sales No. 1949.V.1), pp. 921 *et seq.*; "Railway traffic between Lithuania and Poland", in *P.C.I.J., series A/B 42*, pp. 108 *et seq.*)

In the light of these general observations and with reference to the present case, we shall consider successively whether a preliminary agreement is necessary and whether the other rules established by article 11 of the Additional Act have been observed.[879]

1066. Concerning the necessity of a preliminary agreement, the Tribunal added:

12. We shall consider first, therefore, whether the proposition that the execution of the French project is conditional on the preliminary consent of the Spanish Government is justified by reference to the system of joint community pasturage rights or to the generally accepted principles of international law; the data collected is supposed to help, if necessary, to interpret the Treaty and Additional Act of 1866 or, better still, according to the more general form given to the Spanish thesis, to establish the existence of a general principle of law or custom which was recognized, *inter alia*, by the Treaty and the Additional Act of 1866 (Spanish case, p. 81).

The Spanish Government desired in particular to show that "the demarcation line of the Pyrénées boundary constituted, not a limit to the sovereign rights of the bordering States, but a zone organized in accordance with a special customary law, incorporated into international law by the boundary Treaties which recognized that zone" (Spanish case, p. 55). The most characteristic expression of this customary law was said to be the existence of joint community pasturage rights (pleadings, 4th meeting, p. 16); these were themselves said to be the residue of a wider community system, which in the Pyrénées valleys was based on the rule that matters of common interest should be settled by freely negotiated agreements.

In fact, the French project does not affect the rights of pasturage on French territory guaranteed by the treaties to certain Spanish towns. In particular, it appears, according to the replies of the Parties to a question put by the Tribunal, that the rights of pasturage on French territory held by the Spanish town of Llivia in no way affect the waters of Lanoux or of the Carol. In any case, the Spanish Government invokes the system of joint community pasturage rights, or rather the now bygone régime of the Pyrénées communities of which joint community pasturage rights are the last trace, in order to retain the essential spirit of this system, which was based on mutual understanding, on a concern for the common interest and on the search for a compromise through agreements freely negotiated and concluded. In this sense, it is in fact correct that the distinctive features of the Pyrénées boundary lead the bordering States, more than at any other frontier, to exhibit the spirit of collaboration and understanding which is indispensable to the solution of the difficulties that may arise from boundary relationships, particularly in mountainous countries.

But we cannot go farther; it is impossible to extend the system of joint community pasturage rights beyond the bounds assigned to it by the Treaties, nor to derive from it an idea of a generalized "community" which would have any legal content whatever. As for the appeal to the idea of a "frontier zone", an obligation cannot be added to those laid down by positive law merely by the use of the vocabulary of legal doctrine.

13. The Spanish Government also attempted to establish what the existing positive international law was (Spanish case, p. 65; Spanish counter-case, p. 105). Some of the principles for which proof is offered, assuming them to be established, are without relevance to the matter now under consideration. Thus, while admittedly there is a rule prohibiting the upper riparian State from altering the waters of a river in circumstances calculated to do serious injury to the lower riparian State, such a principle has no application to the present case, since it was agreed by the Tribunal, with respect to the first question considered above, that the French project did not alter the waters of the Carol. In fact, States today are well aware of the importance of the conflicting interests involved in the industrial use of international rivers and of the necessity of reconciling some of these interests with others through mutual concessions. The only way to achieve these adjustments of interest is the conclusion of agreements on a more and more comprehensive basis. International practice reflects the conviction that States should seek to conclude such agreements; there would thus be an obligation for States to agree in good faith to all negotiations and contacts which should, through a wide confrontation of interests and reciprocal goodwill, place them in the best circumstances to conclude agreements. This point will be considered later on in establishing the obligations of France and Spain concerning contacts and negotiations prior to the execution of a project such as the one for Lake Lanoux.

But international practice does not permit us, so far, to go beyond this conclusion; the rule that States may use the hydraulic power of international waterways only if a *preliminary* agreement between the States concerned has been concluded cannot be established as a customary rule or, still less, as a general principle of law. In this connexion the history of the drafting of the multilateral Geneva Convention of 9 December 1923 relating to the Development of Hydraulic Power affecting more than one State is very significant. The initial draft was based on the idea of compulsory preliminary agreements for developing the hydraulic power of international waterways. But this proposal was rejected, and the Convention, in its final form, provided (art. 1) that it "in no way affects the right belonging to each State, within the limits of international law, to carry out on its own territory any operations for the development of hydraulic power which it may consider desirable"; it is merely provided that the signatory States concerned have an obligation to agree to a joint investigation of a scheme of development; the carrying out of this programme is not compulsory except for States which have formally undertaken to do so.

[879] *Ibid.*, pp. 105 and 106.

No more than the traditions of the Pyrénées does generally accepted international law provide a basis for interpreting the Treaty and Additional Act of 1866 in a sense favourable to the necessity of a preliminary agreement or, still less, for concluding that there is a general principle of law or custom to this effect.

14. A rule requiring an agreement prior to the hydraulic development of an international waterway can exist between Spain and France only as a result of a treaty.[880]

1067. The Tribunal, after having examined the agreements in force between the parties, held that no such rule existed.[881]

1068. With respect to the other obligations arising from article 11 of the Additional Act, the Tribunal said:

21. Article 11 of the Additional Act imposes a twofold obligation on States in which works or new concessions calculated to change the administration or the volume of a waterway traversing the two States are proposed. One is to give prior notice to the competent authorities of the neighbouring country; the other is to develop a system of complaints and of safeguards for all the interests involved on one side and the other.

. . .

The fact that France satisfied the obligation of notice as far as the development of Lake Lanoux was concerned has not been contested.

22. The content of the second obligation is more difficult to determine. The "complaints" mentioned in article 11 relate to the various rights protected by the Additional Act, but the main question is to establish how "all the interests involved on one side and the other" should be safeguarded.

First, it is necessary to determine which "interests" should be safeguarded. A strict interpretation of article 11 would support the conclusion that only interests corresponding to a right of the riparian population were involved. Various considerations already pointed out by the Tribunal lead however to a broader interpretation. Consideration must be given to all interests, whatever their nature, which may be affected by the works undertaken, even if they do not amount to a right. Only this solution is in accord with the terms of article 16, the spirit of the Pyrénées Treaties, and the trends apparent in current international practice as regards hydro-electric development.

The second question is to determine the procedure whereby these interests can be safeguarded. Although this procedure necessarily involves negotiations, it cannot be reduced to purely formal requirements, such as taking note of complaints, protests or expressions of regret submitted by the lower riparian State. The Tribunal considers that the upper riparian State, under the rules of good faith, has an obligation to take into consideration the various interests concerned, to seek to give them every satisfaction compatible with the pursuit of its own interests and to show that it has, in this matter, a real desire to reconcile the interests of the other riparian with its own.

It is difficult to determine if such an obligation has been met. Nevertheless, without substituting himself for the Parties, the judge is able to undertake this determination on the basis of the evidence furnished by the negotiations.

23. In the present case, the Spanish Government charges that the French Government did not draw up the development project for the waters of Lake Lanoux on a basis of absolute equality. This charge is twofold: it relates to both form and substance. In the matter of form, it is suggested that the French Government imposed its project unilaterally without associating the Spanish Government in a joint search for an acceptable solution. As to substance, it is contended that the French project does not maintain an equitable balance between French interests and Spanish interests. The French project, it is argued, perfectly serves French interests, especially those directed towards electric power production designed to meet peak demand, but does not take sufficient account of Spanish interests in the matter of irrigation. According to the Spanish Government, the French Government refused to consider projects which, in the Spanish Government's opinion, would have involved a slight sacrifice for French interests and great advantages for the Spanish agricultural economy. Spain bases its argument specifically on the following facts: during the meetings of the Special Joint Commission at Madrid (12–17 December 1955), the French delegation made a comparison of three development projects for Lake Lanoux and pointed out the considerable advantages which, in its opinion, the first project (corresponding to the final project) had in comparison with the other two. The Spanish delegation, having no particular objection to these latter projects, declared that it was prepared to accept either of the two. The French delegation deemed itself unable to renounce the execution of project No. 1, which was more favourable to French interests and based, in its opinion, on a right (French case, pp. 117 *et seq.*; p. 127).

From the standpoint of principle, the Spanish thesis cannot be accepted by the Tribunal, for it is inclined to put rights and mere interests on the same level. Article 11 of the Additional Act makes a distinction between them, which both Parties have reproduced in the fundamental statement of their theses at the beginning of the *compromis*:

"Considering that, in the opinion of the French Government, the carrying out of its project . . . would not prejudice any of the rights or interests referred to in the Treaty of Bayonne of 26 May 1866 and in the Additional Act of the same date;

"Considering that, in the opinion of the Spanish Government, the carrying out of this project would prejudice Spanish interests and rights".

France may use its rights; it may not disregard Spanish interests.

Spain may demand respect for its rights and consideration of its interests.

In form, the upper riparian State had, by virtue of the procedure, a right of initiative; it is not obliged to associate the lower riparian State in the preparation of its projects. If during the negotiations the lower riparian State submits projects to it, the upper riparian State should examine them, but it has the right to prefer the solution adopted by its project, if it takes into consideration in a reasonable manner the interests of the lower riparian State.

24. In the case of Lake Lanoux, France adhered throughout to the solution which involved a diversion of the water of the Carol to the Ariège, with complete return. In making this choice, France is merely exercising a right; the Lake Lanoux development works are being carried out on French territory, the burden and the responsibility of the undertaking rests on France, and France is the sole judge of the public works to be carried out on its territory, subject to article 9 and 10 of the Additional Act, which the French project does not infringe.

For its part, Spain may not invoke a right to have the development of Lake Lanoux based on the needs of Spanish agriculture. In fact, if France renounced all the works planned on its territory, Spain could not require other works which conformed to its wishes to be carried out. It, therefore, may assert its interests simply to obtain terms providing reasonable safeguards for them within the limits of the project adopted by France.

It remains to be decided whether this requirement has been met.

. . .

In determining whether France, both in its negotiations and in its proposals, took Spanish interests sufficiently into consideration, note must be taken of the intimate connexion between the obligation to take adverse interests into account in the course of negotiations and the obligation to give a reasonable place to such interests in the solution adopted. A State which has conducted negotiations with understanding and good faith, according to article 11 of the Additional Act, is not released from the obligation to give a reasonable place to adverse interests in the solution adopted because the conversations have been interrupted, even by the intransigence of its partner. Inversely, when it is a question of appraising the way in which a project takes account of the interests concerned, the manner in which the negotiations have been conducted, the list of the interests which might have been presented in them and the price which each of the Parties was prepared to pay in order to obtain their safeguard, are the main factors in establishing the merit of this project in relation to the obligations of article 11 of the Additional Act.

In view of all the above-mentioned circumstances of the case, the Tribunal is of the opinion that the French project satisfies the obligations of article 11 of the Additional Act.

[880] *Ibid.*, pp. 106–108.

[881] *Ibid.*, pp. 108–115.

For these reasons, the Tribunal decided to reply in the affirmative to the question set forth in article 1 of the *compromis*. In carrying out, without a preliminary agreement between the two Governments, works for the use of the waters of Lake Lanoux on the terms laid down in the project for the use of the waters of Lake Lanoux, due notice of which was given to the Governor of Gerona Province on 21 January 1954 and of which the representatives of Spain on the Pyrénées Commission were informed during the Commission's session from 3 to 14 November 1955, and in accordance with the proposals submitted by the French delegation to the Special Joint Commission on 13 December 1955, the French Government would not commit a violation of the provisions of the Treaty of Bayonne of 26 May 1866 and of the Additional Act of that date.[882]

[882] *Ibid.*, pp. 115–119.

Part IV

General survey of studies made or being made by non-governmental organizations concerned with international law

Chapter I

INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

1. Institute of International Law

1069. At its session held in Paris in 1910, the Institute of International Law decided to study the question of "determining the rules of international law relating to international rivers from the point of view of the utilization of their energy". Mr. von Bar was appointed Rapporteur and a study commission was formed.[883]

1070. At the Institute's session in Madrid in 1911, the Rapporteur submitted two reports. In the first,[884] he recommended to the Institute the adoption of the following proposals:[885]

I. When a stream forms the frontier of two States, neither of these States may, without the consent of the other, and without special and valid legal title, make or allow individuals, corporations, etc. to make alterations therein detrimental to the territory of the other State. On the other hand, neither State may, on its own territory, utilize or allow the utilization of the water in such a way as seriously to interfere with its utilization by the other State or by individuals, corporations, etc. on the territory thereof.

The provisions of the foregoing paragraph are likewise applicable to a lake lying between the territories of more than two States.

II. When a stream traverses successively the territories of two States:

(1) The point where this stream crosses the common frontier, whether naturally or since time immemorial, may not be changed by establishments of one of the States without the consent of the other;

(2) All alterations to the chemical composition of the water and the emptying therein of injurious matter (from factories, etc.) are likewise forbidden.

(3) No establishment (especially factories utilizing hydraulic power) may take so much water that the constitution, otherwise called the utilizable character, of the stream shall, when it reaches the territory down-stream, be serious modified.

However, it is not necessary for the mass of water entering the territory down-stream, whether naturally or since time immemorial (except according to special legal titles to be judged in accordance with the law of the territory up-stream) to be always equal to the mass which arrived there previously and the State up-stream is authorized, within limits, to take more water than it had done previously.

The solution to the question of quantity must take into account; on the one hand, the use actually made to date in each territory and, on the other hand, the possibility of the creation in the quite near future of new establishments involving the utilization of a larger quantity of water.

(4) It is recommended that permanent joint commissions be appointed, which shall render decisions, or at least shall give their opinion, when, from the building of new establishments or the making of alterations in existing establishments, serious consequences might result in that part of the stream situated in the territory of the other State.

1071. In his second report,[886] the Rapporteur examined the observations made by the members of the Study Commission and proposed the following amended text:[887]

Preamble—The riparian States with a common stream are in a position of permanent physical dependence on each other which precludes the idea of the complete autonomy of each State in the section of the natural watercourse under its sovereignty.

International law has already dealt with the right of navigation with respect to international rivers but the use of water for the purposes of industry, agriculture, etc. was not foreseen by international law.

It therefore seems expedient to remedy this lack by noting the rules of law resulting from the interdependence which undoubtedly exists between riparian States with a common stream and between States whose territories are crossed by a common stream.

With the exception of the right of navigation, as already established or to be established by international law:

The Institute of International Law is of the opinion that the following regulations should be observed from the point of view of (any) use of international streams:

I. When a stream forms the frontier of two States, neither of these States may, without the consent of the other, and without special and valid legal title, make or allow individuals, corporations, etc. to make alterations therein detrimental to the territory of the other State. On the other hand, neither State may, on its own territory, utilize or allow the utilization of the water in such away as seriously to interfere with its utilization by the other State or by individuals, corporations, etc. thereof.

[883] See *Annuaire de l'Institut de droit international, Paris session, March-April 1910* (Paris, 1910), vol. 23, pp. 498 and 499. For the membership of the Study Commission, *ibid.*, p. 549.

[884] The text of this report appears in *ibid., Madrid session, April 1911*, (Paris, 1911), vol. 24, pp. 156–167. The report was also published in the *Revue générale de droit international public* (Paris, 1910), pp. 281–288.

[885] See *Annuaire de l'Institute de droit international, Madrid session, April 1911* (Paris, 1911), vol. 24, pp. 166 and 167.

[886] *Ibid.*, pp. 168–183.

[887] *Ibid.*, pp. 180–183.

The provisions of the foregoing paragraph are likewise applicable to a lake lying between the territories of more than two States.

II. When a stream traverses successively the territories of two or more States:

1. The point where this stream crosses the common frontier of two States, whether naturally or since time immemorial, may not be changed by establishments of one of the States without the consent of the State in whose territory the point is situated.
2. All alterations injurious to the water, the emptying therein of injurious matter (from factories, etc.) is likewise forbidden.
3. No establishment (especially factories using hydraulic power) may take so much water that the constitution, otherwise called the (utilizable or) essential character, of the stream shall, when it reaches the territory down-stream, be seriously modified.

However, it is not necessary for the mass of water entering the territory down-stream, whether naturally or since time immemorial (except according to special legal titles to be judged in accordance with the law of the territory up-stream) to be always equal to the mass which arrived there previously and the State up-stream is authorized, within limits, to take more water than it had done previously.

The solution to the question of quantity must take into account, on the one hand, the use actually made to date in each territory and, on the other hand, the possibility of the creation in the quite near future of new establishments involving the utilization of a larger quantity of water.

(The right of navigation by virtue of a title recognized in international law may not be violated in any way whatever.)

3 (*a*) A State situated down-stream may not erect or allow to be erected within its territory constructions or establishments which would subject the other State to the danger of inundation.

3 (*b*) The foregoing rules are applicable likewise to cases where streams flow from a lake situated in one State through the territory of another State or the territories of other States.

4. It is recommended that the interested States appoint permanent joint commissions which shall render decisions, or at least shall give their opinion, when, from the building of new establishments or the making of alterations in existing establishments, serious consequences might result in that part of the stream situated in the territory of the other State.

1072. The Institute of International Law examined this text at its two meetings held on 19 and 20 April 1911.[888] Following this examination, it adopted the following resolution on "international regulations regarding the use of international watercourses".[889]

Statement of reasons[890]

Riparian States with a common stream are in a position of permanent physical dependence on each other which precludes the idea of the complete autonomy of each State in the section of the natural watercourse under its sovereignty.

International law has dealt with the right of navigation with respect to international rivers but the use of water for the purposes of industry, agriculture, etc. was not foreseen by international law.

It therefore seems expedient to remedy this lack by noting the rules of law resulting from the interdependence which undoubtedly exists between riparian States with a common stream and between States whose territories are crossed by a common stream.

With the exception of the right of navigation, as already established or to be established by international law:

The Institute of International Law is of the opinion that the following regulations should be observed from the point of view of (any) use of international streams.

Regulations

I. When a stream forms the frontier of two States, neither of these States may, without the consent of the other, and without special and valid legal title, make or allow individuals, corporations, etc. to make alterations therein detrimental to the bank of the other State. On the other hand, neither State may, on its own territory, utilize or allow the utilization of the water in such a way as seriously to interfere with its utilization by the other State or by individuals, corporations, etc. thereof.

The foregoing provisions are likewise applicable to a lake lying between the territories of more than two States.

II. When a stream traverses successively the territories of two or more States:

(1) The point where this stream crosses the frontiers of two States, whether naturally or since time immemorial, may not be changed by establishments of one of the States without the consent of the other;

(2) All alterations injurious to the water, the emptying therein of injurious matter (from factories, etc.) is forbidden;

(3) No establishment (especially factories using hydraulic power) may take so much water that the constitution, otherwise called the utilizable or essential character, of the stream shall, when it reaches the territory down-stream, be seriously modified;

(4) The right of navigation by virtue of a title recognized in international law may not be violated in any way whatever;

(5) A State situated down-stream may not erect or allow to be erected within its territory constructions or establishments which would subject the other State to the danger of inundation;

(6) The foregoing rules are applicable likewise to cases where streams flow from a lake situated in one State through the territory of another State or the territories of other States;

(7) It is recommended that the interested States appoint permanent joint commissions, which shall render decisions, or at least shall give their opinion, when, from the building of new establishments or the making of alterations in existing establishments, serious consequences might result in that part of the stream situated in the territory of the other State.

1073. The Institute recently decided to study this subject again. At its Granada session in 1956, it set up a new Commission to study the topic of the utilization of non-maritime international waters (except for navigation) and appointed Mr. Juraj Andrassy as Rapporteur for the topic.[891]

1074. In 1957, Mr. Andrassy submitted a "preliminary paper" on the topic.[892] In 1959, he submitted an "interim report",[893] which took into account the observations on the preliminary paper made by the members of the Commission.[894] In this report, he proposed the adoption of the following draft resolution:[895]

Draft resolution on the utilization of waters

The Institute of International Law,

Noting that the rule of not causing unlawful harm to others is one of the basic general principles governing international neighbourly relations in general,

Noting that this principle is also applicable to relations arising from different utilizations of waters,

[888] The proceedings are recorded in *ibid.*, pp. 347–364.

[889] *Ibid.*, pp. 365–367.

[890] However, this statement of reasons was not put to the vote.

[891] See *Annuaire de l'Institut de droit international, Granada session, April 1956* (Basle, 1956), vol. 46, p. 92. For the membership of the Commission, see p. 497.

[892] *Ibid., Neuchâtel session, September 1959* (Basle, 1959), vol. 48, tome I, p. 213.

[893] *Ibid.*, p. 131.

[894] *Ibid.*, p. 270.

[895] *Ibid.*, p. 210.

Recalling also that utilization based on joint plans and reciprocal concessions may give better results than are obtained by each of the interested States acting individually and exercising only their rights which are recognized by international law,

That a combining of efforts and plans for the utilization of the waters of a river basin of interest to several States may produce more advantages and a more complete utilization for all the interested States,

And that therefore a procedure of understanding and of utilization based on mutual agreement is often preferable to one based solely on rights in force,

Recognizes the following rules of international law in force and makes the following recommendations:

Article 1. The following rules are applicable to the utilization of waters which form part of a river basin which extends over the territory of two or more States.

Article 2. Every State has the right to utilize, to the maximum extent possible and on the basis of equality of rights, the waters which traverse or border its territory, subject to the corresponding right of the States interested in the same watercourse or river basin and to the limits imposed by international law in general and those contained in the articles which follow.

Article 3. In conformity with the principle of equality of rights, all the interested States have an equal right to use the waters of a river basin in proportion to their needs.

Article 4. No alteration may be made which, through a particular use, seriously impairs the right of utilization of another State interested in the waters of the same river basin.

Article 5. However, the State planning works to improve the facilities is entitled to undertake such works if it gives the party opposing them the opportunity to enjoy the proportional benefits to which that party is entitled and adequate compensation for any loss or damage.

Article 6. In cases in which serious damage might be caused by the works in question, it is recommended that the State which is planning such works give previous notice to the interested States and, in the event of an objection, try to reach agreement within a reasonable time.

Article 7. If the continuance of a dispute regarding the utilization of the waters is likely to endanger the maintenance of international peace and security, the parties to the dispute shall seek a solution by the means indicated in Article 33 of the Charter of the United Nations.

Article 8. In negotiations and in the event of recourse to peaceful means, it is recommended that the parties have recourse to technical experts and, should occasion arise, to the appropriate organs constituted on a basis of parity or international organs, in order to arrive at solutions assuring the greatest advantage to all concerned.

Article 9. During the negotiations or search for solutions by one of the peaceful means, the parties shall refrain from undertaking the works which are the object of the dispute or any other works which might aggravate the dispute or render agreement more difficult.

Article 10. If the parties fail to reach agreement within a reasonable time, any party may propose that the question whether the proposed works are contrary to the above rules be submitted to an arbitral tribunal or to the International Court of Justice.

If one of the parties does not agree to the proposed arbitration or refuses to submit to the jurisdiction of the Court, the other party is absolved from the obligation in article 9.

1075. This draft resolution was examined by the Commission at the Institute's session at Neuchâtel in September 1959. Following this examination, a revised draft resolution was adopted by the Commission. After the Neuchâtel session, some members of the Commission[896] submitted additional observations[897] on the revised draft resolution.

[896] The membership of the Commission after the Neuchâtel session is given in *ibid.*, p. 320.

[897] *Ibid.*, p. 340.

The Rapporteur prepared a final draft resolution which he attached to his final report dated 25 February 1960.[898] The text of this draft resolution is as follows:[899]

The Institute of International Law,

Noting that the rule of not causing unlawful harm to others is one of the basic general principles governing international neighbourly relations in general,

Noting that the principle is also applicable to relations arising from different utilizations of waters,

Recalling also that utilization based on joint plans and reciprocal concessions may give better results than are obtained by each of the interested States acting individually and exercising only their rights which are recognized by international law,

And that a combining of efforts and plans for the utilization of the waters of a river basin of interest to several States may produce more advantages and a more complete utilization for all the interested States,

And that therefore a procedure of understanding and of utilization based on mutual agreement is often preferable to one based solely on rights in force,

Recognizes the existence in international law of the following rules and formulates the following recommendations:

Article 1. The following rules and recommendations are applicable to the utilization of waters which form part of a river basin which extends over the territory of two or more States.

Article 2. Subject to the limits imposed by general and conventional international law and by the provisions of the articles which follow, every State has the right to utilize the waters which traverse or border its territory.

Article 3. In exercising the said right, every State is bound to respect the right of utilization of other States interested in the same watercourse or river basin.

Article 4. In the event of a conflict of rights or utilization, benefits shall be equitably divided between the interested States, taking as a basis the size of their respective needs.

Article 5. No works or utilizations may be undertaken which would involve a modification or any alteration which might seriously impair the right of utilization of another State interested in the waters of the same watercourse or river basin.

Article 6. However, the State planning works to improve the facilities is entitled to undertake such works if it gives the State raising objections the possibility of enjoying the proportional benefits to which that State is entitled and adequate compensation for any loss or damage.

Article 7. In cases in which serious damage might be caused by the works in question, the State planning them shall give previous notice to the interested States.

Article 8. In case objection is made, the States shall enter into negotiations with a view to reaching an agreement within a reasonable time.

For this purpose, it is desirable that the interested States should have recourse to technical experts and, should occasion arise, to the appropriate organs constituted on a basis of parity or international organs, in order to arrive at solutions assuring the greatest advantage to all concerned.

Article 9. During the negotiations, the interested States must refrain from undertaking the works which are the object of the dispute or any other works which might aggravate the dispute or render agreement more difficult.

Article 10. If the interested States fail to reach agreement within a reasonable time, any party may propose that the question whether the proposed works are contrary to the above rules be submitted to an arbitral tribunal or to the International Court of Justice.

If the State objecting to the projected works does not consent to the proposed arbitration or refuses to submit to the juridiction of the

[898] *Ibid.*, p. 319.

[899] *Ibid.*, p. 336.

Court, the other State is free to go ahead while remaining bound by its obligations arising from the provisions of articles 2 to 6.

1076. At its session held at Salzburg from 4 to 13 September 1961, the Institute considered the final report accompanied by the above draft resolution and, on 11 September 1961, by a vote of 50 to none, with 1 abstention, it adopted the following resolution:[900]

Utilization of non-maritime international waters (except for navigation)

The Institute of International Law,

Considering that the economic importance of the use of waters is transformed by modern technology and that the application of modern technology to the waters of a hydrographic basin which includes the territory of several States affects in general all these States, and renders necessary its restatement in juridical terms,

Considering that the maximum utilization of available natural resources is a matter of common interest,

Considering that the obligation not to cause unlawful harm to others is one of the basic general principles governing neighbourly relations,

Considering that this principle is also applicable to relations arising from different utilizations of waters,

Considering that in the utilization of waters of interest to several States, each of them can obtain, by consultation, by plans established in common and by reciprocal concessions, the advantages of a more rational exploitation of a natural resource,

Recognizes the existence in international law of the following rules, and formulates the following recommendations:

Article 1. The present rules and recommendations are applicable to the utilization of waters which form part of a watercourse or hydrographic basin which extends over the territory of two or more States.

Article 2. Every State has the right to utilize waters which traverse or border its territory, subject to the limits imposed by international law and, in particular, those resulting from the provisions which follow.

This right is limited by the right of utilization of other States interested in the same watercourse or hydrographic basin.

Article 3. If the States are in disagreement over the scope of their rights of utilization, settlement will take place on the basis of equity, taking particular account of their respective needs, as well as of other pertinent circumstances.

Article 4. No State can undertake works or utilizations of the waters of a watercourse or hydrographic basin which seriously affect the possibility of utilization of the same waters by other States except on condition of assuring them the enjoyment of the advantages to which they are entitled under article 3, as well as adequate compensation for any loss or damage.

Article 5. Works or utilizations referred to in the preceding article may not be undertaken except after previous notice to interested States.

Article 6. In case objection is made, the States will enter into negotiations with a view to reaching an agreement within a reasonable time.

For this purpose, it is desirable that the States in disagreement should have recourse to technical experts and, should occasion arise, to commissions and appropriate agencies in order to arrive at solutions assuring the greatest advantage to all concerned.

Article 7. During the negotiations, every State must, in conformity with the principle of good faith, refrain from undertaking the works or utilizations which are the object of the dispute or from taking any other measures which might aggravate the dispute or render agreement more difficult.

Article 8. If the interested States fail to reach agreement within a reasonable time, it is recommended that they submit to judicial settlement or arbitration the question whether the project is contrary to the above rules.

If the State objecting to the works or utilizations projected refuses to submit to judicial settlement or arbitration, the other State is free, subject to its responsibility, to go ahead, while remaining bound by its obligations arising from the provisions of articles 2 to 4.

Article 9. It is recommended that States interested in particular hydrographic basins investigate the desirability of creating common organs for establishing plans of utilization designed to facilitate their economic development as well as to prevent and settle disputes which might arise.

[900] See *Annuaire de l'Institut de droit international, Salzburg session, September 1961* (Basle, 1961), vol. 49, tome II, pp. 381–384.

2. International Law Association

1077. At the forty-sixth Conference of the International Law Association, held at Edinburgh in 1954, Mr. Clyde Eagleton submitted a paper on the question of the diversion of water in international rivers,[901] in which he expressed the view that the Association might undertake a study concerning the development and use of waters in international rivers. The study would deal with the following questions:[902]

I. The desirability and possibility, and if desirable the organization, of a general system for development and use of international rivers. Under this heading there could be considered:

A. The parts of such an organization;

B. Its functions;

C. Methods by which States could be encouraged to make arrangements;

D. Conditions or standards under which the United Nations would give assistance.

II. The desirability and possibility of obtaining a general convention among States within which standards could be established and certain legal principles could be laid down, and through which agreements among riparian States could operate more effectively.

III. The extent to which rules or principles of law could be stated.

IV. The possibility of requiring the ultimate submission of disputes to an arbitral body.

1078. The Conference studied the question at its meeting on 12 August 1954.[903] Following this examination it adopted the following resolution:[904]

The International Law Association, emphasizing the vast potential importance of the question of rights and obligations between States as to inland waters,

Resolves that a Committee be formed to study the various legal, economic and technical aspects of this most important matter, with the purpose of elaborating practical recommendations for international arrangements (e.g., bilateral or multilateral conventions, declarations, etc.) having regard to the suggestions made during the discussions of the present meeting.

Decides to invite Professor Clyde Eagleton to undertake the Presidency of this Committee, to choose its members, after consultation with the Executive Council of the International Law Association, and to organize its work and that of eventual subcommittees.

1079. The Committee which was formed[905] in pursuance of this resolution submitted to the Conference of the

[901] See *The International Law Association, Report of the Forty-Sixth Conference, Edinburgh, 1954* (Aberystwyth, Cambrian News, 1955), p. 324.

[902] *Ibid.*, pp. 331 and 332.

[903] *Ibid.*, pp. 309–323.

[904] *Ibid.*, p. vii.

[905] The membership of the Committee is reproduced in *ibid.*, p. xxxviii.

Association held at Dubrovnik in 1956 a report[906] containing a statement of principles upon which to base rules of law concerning the use of international rivers.[907]

1080. The Dubrovnik Conference examined the report at its meetings on 29 and 31 August 1956.[908] Following this examination, it adopted the following resolution:[909]

The Conference of the International Law Association held at Dubrovnik, 1956, having considered the first report of the Committee on the Uses of the Waters of International Rivers and the statement of principles contained therein, as revised by the Committee in the light of the comments of certain of the Branches and members of the Association and the deliberations of this Conference,

Commends the Committee for its work and adopts the following statement of principles as a sound basis upon which to study further the development of rules of international law with respect to international rivers:

I. An international river is one which flows through or between the territories of two or more States.

II. A State must exercise its rights over the waters of an international river within its jurisdiction in accordance with the principles stated below.

III. While each State has sovereign control over the international rivers within its own boundaries, the State must exercise this control with due consideration for its effects upon other riparian States.

IV. A State is responsible, under international law, for public or private acts producing change in the existing régime of a river to the injury of another State, which it could have prevented by reasonable diligence.

V. In accordance with the general principle stated in paragraph III above, the States upon an international river should, in reaching agreements, and States or tribunals in settling disputes, weigh the benefit to one State against the injury done to another through a particular use of the water. For this purpose, the following factors, among others, should be taken into consideration:

(*a*) The right of each to a reasonable use of the water;

(*b*) The extent of the dependence of each State upon the waters of that river;

(*c*) The comparative social and economic gains accruing to each and to the entire river community;

(*d*) Pre-existent agreements among the States concerned;

(*e*) Pre-existent appropriation of water by one State.

VI. A State which proposes new works (construction, diversion, etc.) or change of previously existing use of water, which might affect utilization of the water by another State, must first consult with the other State. In case agreement is not reached through such consultation, the States concerned should seek the advice of a technical commission, and, if this does not lead to agreement, resort should be had to arbitration.

VII. Preventable pollution of water in one State, which does substantial injury to another State, renders the former State responsible for the damage done.

VIII. So far as possible, riparian States should join with each other to make full utilization of the waters of a river both from the viewpoint of the river basin as an integrated whole, and from the viewpoint of the widest variety of uses of the water, so as to assure the greatest benefit to all.

1081. Mr. Arnold W. Knauth, who, after the death of Mr. Clyde Eagleton, was appointed Rapporteur and Chairman of the Committee on the Uses of the Waters of International Rivers[910] submitted a report[911] in which he stated the following principles of law:[912]

1. *Riparian sovereign right—Extent*

A riparian State has sovereign right to make the fullest use of the waters in those parts of a river-drainage-basin under its jurisdiction (and control) consistent with the corresponding right of (each) (any) co-riparian (and of any non-riparian possessing any rights).

1. *Alternative A*

Within the limits determined by treaty obligations and the recognized principles of law, every riparian State has exclusive legislative judicial and administrative jurisdiction over the whole of its territory within the area of the basin, including jurisdiction over all persons and things which may be upon, within, beneath, or above the waters of the basin.

In the exercise of its jurisdiction, as defined, every riparian State is entitled:

(i) To construct such works and to take such measures for the use or control of the waters of the basin within its territory as do not cause or threaten material injury to any other riparian State or its inhibitants;

(ii) To reserve to its own nationals or inhabitants all fisheries and any other benefits which may be derived from the exploitation of the waters of the basin within its territory and the land underneath the waters;

(iii) Subject to treaty and other rights of traffic and transit, to reserve to its own nationals or inhabitants all rights of navigation of every kind within its territory.

A riparian State is at liberty to construct within its territory artificial channels connecting one river basin with another, provided that such constructions do not involve a diversion of water in such quantities as to be inconsistent with the principles of this Statement.

Changes in population. Changes in the density or geographical distribution of population should not, in the absence of other relevant factors, affect the mutual rights and obligations of riparian States under this Statement.

2. *Riparian sovereign duty—Extent*

A riparian State is under a duty itself to refrain from conduct which would violate the rights of a co-riparian.

Every riparian State is responsible for such acts or omissions of persons, authorities and agencies within its territory or under its control as may cause or threaten material injury to any other riparian State or its inhabitants. (See IV-11: Changes in régime.)

2. (continued)—*Pollution*

A riparian is under a duty not to increase the level of pollution of a system of 'international' waters to the detriment of a co-riparian.

3. *Co-riparian sovereign right—Extent—Equitable apportionment*

All riparian States have a common interest in the beneficial uses and beneficial control of the waters of any particular basin, and each riparian State is entitled to a reasonable and equitable share in the beneficial uses which can be made of such waters.

What amounts to a reasonable and equitable share is a question of fact to be determined in each particular case in the light of all the relevant factors.

4. *Co-riparian sovereign duty—Extent*

A co-riparian is under a duty itself to refrain from conduct which would violate the rights of another riparian.

A co-riparian is under duty to exercise diligence to prevent, in the territory under its jurisdiction, conduct by persons, authorities and agencies which would violate the rights of another riparian.

[906] For the text of this report, see The International Law Association, *Report of the Forty-Seventh Conference, Dubrovnik, 1956* (Aberystwyth, Cambrian News, 1957), pp. 244–248.

[907] *Ibid.*, pp. 245–248.

[908] The proceedings are reported in *ibid.*, pp. 216–241.

[909] *Ibid.*, pp. 241–243.

[910] The membership of the Committee after the Dubrovnik session is given in *ibid.*, p. xxxi.

[911] For the text of the report, see The International Law Association, *Report of the Forty-Eighth Conference, New York 1958* (Aberystwyth, Cambrian News, 1959), p. 72.

[912] *Ibid.*, p. 88.

5. *Non-riparian sovereign rights—Extent*

A non-riparian has no rights in the uses of the waters of a basin, save as rights may be granted by agreement with the riparian States or by usage having the force of law.

6. *Non-riparian sovereign duty—Extent*

A non-riparian State is under a duty itself to refrain from conduct which would violate the rights of a riparian, and to exercise diligence to prevent, in the territory under its jurisdiction, conduct by persons, authorities and agencies which would violate the rights of a riparian.

7. *Role of the United Nations*

The United Nations and its agencies should co-operate with the riparian and co-riparian States for the maintenance of the rights of each and to avoid breaches of duties by each, to the end that the uses of the waters of basins of international interest shall be developed to the fullest extent of their use for the mutual benefit of all.

8. *Priority as between uses of waters*

Priority in the uses of waters may differ as between one basin and another, and as between one part of a basin and another. If priority in the uses is not arranged by agreement, the advice of technical experts should be sought. In general, domestic uses rank first, navigation uses rank second, flood control uses rank third, hydro-electric uses rank fourth, agricultural and irrigation uses rank fifth. Priorities may vary with the season, and may vary as between arid and well-watered areas.

9. *Prior uses of water—Vested rights—Divestment*

Existing treaties and agreements and customary uses having the force of law respecting the uses of waters shall not be disturbed unilaterally.

Vested rights in the use of waters may not be divested except: (1) upon agreement, (2) by an arbitration tribunal, (3) by a judicial tribunal, and in every case upon the payment or delivery of just compensation in some form.

10. *Forms of compensation*

Just compensation for the legal divestment of a vested right in a use of water should preferably take the form of the provision of a substitute source and supply of water of substantially equivalent rate, quantity and quality, or the provision of a substantially equivalent supply of electric power; it may take the form of money compensation for the value of the lost investment.

1082. The report was examined by the Committee at the forty-eighth Conference of the Association, held in New York in 1958. Following this examination, the Committee prepared a third report, which, after being examined by the Conference at its meetings on 3, 4 and 6 September 1958, was unanimously adopted by the Conference.[913] The text of the third report is as follows:[914]

Heads of Unanimous Agreement:

It is agreed that our immediate purpose is to put forward some principles and some recommendations on which there is unanimous agreement.

It is agreed that there are rules of conventional and customary international law governing the uses of waters of drainage basins that are within the territories of two or more States.

It is agreed that there may be issues not adequately covered by recognized rules of international law and also that there are rules as to which there exist differences as to their meaning.

As used in this statement, a drainage basin is an area within the territories of two or more States in which all the streams of flowing surface water, both natural and artificial, drain a common watershed terminating in a common outlet or common outlets either to the sea or to a lake or to some inland place from which there is no apparent outlet to a sea.

Statement of some principles of international law governing, and recommendations respecting, the uses of the waters of drainage basins within the territories of two or more States, as to which the members of the Committee present at the New York Conference have reached *unanimous agreement:*

Agreed principles of international law

1. A system of rivers and lakes in a drainage basin should be treated as an integrated whole (and not piecemeal).

Comment: Until now international law has for the most part been concerned with surface waters, although there are some precedents having to do with underground waters. It may be necessary to consider the interdependence of all hydrological and demographic features of a drainage basin.

2. Except as otherwise provided by treaty or other instruments or customs binding upon the parties, each co-riparian State is entitled to a reasonable and equitable share in the beneficial uses of the waters of the drainage basin. What amounts to a reasonable and equitable share is a question to be determined in the light of all the relevant factors in each particular case.

3. Co-riparian States are under a duty to respect the legal rights of each co-riparian State in the drainage basin.

4. The duty of a riparian State to respect the legal rights of a co-riparian State includes the duty to prevent others, for whose acts it is responsible under international law, from violating the legal rights of the other co-riparian States.

Agreed recommendations

1. Co-riparian States should refrain from unilateral acts or omissions that affect adversely the legal rights of a co-riparian State in the drainage basin so long as [that] co-riparian State is willing to resolve differences as to . . . legal rights within a reasonable time by consultation. In the eventuality of a failure of these consultations to produce agreement within a reasonable time, the parties should seek a solution in accordance with the principles and procedures (other than consultation) set out in the Charter of the United Nations and the procedures envisaged in Article 33 thereof.

2. The action of the United Nations and its specialized agencies looking towards the assembling, exchange and dissemination of information concerning drainage basins is welcome, and the hope is expressed that this work will be undertaken with the addition of the assembling, exchange and dissemination of legal information.

3. Co-riparian States should make available to the appropriate agencies of the United Nations and to one another hydrological, meteorological and economic information, particularly as to stream-flow, quantity and quality of water, rain and snow fall, water tables and underground water movements.

4. Riparian States should by agreement constitute permanent or *ad hoc* agencies for the continuous study of all problems arising out of the use, administration and control of the waters of drainage basins. These agencies should be instructed to submit reports upon all matters within their competence to the appropriate authorities of the riparian States.

5. Since priorities in the kinds of uses of waters may differ from basin to basin and from one part of a basin to another, in case of differences as to the proper order of priority, the advice of technical experts should be sought.

6. The appropriate authorities of the co-riparian States should endeavour to resolve by agreement all matters concerning which recommendations are made by technical agencies.

7. In view of the variety of conditions of climate, hydrological facts, demographic and economic conditions in the various drainage basins, and the varieties of possible uses and needs for water, it is observed that regional agreements may serve the needs of riparian States and communities in many situations and it is recommended that every effort should be made to reach agreements on a regional basis.

8. Co-riparians should take immediate action to prevent further pollution and should study and put into effect all practicable means of reducing to a less harmful degree present uses which lead to pollution.

9. It is desirable that there be further study of the hydrological, engineering, economic and legal matters bearing on the prospective

[913] The proceedings are reported in *ibid.*, p. 28.

[914] *Ibid.*, p. 99.

operation of the existing and desired rules of international law relating to the uses of the waters of a drainage basin.

10. Funds should be sought from foundations likely to be interested in this subject, and it should be considered how, and to what extent, the work can be carried further in harmony with the similar work of the Institut de Droit International and of the Inter-American Bar Association.

1083. The Committee, pursuing its studies, submitted to the forty-ninth Conference of the Association, held at Hamburg in 1960, a report, of which the following is an extract:[915]

The Committee, having met at Jacobs Gasthaus near Hamburg on August 5 and 6, 1960, for final consideration of the background material contained in the printed report of 73 pages,[916] makes the following report to the Conference:

...

(2) *The New York resolutions, 1958.* It was unanimously resolved by the Committee to "stick to" the New York 1958 text without any change, and to maintain the unanimity achieved at New York.

(3) The decision to "stick to" the New York 1958 resolutions was accompanied by an understanding that it does not preclude the study of Judge Bagge's proposals as to elaboration of a procedure for the settlement of disputes, which proposals were set out in his working paper of 1 March, 1960.

...

(5) The Committee therefore proposes to the Hamburg Conference, in furtherance of the New York 1958 resolution, which was unanimous, the acceptance of the annexed recommendations as to procedure, to be known, if adopted, as the *Hamburg Recommendations for procedure concerning non-navigational uses.*

...

(9) The Committee has had before it the following materials:

Pollution: The first and second reports of Dr. Cuperus;

Navigational uses: The first and second reports of Dr. Fortuin, and notes of Dr. Giesecke;

Inter-oceanic canals: The first and second reports of Professor Baxter, the Israeli comments, the comments of the Egyptian Society of International Law;

Timber-floating: A study by Dr. Manner.

(10) Assuming that the Executive Council may deem these subjects, or any of them, worthy of further consideration upon the agenda of the International Law Association, the Committee suggests a programme of further work.

"Some aspects of the work of the Committee have become quite specialized. Its further studies may in some respects better be carried forward through working parties charged with responsibility for the preparation of the necessary study papers and such ideas are being considered by the Committee. A working party may have a rapporteur as chairman; a working party might co-opt persons, such as technical experts, not members of the principal committee. Working parties could be established for such topics as the following:

(*a*) Pollution in respect of health, of industry, of agriculture, of related activities;

(*b*) Floating of timber;

(*c*) Inter-oceanic canals (if the decision should be made to proceed with the consideration of this topic).

It may be anticipated that the final production of the Committee's work would be comprehensive statements of agreed principles, recommendations, and propositions relating to the various uses of international rivers. The Reports of working parties would furnish drafting materials from which agreed principles, recommendations and propositions can be derived. The New York principles and recommendations have already been unanimously adopted as to non-navigational uses; the Hamburg resolution as to procedures with respect to the settlement of water disputes is unanimously recommended for adoption. The Committee could expect, through the assistance of some working parties, better to carry forward its researches on those topics requiring further study.

The Committee would propose that its next report may be distributed to national Branches for comment well in advance of the discussion by the 1962 Conference.

1084. The Hamburg Conference examined this report at its meetings on 8 and 12 August 1960 and adopted the following resolution:

The Uses of Waters of International Rivers

The 49th Conference of the International Law Association

1. *Notes* the work of the Committee on the Uses of the Waters of International Rivers and Basins and its report;

2. *Adopts* the proposed Hamburg Recommendations on procedure concerning non-navigational uses (see annex I);

3. *Adopts* the proposed Hamburg Recommendation concerning water pollution control commissions (see annex II);

4. *Instructs* the Committee to continue its work on the lines indicated in its report, but to suspend its work on Inter-oceanic canals.

Annex I

HAMBURG RECOMMENDATIONS ON PROCEDURE CONCERNING NON-NAVIGATIONAL USES

The International Law Association, having taken into consideration the importance of resolving by peaceful means differences between co-riparian States as regards their rights in respect of the waters of a drainage basin, and in furtherance of the second sentence of the first agreed recommendation of the 1958 New York resolution on the uses of the Waters of International Rivers, recommends, in the absence of other agreement, the following procedures:

1. In case of a difference as to the legal rights or other interests of co-riparian States they should consult one another.

2. If such consultation has not produced agreement, the States should agree to form an *ad hoc* Commission which shall endeavour to find a solution, likely to be accepted by the States involved, of differences as to their rights.

3. (*a*) The members of the Commission and among them the President of the Commission shall be appointed by the States involved.

(*b*) If the States involved do not agree about these appointments, each State shall appoint two members. The members thus appointed shall choose one more member, who shall be the President of the Commission. If the appointed members do not agree, the member-President shall be appointed, at the request of any State involved, by the President of the International Court of Justice, or if he does not make an appointment, by the Secretary-General of the United Nations.

(*c*) If a member of the Commission dies or abstains from performing his office, such member shall be replaced by the procedure set out in paragraph (*a*) or paragraph (*b*) of this recommendation, according to the manner in which he was originally appointed. If, in the case of:

(i) A member originally appointed under paragraph (*a*) of this recommendation, the States fail to agree as to a replacement; or

(ii) A member originally appointed under paragraph (*b*) of the recommendation, the State involved fails to replace the member; a replacement shall be chosen, at the request of any State involved, by the President of the International Court of Justice or, if he does not choose a replacement, by the Secretary-General of the United Nations.

(*d*) The States involved shall determine the place of the meetings of the Commission and settle the rules of procedure. If they do not agree, the Commission shall determine these matters.

4. If within a reasonable time a Commission has not been formed or has not been able to find a solution to be recommended or a solution

[915] For the text of this report, see The International Law Association, *Report of the Forty-Ninth Conference, Hamburg, 1960* (Aberstytwyth, Cambrian News, 1961), p. 33.

[916] This preliminary report was not published.

recommended has not been accepted by the States involved or an agreement between them has not been otherwise arrived at, the States should agree to submit the dispute to an arbitral tribunal to be formed or to a permanent court of arbitration or, if they do not do so, to the International Court of Justice.

5. If the dispute is submitted to the arbitration of a tribunal to be formed, the rules of recommendation 3(*d*) concerning the method of determining the place of meetings and of settling the rules of procedure shall apply to the method of the formation of the arbitral tribunal and of determining its meetings and procedure. No person who has been a member of the Commission may be a member of the arbitral tribunal.

6. The award of the arbitral tribunal shall be rendered in writing and signed by the President of the tribunal. The tribunal shall in the award give reasons for its decision. The award, besides giving a decision on the dispute, shall liquidate expenses and decide which of the States shall have to bear their payment or in which proportion the expenses shall be borne by the States. The compensation of the arbitrators shall be fixed by the tribunal.

7. Recourse to arbitration implies the undertaking by the States involved to consider the award to be given as final and to submit in good faith to its execution.

Annex II

HAMBURG RECOMMENDATION ON POLLUTION CONTROL

1. For the control of water pollution in accordance with New York recommendation 8, pollution-control commissions should be set up for each separate basin by agreement among the co-riparian States of that basin.

2. To define the scope and responsibilities of pollution control commissions for a drainage basin, preliminary studies should be made by the appropriate agencies dealing with the control and abatement of water pollution.

1085. After the death of Mr. Arnold W. Knauth, Mr. Cecil J. Olmstead was appointed Chairman of the Committee on the Uses of the Waters of International Rivers.

1086. The Committee met in New York on 14 January 1961 to review its plan of work, with a view to the preparation of a report for the Conference of the International Law Association to be held in 1962 at Brusssels and decided that:

There was reason to believe that, in view of recent treaties, it might be possible to carry the development of rules or principles with respect to "non-navigational uses" beyond the point where they were left at the New York Conferences in 1958. Accordingly, it was agreed that long-range studies would be undertaken with respect to the Treaties dealing with the Indus, Columbia, Nile and Uruguay Rivers. Those studies are in various stages of progress, and the present plan is to submit a further report on "non-navigational uses" to the 1964 Conference.[917]

1087. The Committee then held a second meeting at The Hague from 1 to 6 September 1961 and reviewed the following draft reports:

(1) Procedural rules for settlement of disputes (Rapporteur: Professor Richard R. Baxter);

(2) Navigation (Rapporteur: Dr. H. Fortuin);

(3) Pollution (Acting Rapportuer: Professor Cecil J. Olmstead instead of Dr. K. W. Cuperus, who was on assignment in the Congo);

(4) Floating of timber (Rapporteur: Dr. E. J. Manner);

(5) Rights and duties of parties to a waters dispute pending its solution by peaceful means (Rapporteur: John G. Laylin).[918]

1088. The first three draft reports were examined in detail and were included, in their revised form, in the report submitted by the Committee to the Conference of the International Law Association held at Brussels in 1962. Extracts from this report expressing principles of law are given below:

III. Chapter concerning settlement of disputes

CHAPTER I

PROCEDURES FOR THE SETTLEMENT OF DISPUTES

Article I

This chapter relates to procedures for the settlement of international disputes as to the legal rights or other interests of riparian States and of other States in the rivers, river systems and other watercourses referred to in these chapters.

...

Article II

1. Consistently with the Charter of the United Nations, States are under an obligation to settle international disputes as to their legal rights or other interests by peaceful means in such a manner that international peace and security, and justice, are not endangered.

2. States are recommended to [have] resort progressively to the means of settlement stipulated in articles V and IX of this chapter.

...

Article III

1. States are under a primary obligation to resort to means of settlement stipulated in the applicable treaties binding upon them.

2. States are limited to the means of settlement stipulated in treaties binding upon them only to the extent provided by the applicable treaties.

...

Article IV

It is recommended that in the settlement of disputes under this chapter effect be given to the resolution on the Uses of the Waters of International Rivers adopted at the Forty-Eighth Conference of the International Law Association held at New York.

Article V

1. With a view to preventing disputes from arising between States as to their legal rights or other interests, the States concerned are recommended to exchange information concerning the rivers, river systems or other watercourses referred to in these chapters.

2. In case of a dispute between States as to their legal rights or other interests, as defined in article I, they should seek a solution by negotiation.

...

Article VI

1. If a question arises which relates to the future utilization of a river, a river system or other watercourse referred to in these chapters, it is recommended that the riparian States establish a joint agency for the purpose of surveying the river, river system or other watercourse and of formulating plans or recommendations for the fullest and most efficient use thereof in the interests of all such States.

2. It is recommended that non-riparian States which by treaty, other instruments or customs binding upon the parties or by international law have an interest in the river, river system or watercourse to be invited, in appropriate cases, to participate in the activity of the joint agency.

3. It is recommended that the joint agency be instructed to submit reports on all matters within its competence to the appropriate authorities of the States concerned.

...

[917] The International Law Association, "Report of the Committee on the Uses of the Waters of International Rivers", *Report of the Fiftieth Conference, Brussels, 1962* (Aberystwyth, Cambrian News, 1963).

[918] *Ibid.*, p. 3.

Article VII

If a question or a dispute is one which is considered by the States concerned to be incapable of resolution in the manner set forth in article VI, it is recommended that they seek the good offices or mediation of a third State or of a qualified international organization.

...

Article VIII

1. If the States concerned have not been able to resolve their dispute through negotiation or have been unable to agree on the measures described in articles VI and VII, it is recommended that they form an *ad hoc* conciliation commission, which shall endeavour to find a solution, likely to be accepted by the States concerned, of any dispute as to their legal rights.

2. It is recommended that the conciliation commission be constituted in the manner set forth in the annex.

...

Article IX

It is recommended that the States concerned agree to submit their dispute to an *ad hoc* arbitral tribunal, to a permanent arbitral tribunal or to the International Court of Justice if:

(*a*) A commission has not been formed as provided in article VIII, or

(*b*) The commission has not been able to find a solution to be recommended, or

(*c*) A solution recommended has not been accepted by the States concerned, and

(*d*) An agreement has not been otherwise arrived at.

...

Article X

It is recommended that in the event of arbitration the States concerned have recourse to the Model Rules on Arbitral Procedure prepared by the International Law Commission of the United Nations at its tenth session in 1958.

...

Article XI

Recourse to arbitration implies the undertaking by the States concerned to consider the award to be given as final and to submit in good faith to its execution.

...

Article XII

The means of settlement referred to in the preceding articles are without prejudice to the utilization of means of settlement recommended to, or required of, members of regional arrangements or agencies and of other international organizations.

...

Annex

Model rules for the Constitution of a conciliation commission for the settlement of a dispute

...

Article I

The members of the Commission, including the President, shall be appointed by the States concerned.

Article II

If the States concerned cannot agree on these appointments, each State shall appoint two members. The members thus appointed shall choose one more member who shall be the President of the Commission. If the appointed members do not agree, the member-President shall be appointed, at the request of any State concerned, by the President of the International Court of Justice or, if he does not make the appointment, by the Secretary-General of the United Nations.

Article III

The membership of the Commission should include persons who, by reason of their special competence, are qualified to deal with disputes concerning rivers, river systems or other watercourses.

Article IV

If a member of the Commission abstains from performing his office or is unable to discharge his responsibilities, he shall be replaced by the procedure set out in article I or article II of this annex according to the manner in which he was originally appointed. If, in the case of—

(1) A member originally appointed under Article I, the States fail to agree as to a replacement; or

(2) A member originally appointed under article II, the State involved fails to replace the member;

a replacement shall be chosen, at the request of any State concerned, by the President of the International Court of Justice or, if he does not choose the replacement, by the Secretary-General of the United Nations.

Article V

In the absence of agreement to the contrary between the parties, the Conciliation Commission shall determine the place of its meetings and shall lay down its own procedure.

V. Chapter concerning pollution of waters disputes of a drainage basin

...

Article I

As used in this chapter, the term "water pollution" refers to any artificial and detrimental change in the natural composition, content or quality of the waters of a drainage basin.

...

Article II

Except as may be otherwise provided by convention, agreement or binding custom, a State is required by international law to prevent or to abate pollution originating within its territory of the waters of an international drainage basin causing substantial injury to a use in the territory of another State.

Article III

In case of a violation of the rule stated in article II of this chapter, the State responsible for the violation shall be required to abate the pollution, and the injured State shall be entitled to appropriate compensation for any injury caused during the period of the pollution; except that, if the requirement of abatement of the pollution would cause a manifestly unjust result to the responsible State, relief may be limited to appropriate compensation for past and future injury caused by the pollution.

1089. At its session held at Brussels in 1962, the International Law Association considered the report of the Committee on the Uses of the Waters of International Rivers and adopted the following resolution:

Resolution: The Uses of the Waters of International Rivers

1. The Fiftieth Conference of the International Law Association notes the report of the Committee on the Uses of the Waters of International Rivers.

2. The Conference expresses its tentative approval of the substance of that report, taking into consideration the comments and suggestions of the members of the Conference.

3. The Conference requests the Committee to continue its work with a view to presentation of a final and comprehensive report for submission to the 1964 Conference.

1090. The Committee on the Uses of the Waters of International Rivers is continuing its work on the matter.

NOTE

National branches of the International Law Association[919]

1091. Some Governments, namely those of Canada, Finland, India, the Union of Soviet Socialist Republics, the United States of America and Yugoslavia, referred to

[919] See para. 1099 below.

national branches of the International Law Association as being non-governmental organizations concerned with international law which were making studies on the legal problems relating to the utilization of international rivers. In reply to a request by the Secretariat of the United Nations to the foregoing national branches of the International Law Association, the following information was made available:

(1) The Committee on the Uses of International Rivers of the United States Branch of the International Law Association reported that it is continuing its work, in conjunction with the International Committee on the Uses of the Waters of International Rivers of the International Law Association.

(2) The Canadian Branch of the International Law Association stated that "The Canadian Branch of the International Law Association is very active with regard to the legal problems relating to the utilization and use of international rivers. Several articles have been written by the following members: Messrs. J. Austin, L. J. Ladner and Professor M. Cohen, and also a very thorough essay has been published by L. M. Bloomfield and Dr. G. F. Fitzgerald under the title 'Boundary Water Problems between Canada and the U.S.A.'. (The Carswell Publishing House, Toronto, 1958.) Besides the above publications, our members are working with the American group in the Committee on the Uses of the Waters of International Rivers, and L. M. Bloomfield, Q.C., took part in the recent New York meeting of this Committee in early January."

(3) A few papers concerning the problem of uses of the waters of international rivers have been prepared by the members of the Finnish Branch, especially on floating of timber and water pollution.

3. Inter-American Bar Association

1092. The Inter-American Bar Association began to consider the question of the principles of law governing the use of international rivers at its Tenth Conference held at Buenos Aires in 1957.[920] Two reports on this question were then submitted to the Conference, by Mr. Eduardo Theiler and Mr. John G. Laylin respectively.[921]

The question was referred for study to the First Committee of the Conference. A draft resolution presented by the First Committee was studied by the Conference at its meeting of 19 November 1957.[922] Following that study, the Conference unanimously adopted the following resolution:[923]

The Tenth Conference of the Inter-American Bar Association

Resolves:

I. That the following general principles which form part of existing international law, are applicable to every watercourse or system of rivers or lakes (non-maritime waters) which may traverse or divide the territory of two or more States; such a system will be referred to hereinafter as a "system of international waters":

1. Every State having under its jurisdiction a part of a system of international waters has the right to make use of the waters thereof in so far as such use does not affect adversely the equal right of the States having under their jurisdiction other parts of the system;

2. States having under their jurisdiction a part of a system of international waters are under a duty, in the application of the principle of equality of rights, to recognize the right of the other States having jurisdiction over a part of the system to share the benefits of the system, taking as the basis the right of each State to the maintenance of the status of its existing beneficial uses and to enjoy, according to the relative needs of the respective States, the benefits of future developments. In cases where agreement cannot be reached, the States should submit their differences to an international court or an arbitral commission.

3. States having under their jurisdiction part of a system of international waters are under a duty to refrain from making changes in the existing régime that might affect adversely the advantageous use by one or more other States having a part of the system under their jurisdiction, except in accordance with (i) an agreement with the State or States affected or (ii) a decision of an international court or arbitral commission;

4. The foregoing principles do not alter the norm of international law that if the territory over which the waters of an international system flow is of such a nature as to provide a particular benefit, that benefit may be enjoyed exclusively by the State having jurisdiction over that territory, it being understood that such enjoyment will be in conformity with principle 3.

Recommends:

II. That a permanent committee of the Inter-American Bar Association be established to examine further the general juridical principles in this field, which committee should correspond with other international associations and organizations (United Nations, OAS, etc.) devoting their attention to the study of the principles of law governing the uses of international rivers.

III. That this permanent committee study and prepare for the Eleventh Conference of the Inter-American Bar Association a report dealing, among other matters that it considers of interest, with the following:

1. The question of the rights, if any, of non-riparian States which may have interests dependent upon a system of international waters;

2. The question of indemnification and of preventing unlawful acts in the use of waters of international systems that might cause irreparable damage or might even lead to a situation likely to endanger the peace or constitute a threat to the peace;

3. The question of sharing costs in the operation, maintenance and development of a system of international waters;

4. The questions of pollution and flood control;

5. The question of the priorities as between different uses of a system of international waters and the relation of these priorities to the specific characteristics of the system;

6. The question of the differences in legal treatment of the right of dominion over, as distinguished from the right to the use of, a system of international waters;

7. The possibility of sytematizing the practical rules put into effect by the States to achieve the most advantageous use of systems of inter-State or international waters;

8. The difference, if any, arising in the application of general principles of international law as between international boundary water systems and successive water systems;

9. The possibility of creating general and/or regional commissions and tribunals in order to facilitate the most advantageous use of the waters and the solution of conflicts relating to the régime of systems of international waters.

IV. That the Committee be requested to collect, classify and analyse the precedents from every part of the world evidencing practices accepted as law governing the use of international waters.

V. That States with an interest in an international water system ought to participate, as soon as possible, in the collection and exchange of physical and economic data essential for the planning and realization of the rational use of the waters.

1093. The Permanent Committee on the Law Governing the Uses of International Rivers, established under para-

[920] Inter-American Bar Association, *Proceedings of the Tenth Conference held at Buenos Aires from 14 to 21 November 1957* (2 volumes) (Buenos Aires, 1958).

[921] The text of these two reports appears in *ibid.*, vol. I, pp. 322 and 333. See also the material submitted to the Inter-American Bar Association at its Tenth Conference, in *Principles of Law Governing the Uses of International Rivers and Lakes* (Washington, D.C., 1958).

[922] See Inter-American Bar Association, *Proceedings of the Tenth Conference . . . (op. cit.)*, vol. 1, pp. 117–119.

[923] *Ibid.*, pp. 246–248.

graph II of the above-mentioned resolution, met during the Eleventh Conference of the Inter-American Bar Association, held at Miami, Florida, from 10 to 18 April 1959.[924] The Permanent Committee studied an interim report submitted by its Chairman and approved a draft resolution, which was then adopted by the Conference. The text of the resolution is the following:

Whereas

The Chairman of the Permanent Committee of this Association on the Law Governing the Uses of International Rivers has submitted an interim report in which it is stated that the Committee has begun but has not been able to complete as yet the study which it was requested to make in the resolution adopted at the Tenth Conference of this Association and has recommended that the Committee be continued in order that this work may be completed,

[The Inter-American Bar Association]

Resolves

1. That the report of the Chairman of the Committee on the Law Governing the Uses of International Rivers be received and ordered to be entered in the proceedings of this Conference together with any observations submitted to this Conference by any members of the Permanent Committee and [that] the Committee be continued with the request that it complete its studies and report to the XIIth Conference of this Association.

2. That the Committee be requested, if possible, to have at least one meeting prior to the Twelfth Conference and in time to permit the circulation of its report for consideration by the members prior to that Conference.

1094. The Inter-American Bar Association held its Twelfth Conference at Bogotá in 1961.[925] The Conference considered the following documents on the uses of international rivers: (*a*) A report on the development of the question of the uses of international rivers, submitted by Mr. Enrique Martinez Paz, Chairman of the Permanent Committee on the Law Governing the Uses of International Rivers; (*b*) a document relating to the agreement concerning the Columbia River Basin, concluded between the United States of America and Canada in 1961, submitted by Mr. Brice M. Clagett, Secretary of the Permanent Committee; (*c*) a document by Mr. David E. Hume, entitled "International Waters"; (*d*) a draft resolution submitted by the Permanent Committee. The text of the draft resolution is as follows:

Considering:

1. The work already accomplished and still being accomplished by the Permanent Committee established by the Eleventh Conference, and the need for (*a*) an organic study of the subject and (*b*) a complete archive of records on the questions arising out of the utilization of international rivers in America;

2. The similar work done by other bodies, both private and public, national and international, in their respective geographical areas or transcending those areas, on a universal basis;

3. The fact that in a subject still in a certain condition of fluidity the principles of law are being shaped, that there is confirmative evidence of their existence, but that it is necessary to state them clearly;

4. That, according to an elementary principle of economy, there should be no useless duplication of effort, without on that account neglecting to issue a warning that the American experience in this matter should be made known and carefully scrutinized for its real meaning, by reason of its universal significance and its special relevance in indicating specific conditions in its geographical area.

Finding:

1. The need for the Permanent Committee to continue its work in conjunction with other bodies which have already taken note of its work with deep appreciation, and

2. The need to achieve the aims stated in paragraphs 1 (*a*) and 1 (*b*) above, and . . . to provide the Permanent Committee with the requisite means toward that end;

The Twelfth Conference of the Inter-American Bar Association resolves:

I. To continue the present Permanent Committee, established by the Tenth Conference (Buenos Aires), *recommending* (*a*) that it should make an organic study of the subject and report to the next Conference concerning the progress of its work and (*b*) that it should officially co-ordinate its work with that of the bodies performing similar tasks, but always from the basic point of view of its application in the American area.

II. Requests OAS and, through it, the respective American Governments to provide the maximum possible co-operation in achieving its ends for the benefit of the community, and for this purpose to take the necessary steps for the allocation of funds for study and the establishment of the archive referred to in paragraph (1) (*a*) above, and also to facilitate the co-ordination of work.

1095. At its meeting of 1 February 1961, the First Committee of the Twelfth Conference adopted the following draft resolution:

Whereas:

1. The Tenth Conference of the Inter-American Bar Association established the Permanent Committee to resolve problems concerning international rivers in America, and

2. The said Committee, in order to accomplish its objectives, must carry out an organic study of the new material evidencing development of the law, which should be brought together,

Recommends:

That the Permanent Committee continue functioning, in order to present its report to the Thirteenth Inter-American Conference and that it request OAS to make available to it the necessary means, to the end that it may accomplish the objectives above-mentioned.

1096. This draft resolution was later adopted by the Conference.

4. Other international non-governmental organizations

(*a*) World Power Conference

1097. The Austrian National Committee of the World Power Conference presented to the 1954 World Power Conference, held at Rio de Janeiro, a report entitled "*Erfahrungen Österreichs mit zwischenstaatlichen Wasserkraftwerken*" (Austrian experience with inter-State water power plants) by Dr. Urban and Dr. Vas.[926]

[924] At the time of drafting of the present report, the proceedings of the Eleventh Conference of the Inter-American Bar Association had not yet been published.

[925] At the time of drafting of the present report, the documentation of the Twelfth Conference of the Inter-American Bar Association had not yet been published. The information was furnished by Mr. Brice M. Clagett, Secretary of the Permanent Committee on the Law Governing the Uses of International Rivers of the Inter-American Bar Association.

[926] See *Anais da Reunião Parcial do Rio de Janeiro de Conferência Mundial de Energia*, 1954, vol. IV, p. 265 (information furnished by the Permanent Representative of Austria to the United Nations).

(*b*) International Commission on Irrigation and Drainage

1098. In accordance with the wishes of the International Executive Council of the Commission, as expressed at its 1959 meeting, a study on the legal problems relating to the utilization of international rivers was in progress in the Central Office of the Commission.[927]

[927] Information furnished by Mr. Yadava Mohan, Secretary-General of the International Commission on Irrigation and Drainage (New Delhi).

Chapter II

NATIONAL NON-GOVERNMENTAL ORGANIZATIONS

1099. In a circular dated 2 November 1960, the Secretary-General requested the Governments of Member States to transmit to him the names and addresses of non-governmental organizations concerned with international law which had made or were making studies of the legal problems relating to the utilization and use of international rivers. The replies submitted by the Governments included the names of national non-governmental organizations, law schools and institutes, and also national branches of international non-governmental organizations. Individual letters have been addressed to all these bodies, with a view to obtaining the relevant information on the matter. The information received concerning the national branches of international non-governmental organizations has been dealt with in an earlier section devoted to such organizations.[928] The information relating to the law schools and institutes will be included in a note at the end of the present section.[929]

1100. In the replies by the Governments, mention was made of the following national non-governmental organizations: "Österreichische Wasserwirtschaftsverband (Austria); American Bar Association (United States of America); Chinese Society of International Law (China); Indian Society of International Law (India); Commissie voor internationaal Riviererenrecht (Netherlands).

1101. Of the above-mentioned organizations, only the first two have furnished information, as follows:

1. Österreichische Wasserwirtschaftsverband (Austria)

1102. Studies made by this Association have been published by E. Hartig under the title "*Internationale Wasserwritschaft und internationales Recht*" in issue No. 28/29 of the periodical *Schriftenreihe des Österreichischen Wasserwirtschaftsverbandes* (Vienna, Österreichische Wasserwirtschaftsverband-Presse, 1955).

2. American Bar Association (United States of America)

1103. At its meeting held at Dallas, Texas, on 26 August 1956, the Council of the Section of International and Comparative Law of the American Bar Association decided to set up a Permanent Committee on Uses of International Inland Waters,[930] under the chairmanship of Mr. James L. Kunen. In 1957, Mr. William Roy Vallance became Chairman of the Committee.

1104. The Committee submitted a first report dated 17 May 1958,[931] which was examined by the Section of International and Comparative Law and by its Council, meeting respectively on 22 May 1958 at Washington[932] and on 24 August 1958 at Los Angeles.[933] No resolution was adopted at those meetings.

1105. A second report, dated 17 February 1959,[934] was submitted by the Permanent Committee to the Council of the Section of International and Comparative Law, meeting at Chicago on 22 February 1959. The Council, after studying the report, adopted the following resolution:[935]

> Resolved, that the Council, considering the report of the Committee on Uses of International Inland Waters, approves, in conformity with its support of the rule of law, the principle that the United States or any State thereof should not unilaterally divert any boundary inland waters or international rivers without consulting with and obtaining the agreement of any interested foreign State or seeking a solution in accordance with the principles and procedures set out in the Charter of the United Nations and the procedures envisaged in Article 33 thereof, or other treaty provisions.

1106. At its meeting held at Washington on 14 May 1959, the Section of International and Comparative Law adopted this resolution[936] on the basis of a third report[937] submitted by the Permanent Committee.

[928] See para. 1091 above.

[929] See para. 1108 below.

[930] See American Bar Association, *Section of International and Comparative Law, 1956, Proceedings, Dallas, Texas*, p. 27. The composition of this Committee appears in *ibid.*, p. 11.

[931] For the text of the report, see American Bar Association *Section of International and Comparative Law, 1958, Proceedings, Los Angeles, California* (Chicago, American Bar Center, 1959). p. 80.

[932] *Ibid.*, pp. 13 and 14.

[933] *Ibid.*, pp. 15 and 17.

[934] For the text of the report, see American Bar Association, *Section of International and Comparative Law, 1959, Proceedings, Bal Harbour–Miami Beach, Florida*, p. 130. The dissenting opinion of Mr. Sydney Craig was submitted in a separate report (*ibid.*, p. 139).

[935] *Ibid.*, p. 11.

[936] *Ibid.*, p. 14. The Section decided, in addition, that: "(1) The text of this resolution shall not be distributed or published unless it includes the statement 'Nothing herein contained shall be construed as the action of the American Bar Association unless the same shall have been first approved by the House of Delegates or Board of Governors,' and (2) the form of this resolution shall be submitted to and approved by the Executive Director of the American Bar Association." *(Ibid.)*.

[937] *Ibid.*, p. 127. Mr. Sydney Craig delivered his dissenting opinion in a separate report (*ibid.*, p. 130).

1107. The Permanent Committee submitted to the Council of the Section three reports dated 4 February, 16 May and 20 August 1960,[938] containing information on the studies on the utilization of the waters of international rivers being conducted by other organizations and also on particular questions concerning certain rivers of North America.

NOTE

LAW SCHOOLS AND INSTITUTES

1108. The law schools and institutes whose names were transmitted to the Secretariat[939] are the following: New York University School of Law, New York (United States of America); Institute of Government and Law of the Academy of Sciences of the Union of Soviet Socialist Republics, Moscow (Soviet Union); Institute of International Law and International Relations of the School of Law of the University of Zagreb (Yugoslavia); Faculty of Law of the University of Delhi (India).

1109. Of the above-mentioned institutions, only the first three have furnished information, as reproduced below.

(*a*) *New York University School of Law, New York* (United States of America)

1110. The School of Law of New York University reported that it had been concerned with a programme of research in this area since 1 June 1957, when the late Professor Clyde Eagleton took up a Ford Foundation grant for research in the law and uses of international rivers. The programme was continued by Professor Cecil J. Olmstead. Several publications had resulted, including an extensive bibliography on the law and uses of international rivers,[940] and a report of 30 June 1959.[941] The Ford Foundation had recently renewed the research project with a grant which would be administered under the directions of Professors Garretson and Olmstead of the School of Law of New York University.

1111. The study would include analysis of four recent major river settlements: the Indus Agreement between India and Pakistan, the Columbia Agreement between Canada and the United States, the Nile Accord between the United Arab Republic and the Sudan and the Uruguay Agreement between Argentina and Uruguay. A study of the status of pollution of rivers and other waterways, methods of pollution abatement and principles of law governing international injuries from pollution, would also be continuing. Studies of procedural techniques and recommendations for the settlement of disputes were also being carried out.

(*b*) *Institute of Government and Law of the Academy of Sciences of the Union of Soviet Socialist Republics, Moscow* (Soviet Union)

1112. The Institute gave the following information: "The Institute published a textbook on international law in 1957 and a volume entitled 'International Law' in 1951, which, in their appropriate sections, deal with questions relating to the régime of international rivers. In each case, the work naturally reflects the author's personal viewpoint. The Institute of Government and Law of the Academy of Sciences of the Union of Soviet Socialist Republics has no immediate plans to publish new works on legal problems relating to the utilization and use of international rivers."

(*c*) *Institute of International Law and International Relations of the Faculty of Law of the University of Zagreb* (Yugoslavia)

1113. In a letter dated 22 February 1961, Professor Juraj Andrassy, Director of the Institute, furnished the following information:

The Institute has placed on its work programme the study of the regulation of the utilization of the waters of international river basins. The Federal Council for Scientific Research made a grant of 2,800,000 dinars to the Institute for that work, for the years 1961 and 1962. The work is now in its initial phase. A work plan has been drawn up, the rapporteurs for the various items of the plan have been appointed and the documentation has been prepared. The Institute has a card-index dealing with:

(*a*) International documents the purpose of which is to regulate the utilization of waters;

(*b*) Questions and matters relating to the utilization of waters, classified according to countries and river basins (watercourses);

(*c*) National and international judicial precedents concerning the utilization of waters;

(*d*) Bibliography.

The assistants and collaborators of the Institute are preparing memoranda on the most important conflicts, arrangements and regulations in the matter.

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[938] For the text of the reports see American Bar Association, *Section of International and Comparative Law, 1960, Proceedings, Washington, D.C.*, pp. 134, 136 and 142. The first two reports were considered by the Council of the Section at its meetings held at Chicago on 21 February 1960 (*ibid.*, p. 11) and at Washington, D.C. on 19 May 1960 (*ibid.*, p. 131). No action was taken by the Council or by the Section with regard to the reports.

[939] See para. 1099 above.

[940] United States of America, New York University School of Law, *Bibliography on the law and uses of international rivers*, prepared by J. L. Andrews (New York, 1960).

[941] United States of America, New York University School of Law, *Research Project on the Law and Uses of International Rivers* (New York, 30 June 1959). Director, Cecil J. Olmstead; Associate Director, Joseph M. Sweeney. The publication consists mainly of a survey of the geographical, historical, economic and other factual data concerning the international rivers of the world, which, for this purpose, has been divided into the following geographical areas: Europe, North America, South America, Far East and Asia, Africa.

Annexes

ANNEX I

Declarations and resolutions adopted by inter-governmental organizations with reference to the codification of international law governing the utilization and use of international rivers

A. Declaration of Montevideo concerning the industrial and agricultural use of international rivers, approved by the Seventh Inter-American Conference[a] at its fifth plenary session, 24 December 1933[b]

The Seventh International Conference of American States,

Declares:

1. In case that, in order to exploit the hydraulic power of international waters for industrial or agricultural purposes, it may be necessary to make studies with a view to their utilization, the States on whose territories the studies are to be carried on, if not willing to make them directly, shall facilitate by all means the making of such studies on their territories by the other interested State and for its account.

2. The States have the exclusive right to exploit, for industrial or agricultural purposes, the margin which is under their jurisdiction of the waters of international rivers. This right, however, is conditioned in its exercise upon the necessity of not injuring the equal right due to the neighbouring State on the margin under its jurisdiction.

In consequence, no State may, without the consent of the other riparian State, introduce into watercourses of an international character, for the industrial or agricultural exploitation of their waters, any alteration which may prove injurious to the margin of the other interested State.

3. In the cases of damage referred to in the foregoing article, an agreement of the parties shall always be necessary. When damages capable of repair are concerned, the works may only be executed after adjustment of the incident regarding indemnity, reparation (or) compensation of the damages, in accordance with the procedure indicated below.

4. The same principles shall be applied to successive rivers as those established in articles 2 and 3, with regard to contiguous rivers.

5. In no case either where successive or where contiguous rivers are concerned, shall the works of industrial or agricultural exploitation performed cause injury to the free navigation thereof.

6. In international rivers having a successive course, the works of industrial or agricultural exploitation performed shall not injure free navigation on them but, on the contrary, try to improve it in so far as possible. In this case, the State or States planning the construction of the works shall communicate to the others the result of the studies made with regard to navigation, to the sole end that they may take cognizance thereof.

7. The works which a State plans to perform in international waters shall be previously announced to the other riparian or co-jurisdictional States. The announcement shall be accompanied by the necessary technical documentation in order that the other interested States may judge the scope of such works, and by the name of technical expert or experts who are to deal, if necessary, with the international side of the matter.

8. The announcement shall be answered within a period of three months, with or without observations. In the former case, the answer shall indicate the name of the technical expert or experts to be charged by the respondent with dealing with the technical experts of the applicant, and shall propose the date and place for constituting the Mixed Technical Commission of technical experts from both sides to pass judgement on the case. The Commission shall act within a period of six months, and if within this period no agreement has been reached, the members shall set forth their respective opinions, informing the Governments thereof.

9. In such cases, and if it is not possible to reach an agreement through diplomatic channels, recourse shall be had to such procedure of conciliation as may have been adopted by the parties beforehand or, in the absence thereof, to the procedure of any of the multilateral treaties or conventions in effect in America. The Tribunal shall act within a period of three months, which may be extended, and shall take into account, in the award, the proceedings of the Mixed Technical Commission.

10. The parties shall have a month to state whether they accept the conciliatory award or not. In the latter case, and at the request of the interested parties, the disagreement shall then be submitted to arbitration, the respective Tribunal being constituted by the procedure provided in the Second Hague Convention for the peaceful solution of international conflicts.

RESERVATIONS[c] [*Extracts*]

Venezuela

The delegation of Venezuela desires to record:

(1) That, with respect to the industrial and agricultural use of international rivers, Venezuela subjects the regulation of this matter to existing partial agreements previously entered into with neighbouring States.

...

Mexico

The delegation of Mexico records expressly that it makes a general reservation on the resolutions of the Conference regarding the following:

First: Industrial and agricultural use of international rivers.

...

DECLARATION [*Extracts*]

United States of America

1. The delegation of the United States of America, believing that the Declaration on the Industrial and Agricultural Use of International Rivers is not sufficiency comprehensive in scope to be properly applicable to the particular problems involved in the adjustment of its rights in the international rivers in which it is interested, refrains from giving approval to [that] Declaration.

...

B. Resolution concerning the establishment of joint technical commissions to study the hydrographic system of the River Plate, adopted by the Regional Conference of the Countries of the River Plate[d] on 6 February 1941[e]

Considering:

That the States represented at the Regional Conference of the Countries of the River Plate have guaranteed freedom of navigation

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[a] See the reservations of Venezuela and Mexico and the Declaration of the United States of America on the Final Act of the seventh International Conference of American States, below.

[b] See Pan-American Union, Seventh International Conference of American States, *Plenary Sessions, Minutes and Antecedents* (Montevideo, 1933), p. 114.

[c] See the Carnegie Foundation for International Peace, *The International Conferences of American States, First Supplement, 1933–1940* (Washington, D.C., 1940), pp. 105 and 106.

[d] Argentina, Bolivia, Brazil, Paraguay and Uruguay were represented at the Conference. Chile, Peru and the United States of America sent observers. The Governments of Bolivia and Paraguay took the initiative of calling the Conference, which was held for the purpose of solving common problems relating to economic and financial matters and commercial transit, in accordance with the provisions of the Protocol signed at Buenos Aires on 12 July 1935 and the conclusions of the Meeting of American Ministers of Foreign Affairs which took place at Panama in September and October 1939.

[e] See Regional Conference of the Countries of the River Plate, *Final Act*, 27 January–6 February 1941, Montevideo, pp. 44 and 45. (United States of America, Office of the Geographer, *Boundaries of the Latin American Republics* (Washington, D.C., 1942), Inter-American Series No. 23, publication No. 1835.)

to ships of all flags on the rivers which constitute the hydrographic system of the River Plate,

That it is in their mutual interest to adopt measures to improve the navigability of these rivers and to secure more effective use of their waters for industrial and agricultural purposes,

The Regional Conference of the Countries of the River Plate

Resolves:

Article 1. To recommend that the States represented at the Conference, acting under reciprocal agreements, should establish joint technical commissions consisting of the technical organs of each State, or in their absence of specialists in the fields concerned, in order to study ways and means of improving the navigability of those rivers, forming a part of the hydrographic system of the River Plate, which flow between or through two or more of the countries concerned.

These commissions shall undertake a particular study of the following points:

(*a*) Prediction of rises in water levels;

(*b*) Placing of marking buoys and beacons, etc.;

(*c*) Any factors liable to affect navigation conditions.

Article 2. To recommend that the States represented at the Conference, in pursuance of the principles approved by the Seventh International Conference of American States at Montevideo, should conclude agreements amongst themselves regarding the use of the said rivers for industrial and agricultural purposes.

Article 3. To recommend that the existing studies regarding the possibility of connecting together the three great hydrographic systems of South America should be persued and co-ordinated by the joint technical commissions.

C. Resolution 675 (XXV) entitled "Economic development of underdeveloped countries: water resources", adopted by the economic and social council at its 1021st plenary meeting on 2 May 1958[f] *[Extracts]*

The Economic and Social Council,

Recalling its resolutions 417 (XIV) of 2 June 1952, 533 (XVIII) of 2 August 1954 and 599 (XXI) of 3 May 1956,

I

1. *Commends* the Panel of Experts for its report entitled *Integrated River Basin Development* (E/3066),[g] which brings together basic information on, and principles of, integrated river basin planning and development;

2. *Calls* the report and its recommendations to the attention of Governments of Member States and the appropriate specialized agencies;

3. *Notes with interest* the efforts being made to formulate legal principles applicable to users of international rivers, particularly those referred to in chapter 4 of the report;

...

[f] See *Official Records of the Economic and Social Council, Twenty-fifth Session, Supplement No. 1*, p. 4.

[g] See annex II, section B, below.

ANNEX II

Reports and extracts from reports concerning the codification of international law governing the utilization and use of international rivers, prepared by intergovernmental organizations or by conferences of government experts

A. Report[a] of the Permanent Committee on Public International Law on the general principles which may facilitate regional agreements between adjacent States on the industrial and agricultural use of the waters of international rivers, submitted to the seventh Inter-American Conference, Rio de Janeiro, 23 July 1932

1. International rivers are those which bound or traverse the territories of two or more States. They differ from national or inland rivers, whose entire courses lie within the territory of a single State.

As the topic of the programme is limited to regional agreements between riparian States on the subject of the industrial and agricultural use of fluvial waters, it will not contribute to an elucidation of the topic, at least directly, to consider either the question of means of communication or the question of transit; therefore, we do not have to consider the classification of rivers from the point of view of international interest according to the ideas expressed at the Barcelona Conference, with respect to the improvement of navigation. The interest which it is sought to regulate is confined to that of neighbouring States and to the industrial use of the waters. It is pertinent to point out that international practice recognizes a right peculiar to riparian States and not a juridical relation of an international character in which all States are participants. Without doubt this right is of an international character as it is recognized and safeguarded in its application by the community of nations but whose agents are the riparian States.

2. In defining the right of a riparian State with respect to the use of fluvial waters for industrial purposes in general, and agricultural purposes in particular, it is necessary to keep within that international *spirit* which Dr. Nicholas Murray Butler had defined, giving expression to what was in the mind of those devoted to the cause of law, as "the spirit of mutual justice and benevolence in international relations". Under the influence of this spirit, States will divest themselves of prejudice and will be disposed to co-operate in increasing the moral and material riches of mankind, in an atmosphere of brotherly friendship.

We shall define this right, therefore, as follows:

It is an exclusive right, but limited in its exercise by the necessity of not prejudicing the equal right of a neighbouring State.

3. *The Institute of International Law*, in 1911, laid down certain principles which constitute a well defined outline of juridical regulation of the subject.

Rivers forming international boundaries were first considered. The solution proposed by the Institute is the following:

> "When a stream forms the frontier of two States, neither of these States may, without the consent of the other, and without special and valid legal title, make or allow individuals, corporations, etc., to make alterations therein detrimental to the bank of the other State. On the other hand, neither State may, on its own territory, utilize or allow the utilization of the water in such a way as seriously to interfere with its utilization by the other State or by individuals, corporations, etc., thereof".

With respect to rivers traversing the territory of two or more States, the solution is as follows:

> "When a stream traverses successively the territories of two or more States: (*a*) The points where this stream crosses the frontiers of two States, whether naturally, or since time im-

[a] *Documentos para uso de los delegados a la Séptima Conferencia Internacional Americana, Montevideo, Uruguay, 3 de diciembre de 1933, No. 1, Informe de la Comisión Permanente de Derecho Internacional Público, establecida en Río de Janeiro, sobre el tema 7 del programa de la Conferencia* [Documents for the use of delegates to the Seventh International Conference of American States, Montevideo, Uruguay, December 3, 1933, No. 1, report of the Permanent Committee on Public International Law, of Rio de Janeiro, on topic 7 of the programme of the Conference] (Washington, D.C., Pan-American Union).

memorial, may not be changed by establishments of one of the States without the consent of the other; *(b)* All alterations injurious to the water, the emptying therein of injurious matter (from factories, etc.), is forbidden; *(c)* No establishment (especially factories utilizing hydraulic power) may take so much water that the constitution, otherwise called the utilizable or essential character of the stream, shall, when it reaches the territory down-stream, be seriously modified; *(d)* The right of navigation by virtue of a title recognized in international law may not be violated in any way whatever; *(e)* A State situated down-stream may not erect or allow to be erected within its territory constructions or establishments which would subject the other State to the danger of inundation; *(f)* It is recommended that the interested States appoint permanent joint commissions, which shall render decisions, or at least shall give their opinion, when from the building of new establishments or the making of alterations in existing establishments serious consequences might result in that part of the stream situated in the territory of the other State".

These principles are dictated by reason, having in view not only the complexity of the relations between States through whose territories streams run, but also interests of a more general character, such as those relating to navigation and public health, which might be injured by the contamination of the waters or the poisoning of fish.

4. From the body of these rules which were proposed by the Institute of International law, and which have earned the support of the most distinguished internationalists, a general dominant principle arises: *the industrial utilization of international streams, whether these cross or form frontiers, presupposes the consent of the States directly interested with regard to the right of navigation and the safeguarding of public health.*

If, for example. an attempt is to be made to utilize for industrial or agricultural purposes a certain waterfall of an international boundary stream, the prior agreement of the two States bordering on the stream will be indispensable, and the works for such utilization shall not obstruct navigation on that portion of the stream which is open to use by other States, nor shall they produce contamination of the waters used by riparian communities; and the amount of water diverted shall not be such as to alter the character of the stream.

5. International boundary rivers are subject to the jurisdiction of each of the bordering States to the center line or middle of the navigable channel (*filum aque*, thalweg). Occasionally, waterfalls change in some respects the character of the waters. In this case, in that part of the stream the dividing line ought to be, more naturally, equidistant from the banks, unless the matter be settled otherwise by treaties. It happens, nevertheless, that frequently, from a technical or economic point of view, the utilization of a waterfall necessitates joint installations which require the occupation of both banks and thus result in the formation of an economic unit.

Whenever the utilization of waterfalls in streams forming international boundaries is undertaken, the principle of prior agreement is imposed by the nature of things.

6. On the other hand, it might happen that the two bordering States cannot reach an agreement to harmonize their interests or points of view. What will be the consequence? The good faith and the loftiness of ideals of the adjacent States, naturally, will lead them to overcome this obstacle, but, the existence of the obstacle being possible, it is desirable to examine the consequences arising from it. If such a situation should arise, international law does not offer a solution, because it is impossible to force sovereign States to adopt a procedure which they may consider injurious or undesirable. On the other hand, as the most eminent internationalists hold, the industrial and agricultural utilization of international streams depends on an agreement between the States directly interested, and the idea of an agreement excludes by its very nature that of coercion.

It would be improper to consider applying expropriation in a case of this character. Expropriation presupposes a general interest superior to a particular interest and dominating it, and an authority vested with sufficient power to decree such expropriation. In the case under consideration, however, the interest is particular, that is, it pertains to an adjacent State, even though there may be a remote possibility that the expropriation in question will promote general human progress, and there is no superior authority, under international law, with powers to recognize the general utility and to decree the expropriation. A multilateral treaty could not constitute such an authority because treaties only obligate those parties that sign them or adhere to them, and the riparian State which found the agreement over the utilization of the waters unsatisfactory naturally would not sign a compulsory treaty nor adhere to it.

The previous creation of a commission charged with settling differences of this character would have the same result. The competency of such a commission to interpret an agreement made between riparian States, or even to suggest a solution for a case not foreseen in the agreement, may be admitted; but to impose a certain course of action on a State which rejects the agreement would be to disturb international life instead of working in the interests of its harmony and welfare. Sovereignty does not constitute an absolute power, but we cannot eliminate it without disorganizing the life of nations. In civil society, the right of the individual has the value which society grants to it, because society is that which is juridically organized and the individual cannot be conceived outside of it. In the society of States, juridical organization results from the grouping together of peoples, which is taking place slowly and which as yet is far removed from what ought to be. If the doctrine of the social contract corresponds to reality in juridical organization, that reality will be based upon international law, as a result of concessions made by States in order to render possible their existence in common, which is imperiously imposed by the necessities of every order. Upon entering the international community, States carry with them the quality of sovereigns, and for this reason there has developed the theory of self-limitation to explain their submission to regulations spontaneously accepted by all. But even disregarding this doctrine, it is true that within its borders the State has the right to exercise its jurisdiction over the persons and things found therein, and therefore cannot be obliged to accept the imposition of any authority which it has not voluntarily recognized.

Nor could the question now under consideration be submitted to the jurisidiction of the Permanent Court of International Justice, because, there being no treaty or convention which establishes the competence of that court, its authority cannot be obligatory.

The General Treaty of Inter-American Arbitration, signed at Washington on 5 January 1929, and promulgated recently by Brazil (Decree No. 21158 of 15 March 1932), submits to arbitration any question of international law, but it is necessary that such a question, *by its juridical nature, be susceptible of decision by the application of the principles of law*; and, as has already been demonstrated, outside of the agreements between the interested States, there are no principles of law applicable to the question.

7. Without the agreement of the interested parties, it is not possible to build works for the industrial utilization of any volume of water of international streams. This thought, moreover, is found expressed in the programme, which refers to the principles that may facilitate a regional agreement between the riparian States. The way to facilitate an agreement lies in the conviction of the interested parties of their advantage in entering into it. If this advantage should be mutually evident, the parties would have no difficulty in coming to an agreement.

If, on the other hand, one of the riparian States should not be convinced of the advantages of the proposed agreement, either because, in its opinion, it is not founded upon equitable grounds, or because it presents grave difficulties, or for other reasons based upon some immediate or permanent legitimate interest, the case could be referred to the study of a commission of experts appointed by the Pan American Union. Such a commission, composed of three members, none of whom is to be a citizen of the States involved in the question, or of States having similar interests, after examining the reasons of both parties and inspecting the sites on both banks, should render its opinion, not, of course, of an obligatory character, but which may serve to overcome the difficulties. Each of the parties should have the right to appoint one or more delegates to participate, without vote, in all the work of the said commission.

In American international relations, the directing thought, the beacon which serves as a guide, is co-operation based upon equality and directed toward the common good, respecting the rights and the legitimate interests of all the States of the continent. Therefore, in

the particular case under consideration, if interests clash, a compulsory solution, which is admissible only in the case of a well-defined right, is not be be sought; an endeavour should be made, by impartial study, to enlighten the minds of the interested parties, in order that they may freely determine as they see fit the best means of harmonizing their legitimate interests.

In conclusion, for the utilization of waters of international rivers for industrial or agricultural purposes, agreement between the riparian States is indispensable, since such utilization on one side may in various ways affect the other bank if the river be the boundary, or affect the territory of the neighbouring State if the river runs through it. This fundamental principle is foreseen in the programme.

If an understanding cannot be reached between the riparian States, in each specific case, either of them (or both) should have recourse to the Pan American Union in order that, in fulfilling its function of co-operating in the development of the economic, social and cultural relations of the American Republics, it may designate the investigating commission mentioned above. The result of the latter's technical study, in which will be considered the various aspects of the case, from the general and particular points of view, will facilitate the solution and furnish the elements of an agreement. If such an agreement is brought about, the bases accepted in cases of similar agreements will be valid, assuming that the situations are identical, in the judgement of the interested riparian States.

Rio de Janeiro, 23 July 1932

B. Report entitled "Integrated river basin development" submitted by a panel of experts constituted by the Secretary-General of the United Nations pursuant to Economic and Social Council resolution 599 (XXI) of 3 May 1956—New York, 23 November 1957[b] *[Extracts]*

...

Chapter 4

CO-OPERATIVE ACTION IN DEVELOPING AN INTERNATIONAL RIVER BASIN

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Inadequacy of relevant international law

13. Though the success of a plan of international basin development in the long run depends on goodwill and co-operation, it is obvious that many conflicting claims have to be balanced and reconciled. Some of these issues may raise question of an international nature which are not adequately covered by recognized international law. For many years legal minds have been directing their efforts towards the formulation and systemization of legal principles applicable to users of international rivers, and much attention is being given to such principles at present by the International Law Association and the Institut du Droit International.

14. The International Law Association, at its meeting in August 1956 at Dubrovnik, Yugoslavia, unanimously adopted a statement of principles "as a sound basis upon which to study further the development of rules of international law with respect to international rivers". Acceptance of these or substantially similar principles by the parties to international water disputes might go far to aid adjustment and agreement. The principles are as follows:

"I. An international river is one which flows through or between the territories of two or more States.

"II. A State must exercise its rights over the waters of an international river within its jurisdiction in accordance with the principles stated below.

"III. While each State has sovereign control over the international rivers within its own boundaries, the State must exercise this control with due consideration for its effects upon other riparian States.

"IV. A State is responsible, under international law, for public or private acts producing change in the existing régime of a river to the injury of another State, which it could have prevented by reasonable diligence.

"V. In accordance with the general principle stated in paragraph III above, the States upon an international river should in reaching agreements, and States or tribunals in settling disputes, weigh the benefit to one State against the injury done to another through a particular use of the water. For this purpose, the following factors, among others, should be taken into consideration:

"*(a)* The right of each to a reasonable use of the water;

"*(b)* The extent of the dependence of each State upon the waters of that river;

"*(c)* The comparative social and economic gains accruing to each and to the entire river community;

"*(d)* Pre-existent agreements among the States concerned;

"*(e)* Pre-existent appropriation of water by one State.

"VI. A State which proposes new works (construction, diversion, etc.) or a change of previously existing use of water which might affect utilization of the water by another State must first consult with the other State. In case agreement is not reached through this consultation, the States concerned should seek the advice of a technical commission, and if this does not lead to agreement, resort should be had to arbitration.

"VII. Preventable pollution of water in one State which does substantial injury to another State renders the former State responsible for the damage done.

"VIII. So far as possible, riparian States should join with each other to make full utilization of the waters of a river, both from the viewpoint of the river basin as an integrated whole, and from the viewpoint of the widest variety of uses of the water, so as to assure the greatest benefit to all."

15. Pending establishment of an accepted international code, it is suggested that the Dubrovnik draft statement of principles affords a sound basic philosophy for planning and executing a project for integrated river development in an international river basin. The fifth principle, in particular, should be useful in furnishing a guide for the solution of disputes with respect to the use of such waters, recognizing as it does the pertinence of all equitable and historical circumstances in the resolution of such disputes.

Initial approach

16. From the foregoing background, it is clear that co-operation must be fostered and nurtured if any real progress in international basin development is to be made. The question arises as to what might be the sequence of steps and who is to initiate and promote them.

17. Different situations will call for different detailed procedures, and much will depend on the prevailing political, social and economic conditions in the countries concerned. In some cases, there may be an intense desire to co-operate in bringing about an integrated basin development, while in others the feeling may range from a willingness to participate to vigorous opposition to any programme of collaborative action. The only point in common between the two extremes and the cases ranging between them is that in none of them are the countries concerned likely to be able to embark on a programme of integrated development without extraneous help in one form or another.

18. In view of the global nature of the problem, it would appear that only an organization with such an international character as the United Nations can play a really influential rôle. This does not mean that this international organization would necessarily take an active rôle in the planning of integrated development of particular river basins; such a step would only be taken upon the invitation of all the countries concerned. Nor does it mean that the United Nations should do nothing while awaiting the issuance of such an invitation. In fact, there is much that could be done to lay the foundation for prospective agreement among the interested countries.

19. The Panel believes that the United Nations has exceptional opportunities and facilities, either directly or through its subsidiary organizations, for gathering the information necessary to make a report on the *status quo* of selected under-developed international river basins. This should be a factual statement, which gives an indication of what further steps are called for. It would be the basic report upon which future planning policy might be oriented. For ease of reference and comparison with basic reports on other basins, it should be prepared on strictly standardized lines, using the same terminology and expressing the facts in terms of accepted standard

[b] United Nations publication, Sales No. 58.II.B.3.

units as well as local units. Such a report need attempt nothing more than a broad outline of the situation based on the information available or easily and quickly procurable. The main headings might be: Economy, Communications, Topography, Geology, Climate, Hydrology. The subheads would have to be decided in conference. The report should be accompanied by a map of the basin prepared on standardized lines and by other maps of the region that are relevant and readily available.

20. With the basic report available, the next step would be an appraisal of the physical possibilities of the basin. This report would take into account only physical and economic factors. It would appraise in particular the hydro-electric potential and, where necessary, irrigation potential, as well as water surpluses and deficiencies in the various parts of the basin. The second report should present, both in descriptive and in statistical form, the salient features of any possible development, assuming the basin to be under unified control and without undue regard to present or historical patterns of use of land and water resources. This report, since it would be only a step in the preparation of a preliminary plan of development, should be considered a confidential technical report.

21. Having obtained information on the *status quo* in all its aspects and a knowledge of the physical possibilities inherent in the basin, the next and third step should be to embark on a preliminary plan of integration, giving full weight to human factors and to existing developments within the basin. The objective should be, of course, the optimum use of sites and water resources. To the extent that this may involve diversion of water from one sub-basin to another, or changes in traditional uses, it may be necessary to incorporate provision for compensation or for offsetting benefits. The purpose should be to produce a plan that would provide a reasonable basis for discussion between the countries concerned. Whether their collaboration should be sought during this phase would depend on the circumstances of the case.

Fostering co-operation

22. For any further progress, it is essential that the countries concerned be brought into consultation, for the next step will involve setting up a committee with members from each country presided over by a chairman and the necessary observers from the United Nations. The timing of this step would have to be judged in the light of political and other considerations, since the preliminary plan must now be put on the table for open discussion. The terms of reference of this committee should stress that the discussions imply no commitment of any sort, their object being to determine the areas of agreement and disagreement and to ascertain the reasons for disagreement. Does disagreement spring from economic factors or is it due to political or sociological considerations? If there is a disagreement over the appraisal of the basic facts of the case, joint technical teams might be appointed to attempt to achieve agreement on the factual questions in dispute.

23. Doubtless, each country will have its own idea of a national development plan determined by its socio-economic needs and by its natural resources (in water, raw materials, labour and capital), and its pattern of development will be governed by these considerations. These national projects will emerge in the course of the discussions, and the degree to which they may overlap or compete with one another will give a fair indication of the real sources of conflict and help to narrow them down. It is most important for the health of future negotiations that the differences in outlook and motive be brought to light, openly discussed and well understood by the parties concerned. The course of those meetings will be determined by the progress made. They will furnish a testing ground and, it is hoped, a prelude to further discussions on a permanent basis.

24. These preliminary meetings may result in any of the following situations:

(*a*) One or more of the parties decide that they cannot consider the preliminary plan owing to political difficulties. If this is a firm decision, it is obvious that no immediate progress can be made on the over-all plan, and the plan must be shelved "with regret" pending a more propitious time. It should never be dropped entirely. It may be that a part of the plan is salvageable without loss of substantial benefits and that this part does not require the participation of the dissenting parties. If so, this part of the plan could go forward.

(*b*) The parties decide that the plan lacks merit or that it is unsuitable for economic reasons, and therefore not worth pursuing further. This is hardly likely, in view of the way in which the plan has been prepared. Should this occur, however, discussion of an alternative plan should be encouraged.

(*c*) The parties express a desire to co-operate, with a view to implementing the plan in full.

(*d*) The parties agree in broad principle to the plan, subject to many reservations. It is this situation that is likely to arise most frequently.

25. As regards cases (*c*) and (*d*), measures should be taken towards appointing an *ad hoc* interim committee and, ultimately, a permanent international joint commission agreed to by treaty.

Permanent joint commissions

26. Two good examples of joint commissions are the international Joint Commissions of the United States and Canada, agreed to in the treaty of 1909 between the United States and Great Britain, and the International Boundary and Water Commission set up by the United States and Mexico. In the latter case, a treaty of 1853 made provision for regulation of the waters of the Rio Grande and Colorado rivers for the purpose of navigation only. A later treaty, ratified in 1945, made provision for wider collaboration "considering that the utilization of these waters for other purposes is desirable in the interest of both countries . . . *in order to obtain the most complete and satisfactory utilization thereof*".[c] These joint commissions have international status. They are permanent bodies established to handle water questions that may arise from time to time, and to collaborate closely on all projects that are of concern to the contracting parties. Their activities cover the entire range of water matters: navigation, power, irrigation, flood control, drainage, domestic uses, sanitation, pollution, and others.

27. Though the duties of the commissions just mentioned may not cover as wide a field as that envisaged for true integrated development, they are examples of the kind of organization that eventually should be established. The effectiveness of joint commissions will depend upon the political maturity of the countries concerned. Lessons learned from experience to date should help to guide other nations away from wasteful delays and controversies. In the younger States, such commissions would require time to put themselves on a sound basis and to gain the confidence of their countries in carrying out their responsible assignment. In the meantime, it is probable that an outside agency will be necessary (and even welcomed) in the capacity of co-ordinator, adviser or mediator, with a view to keeping the talks alive and steering the discussion along objective lines.

28. At this stage, effort should be directed towards developing the machinery of co-operation rather than attempting to achieve spectacular results in the field. Thus, the less controversial subjects should be tackled first. For instance, preparation of a scheme for exchange of information and the gathering of basic data would be a logical first step. The mere process of preparing and implementing such a scheme will afford practice in working together and tend to generate an atmosphere of collaboration. Then, in order to arrive at some indication of the extent of surveys necessary and the cost of various works, the technical characteristics of such works and their functions in the general scheme will have to be discussed. This discussion will include at least some of the following: flood control, river training, reservoirs, river gains and losses, silt charge, reclamation in the various aspects required, surface and subsoil conditions, drainage, farm cropping patterns, irrigation layouts, hydro-electric installations, domestic water supply, fish life, sanitation (especially anti-malarial measures), soil erosion and pollution.

29. Another subject will be the administrative aspects, involving the operation of the plan and day-to-day working arrangements. Some of the under-developed countries involved will be equipped with established and well trained technical services; others may not be so well off. In some countries, international development will be handicapped by the existence of private rights and concessions. The question of expropriation will have to be considered, at least to the extent necessary to put governments in a position to negotiate sound working arrangements. The extent to which such concessions should be recognized or others granted is of course a domestic problem

[c] Passage not italicized in the original.

for each of the countries concerned, but it is the view of the Panel that international developments are facilitated when all important water resources are nationalized or made subject to public control.

30. It is apparent that there is a wide range of matters which may be discussed and clarified by joint commissions. Many may be settled in principle if not in practical detail. It is only to be expected that some of the points will be controversial and will stimulate vigorous argument. But in a functioning commission, such arguments will be conducted in an atmosphere of co-operation rather than dispute, with a view to arriving at the right answer in the light of integrated planning. The arguments may be recorded in the proceedings of the commission, but they will not form the subject of acrimonious official communication between the governments.

31. It is emphasized that the representatives would come together to co-operate in planning, not to settle international disputes. Thus, it might be unwise in some cases to attempt to settle the matter of water allocations as a first step, because this question might be influenced by all kinds of other factors, with the result that the atmosphere would deteriorate at the outset. The policy should be to sidetrack major disputes and eventually approach them from a different angle, so as to avoid, as far as possible, a head-on clash. Should it be of vital importance that a major difference be dealt with promptly, it should be handled by another body under different terms of reference. This is the general practice in settling difficult and controversial problems. Such negotiating or arbitrating commissions are of a temporary nature and are dissolved on completion of the task assigned to them.

32. The true concept of integrated planning in any major development calls above all for continuity of organized co-operation, and the only way to achieve this is by establishing a permanent joint commission which is not overloaded with difficult questions to begin with, though it must deal with them eventually. The composition of such a commission and the juncture at which it should be created would be dictated to a large extent by the progress made at preliminary meetings of government representatives. In some circumstances, the scope for integrated planning may not justify a permanent commission. At an early stage, the question of finance will come into the picture. The governments concerned—especially those of the smaller States—may agree in principle to having a permanent commission but raise objections on the grounds of cost. To meet this objection, part of the cost might be covered under the technical assistance programme. Conditions for granting this financial aid would have to be thought out, but it is felt that money spent in nursing these commissions to maturity would be a good investment.

33. Since joint planning will raise questions of general policy as well as questions in the purely technical sphere, it is only to be expected that the governments concerned will ask that others besides technical experts be included among the permanent officers when the formation of the commission is under consideration.

34. If there exists an organization similar to that of the United States-Canadian International Joint Commission, for instance, or the United States-Mexican International Boundary and Water Commission, it will hardly be necessary to create yet another commission on the ground that the existing machinery is not an integration commission in the true sense. In these circumstances, the obvious step would be to change the framework and widen the terms of reference of such a well-proved and experienced organization. These commissions not only control waters in accordance with the agreed rules laid down in the articles of the treaty; they also make investigations[d] and take responsibility for the construction of new works. Moreover, they have the right of reciprocal inspection.[e]

35. In the case of the Nile Waters Agreement, responsibility for implementing the "working arrangements" does not lie with a commission but simply with the irrigation departments of Egypt and the Sudan. As the Sudan is the upper riparian State and historically the later organized irrigation consumer, most of the clauses in the working arrangements apply to it. In this case, the validity of the existing agreement has been questioned (by the Sudan) for the reason that the agreement was originally negotiated between Great Britain (on behalf of the Sudan) and Egypt. Whatever the situation is today, the Nile Waters Agreement has provided both countries with useful experience in the technique of co-operation in this field, and affords an example of how government technical services can work together in handling a complicated water control matter on a major international river.

36. The varied circumstances make it impossible to generalize as to the composition of a joint planning commission. The very nature of the problem, however, makes it certain that engineers must play a large part. Indications as to its type and composition, or whether the establishment of a permanent commission is necessary at all, should emerge from the preliminary report. Subsequently, rules of procedure and terms of reference will depend on the outcome of discussions at the preliminary meetings.

37. Stated simply, the aims of the permanent commission should be to continue the work of the preliminary committee with a view (*a*) to arriving at a comprehensive plan of integration in principle, (*b*) to implementing the components of the plan as circumstances permit, and (*c*) to making such revisions in the plan as may be thought proper from time to time in view of changed circumstances or technological advances. It is obvious that the rate of progress will be slow in most cases and can only accelerate as the commission gains in experience and stature, a process which takes time and cannot be short-circuited if the psychological build-up is to be sound. But within limits, time should not be the primary consideration. What should be the primary aim is the creation of a sound and effective instrument of co-operation that eventually functions efficiently without outside intervention.

38. The preparation of the comprehensive plan will naturally raise a great variety of issues, all of which have to be analysed and settled in a spirit of give and take. What must emerge is a plan that exhibits two main features; first, a fair deal for all rather than a good bargain for one, and second, obvious benefits, direct and indirect, to all, although the benefits can hardly be equal. In addition, the whole plan—and each phase of it—must be thoroughly understood, not only by the Governments of the countries but by all their peoples. Therefore, the human aspects of the plan must be made clear, for no matter how imposing the engineering works may be, the success of the enterprise must be measured by its effects in the homes, the fields, the factories, the mines and the offices.

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C. Report containing recommendations and conclusions adopted at the first Inter-African Conference on Hydrology[f] meeting under the sponsorship of the Commission for Technical Co-operation in Africa South of the Sahara (CTCA)[g] at Nairobi from 16 to 25 January 1961[h] *[Extracts]*

XII. Inter-African Co-operation in the field of hydrology

The Conference, considering that hydrology covers a vast field, that the subjects calling for co-operation are many and various,

[d] In the United States of America-Mexican Treaty, article 6 specifies: "The Commission shall study, investigate and prepare plans for the flood control works where and when necessary"; article 7: "The Commission shall study, investigate, and prepare plans for plants for generating hydro-electric energy".

[e] *Ibid.*, article 2: "The Commission and its personnel may freely carry out their observations, studies and field work in the territory of either country".

[f] The experts who were delegates to the Conference represented the following States and territories: Belgium, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Federation of Rhodesia and Nyasaland, France, Gabon, Liberia, Mali, Niger, Nigeria, Portugal, South Africa, United Kingdom of Great Britain and Northern Ireland, Bechuanaland, Kenya, Swaziland, Tanganyika and Uganda. Experts from Dahomey, Israel, Italy, the Ivory Coast, Madagascar, the Netherlands, Senegal, Somalia and the United States of America attended the Conference as observers. The United Nations, FAO, UNESCO and WHO were represented by observers.

[g] CTCA was the subject of an intergovernmental agreement signed in London on 18 January 1954. It consists of the following countries: Belgium, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Federation of Rhodesia and Nyasaland, France, Gabon, Ghana, Guinea, the Ivory Coast, Liberia, Madagascar, Mali, Mauritania, Niger, Nigeria, Portugal, Senegal, Somalia, South Africa, United Kingdom of Great Britain and Northern Ireland, Upper Volta.

[h] *Inter-African Conference on Hydrology*, Nairobi, 1961, Publication No. 66 (published under the sponsorship of CTCA).

that some call for the participation of responsible authorities at government level and others require only the assistance of technical personnel, that the territorial scope within that inter-African co-operation should operate varies according to the subject, *recommends* that inter-African co-operation in this field should be adapted to these particular features and that the appropriate action should therefore be taken at several levels:

(*a*) Greater exchange of information through the Inter-African Co-ordinator and correspondents in each country;

(*b*) Inter-African conferences at very long intervals to deal with general problems;

(*c*) Small meetings of specialists to deal with definite specialized subjects;

(*d*) Frequent periodical meetings within hydrographic catchments lying within two or more countries;

(*e*) Regional meetings to deal with definite problems presenting a degree of uniformity in the region under consideration, e.g. the study of rainfall in a given climatic belt, or that of ground water in identical soils;

(*f*) Joint projects, such as schemes for the training of technical staff; and it *requests* CTCA to assist, as far as possible, in the successful conduct of these activities, in close liaison with the various international organizations concerned, and, in particular, the United Nations and its specialized agencies.

XIII. Regional co-operation among countries bordering on the River Niger

A number of problems are common to the countries bordering on the Niger. In particular, it is necessary that information should be exchanged between hydrologists working in this catchment area and that views should be regularly exchanged at the technical level. The Conference *notes* that, following upon the meeting which took place at Mamou (Guinea) in May 1960 on problems concerning the Fouta Djallon, and upon the meeting of hydrologists from Niger and Nigeria which took place at Lagos in December 1960, the CTCA Secretariat intends to convene a meeting of hydrologists from the five countries bordering on the River Niger in the very near future, probably in May 1961. The United Nations and its specialized agencies will be invited. The Conference *considers* that this meeting will be very useful and, in particular, will provide an opportunity of deciding on the functions of a committee of the Niger, if one is to be established; it therefore *approves* the principle of the meeting, in pursuance of recommendation XII (*d*) above.

XIV. Regional co-operation between countries bordering on Lake Chad

The Conference, noting that the rational development of the water resources of a catchment area requires the collection of hydrological and other data over the whole of that catchment area, and recognizing that, despite the fairly advanced plans for utilizing the waters of Lake Chad for irrigation and other purposes, there is no established procedure for the exchange of technical information concerning Lake Chad, *considers* that meetings of hydrological experts of the countries bordering on Lake Chad (Cameroon, Chad, Niger, Nigeria) would be of mutual advantage to all these countries, and *recommends* that such meetings be organized by CTCA, as provided for by recommendation XII (*d*) above. The United Nations and specialized agencies will be invited.

XV. Function of the Inter-African Co-ordinator

The Conference, aware of the need for a greater exchange of information between the various African countries, but recognizing the difficulty of immediately establishing a permanent inter-African bureau, *considers* it desirable that the activities of the present Panel of Correspondents should be developed within present available resources and with a flexible form of operation.

(*a*) It therefore *requests* the Inter-African Co-ordinator, with the assistance of the Correspondents, to prepare a list of all specialists devoting all or part of their activities to the study of the water cycle.

(*b*) It also *requests* the Inter-African Co-ordinator to prepare and bring periodically up to date a yearly bibliography which will be circulated by CTCA in a simplified form, similar to the African bibliography published by UNESCO, i.e. without a summary. The entries for this bibliography should be prepared by the correspondents and collected by the Co-ordinator, who would prepare the card index.

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D. Report of the Conference on Water Pollution Problems in Europe,[1] adopted by the Conference at its final meeting, held at Geneva on 3 March 1961[1]

...

River basin authorities, national and international

27. Two outstanding examples of river basin authorities, though differing in conception and structure, emerged from the studies presented to the Conference: the co-operative river basin authorities created in North-West Germany under the special *Länder* laws by which authority for water pollution control is delegated to self-governing authorities, and the river basin authorities of the United Kingdom.

28. In the interest of solving the problem of pollution in Europe's international rivers,* the Conference considered also the special case of the Ohio River Valley Water Sanitation Commission in the United States as an example of co-operation among eight States.

29. Attention was drawn to the existing intergovernmental agreements covering river basins, or those of major tributaries or drainage areas. The basis and work of the International Commission for the Protection of the Rhine against Pollution, and of similar commissions, under treaties or international agreements, for the Moselle and Saar Rivers, and for Lake Constance, were discussed.

Other international administrative arrangements

30. International agreements other than for river basins were also cited—in most instances bilateral or multilateral agreements—as demonstrating forms of agreement with differing provisions and organizations to cover the varying types, scope and degree of water pollution involved.

31. It was pointed out that all international agreements should be based on co-operation, safeguarding the principle of national sovereignty. General international administrative arrangements did not appear to be the solution to particular problems, because of the great diversity of national legal and economic systems. It was suggested that international co-operation would be most successful among

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[1] Pursuant to ECE resolution 10 (XIV), a Conference on Water Pollution Problems in Europe was held at Geneva from 22 February to 3 March 1961. Convened by the Executive Secretary of ECE, this conference of government experts, organized in the form of a seminar, was sponsored by the secretariats of FAO, WHO and IAEA. Government experts from the following countries attended: Austria, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Denmark, Federal Republic of Germany, Finland, France, Hungary, Israel, Italy, Netherlands, Norway, Poland, Romania, Spain, Sweden, Switzerland, Turkey, Union of Soviet Socialist Republics, Ukrainian Soviet Socialist Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, and Yugoslavia. In addition to the representatives of the sponsoring organizations, experts of a number of international and national organizations took part in the Conference. Also present at the invitation of the ECE secretariat were staff members of the Organisation for European Economic Co-operation and one author who had prepared a paper for the Conference.

[1] See United Nations, Conference on Water Pollution Problems in Europe held at Geneva from 22 February to 3 March 1961, *Documents submitted to the Conference* (United Nations publication, Sales No.: 61.II.E/Mim.24), vol. III, p. 578, paras. 27–36, 50–61 and 74–80.

* Such international waters can be defined as rivers, streams and waters which separate or flow through, or into, or border upon any of the countries concerned.

riparians. Comparative studies and harmonization of national legal provisions and economic policies in the different countries applied to water pollution control seem to constitute an important preliminary task. To facilitate co-ordination at an international level, it has been suggested that exchanges of views among riparians and in expert panels (legal, economic and technical) be continued, with the assistance of the appropriate international agencies.

32. The merits of the administrative use of general international standards of effluents or river quality have been discussed. However, differences in national policies (legal, technical and economic) as applied seem to be the main obstacle to the administrative usefulness of such standards. Mutual understanding of national policies is a prerequisite to administrative international co-operation and could be reached more easily at expert level.

Establishment of international water pollution control bodies

33. The Conference confirmed the opinion in the course of the fourteenth session of ECE that international river pollution control bodies should be set up by interested countries only for drainage areas where the degree of existing pollution makes this desirable. There was no support for the establishment of control organizations with far-reaching powers, most experts favouring the view that States concerned in a particular basin should try to solve pollution problems by negotiating bilateral or multilateral agreements providing for advisory bodies and appropriate administrative machinery.

34. It was noted that a great number of countries has already entered into agreements, although some of these could not be considered to be formal international instruments. As yet, very few of these existing agreements provide for more than periodic investigations of certain watercourses.

35. Support was given to the idea that countries should adhere to the rule that the quality of international waters should be maintained in no worse state in any respect by a country than it would do if the waters remained in its own territory. Several experts expressed, moreover, the opinion that in accordance with established principles of customary international law no State should pass on its waters to its neighbouring States in such a polluted condition that this water would seriously damage their interests.

36. Some representatives thought it premature to discuss basic rules as to the settlement of claims for damages before further study.

...

Laws and regulations bearing on water pollution

National legislation and general principles

50. Water pollution control legislation in the European States exhibits substantial variations, which, in the main, are due to the differences in political, economic and administrative systems in those States and differences in the legal status of watercourses (e.g. whether publicly or privately owned).

51. In national legislation, two main approaches exist to the problem of water pollution control: control measures might be based either upon a system of classification of watercourses and corresponding standards of water quality, or upon a general prohibition of pollution, subject to the power of a controlling authority to grant permission in particular cases.

52. No generally accepted definition of pollution is to be found in national legislation, although such a definition would be desirable. The concept of pollution should be regarded as a relative one, its essential characteristic being the change causing injury or harm, taking into account the particular conditions under which such a change took place.

53. A technical definition of pollution which has secured a large measure of acceptance is as follows:

> "A river is polluted when the water in it is altered in composition or condition, directly or indirectly as a result of the activities of man, so that it is less suitable for any or all of the purposes for which it would be suitable in its natural state."
> (E/ECE/311)

The law applicable to international water pollution problems

54. The Conference noted that there exists so far no general convention defining in detail the rights and obligations of States in respect of the pollution of fresh waters.

55. It was pointed out that, as far as customary international law is concerned, its content is as yet not clearly defined and universally agreed upon and might vary in time as well as from one group of States to another.

56. The idea was advanced that some problems of pollution might be solved to some extent by reference to principles of private international law; it was pointed out, however, that the international aspects of water pollution problems involved questions of State responsibility, relating to territorial sovereignty, and are thus subject to public international law.

57. Some experts felt that many of the problems under discussion might be solved if States would recognize, in regard to damage caused by water pollution, a principle of absolute or objective liability imposed by international law, particularly as the principle of absolute or objective liability in regard to damage from pollution has already been incorporated in the national legislation of several States.

58. The view was expressed that ECE and the other international organizations concerned should continue their studies in this field, in co-operation or consultation with bodies working towards the codification of international water law, such as the International Law Association and the Institut de Droit International.

59. One representative advanced the idea that eventually the ground might be prepared for an international instrument on certain forms of water pollution control. Such an instrument might contain certain general principles of law regarding the rights and obligations of riparians; especially control of pollution by radioactive substances might conceivably be dealt with in an instrument intended to be universally applicable.

60. However, in each drainage area there will be problems of a peculiar localized nature and thus not susceptible of solution by the application of the general rules which might be contained in a convention of general application. In the study of problems of international law, particular attention must be given to concepts of international law as they have been developed in response to peculiar local conditions in Europe.

Further work

61. Suggestions for further work under this item are mentioned in the part of the report dealing with international exchanges of information (see paras. 74 to 80 below).

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International exchanges of information

74. The discussion on this subject was based on the note by the ECE secretariat on possibilities for the promotion of international exchanges of information in the field of water pollution control in Europe (WATER POLL./CONF./17).

75. Some differences in emphasis notwithstanding, a broad consensus of experts' views as to the work to be undertaken by the Commission in this field emerged.

76. The Commission, in its resolution 10 (XIV), has specifically recognized the importance of facilitating exchanges of information of an economic, legal and administrative character and had already requested the Executive Secretary to undertake some work in this regard as embodied in the secretariat notes on water pollution in Europe (WATER POLL./CONF./1 and addenda) and on the establishment of a list of experts (WATER POLL./CONF./3).

77. ECE has a useful and necessary role to play in the regional implementation of world-wide principles and activities under Economic and Social Council resolution 675 (XXV) in furthering exchanges of information and experience in matters of water pollution control in Europe. It should do so on a continuing basis, taking into account the suggestions contained in the ECE note on the subject, by arranging:

(*a*) Exchange of appropriate documentation (including lists of documentary films);

(*b*) The interchange of advisory services by experts;

(*c*) Visits of specialists and direct contact between organizations;

(*d*) Meetings.

In so doing, the Commission should concentrate on economic, technical, legal and administrative aspects.

78. The Commission should conduct these activities in co-ordination with FAO, WHO and IAEA and with other international organizations, as necessary, and in such a way as to avoid duplication of effort.

79. The Commission should convene from time to time, jointly with the international agencies, or after consultation with them, as appropriate, small meetings of experts from interested countries in the form of study groups or panels to discuss specific water pollution problems of common and urgent concern and of general interest to European countries. This programme of meetings should lead up, several years hence, to a further Conference organized along the lines of the present one, at which the progress in water pollution control and prevention achieved in the region, as well as the results of the work of the study groups during the intervening period, could be reviewed.

80. In the course of the discussion, a number of concrete suggestions were made by experts, such as the following:

(i) There was need for a comparative review of certain technical, economic, administrative and legal questions, especially of:

(*a*) The unification of methods of sampling and analysis of waste water and surface water;

(*b*) Desirable water quality criteria and standards of requirements for each of the several uses of water; (in some cases, it may be useful to prepare lists of such standards and/or requirements, in other cases there may be acceptance of the present ones);

(*c*) Stream classification in all its aspects;

(*d*) The existing legal provisions with regard to the utilization and protection of international water courses;

(*e*) Existing national legislation on water pollution control;

(*f*) The organization, scope of activities and mode of operation of river basin authorities and other administrative bodies concerned with the prevention or abatement of water pollution.

(*g*) The comparative study of the financing of pollution control projects and of the activities of administrative bodies concerned with the prevention or abatement of water pollution.

(ii) Emphasis should be placed upon the preparation of educational material on water pollution control, e.g. booklets written in popular style, films, etc.

(iii) Greater aid should be given in the training of experts in water pollution control, and in facilitating exchanges of specialists.

(iv) A greater dissemination of information on new methods employed in the appraisal of water-use projects would be desirable.

(v) There should be a systematic collection of cost data pertaining to operations concerned with the prevention or abatement of water pollution.

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ANNEX III

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A/C.6/SR.164 and 165	Summary records of the 164th and 165th meetings of the Sixth Committee, held during the fourth session	*Ibid., Fourth Session, Sixth Committee,* 164th meeting, paras. 95–101, and 165th meeting, paras. 79–105
E/2205/Add.1	International co-operation on water control and utilization: report of the Secretary-General under Economic and Social Council resolution 346 (XII) of 22 April 1952	Mimeographed
E/3058	*Water for Industrial Use*	United Nations publication, Sales No. 58.II.B.1

Symbol	*Title*	*Observations and references*
E/3066	*Integrated River Basin Development*	United Nations publication, Sales No. 58.II.B.3
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ANNEX IV

Subject index

(The numbers shown in this index, other than those expressly indicated as foot-note numbers, refer to the paragraphs in the text of the report)

Introduction

Alphabetical order 19
Arbitrator, see: International court
Arrangements, see: International treaties
Awards, see: International judicial decisions
Bibliography 17
Bilateral treaties 13
Circular notes of the Secretary-General 12, 15
Commission, see: International court
Conference of government experts 16
Conventions, see: International treaties
Declarations, see: International treaties
Delimitation of fluvial boundaries 4
Disputes 5; foot-note 2
Documents 17
Drainage or feed channels 9
Exchange of notes, see: International treaties
Faculties of law and law institutes 15
Fishing 8; foot-note 2
Floods 8
Frontier lake, see: International river
Frontier waters, see: International river
General Assembly resolution 1401 (XIV) 1
General conventions 13
Information provided by Governments 12, 15
Inter-governmental organizations 16
International agreements, see: International treaties
International court 14
International judicial decisions 5, 14
International river 9; foot-note 5
International treaties 5, 13; foot-note 6
Interpretation of a treaty 14
Inter-State river 10; foot-note 5
Inter-State waterways, see: Inter-State river
Judgements, see: International judicial decisions
Legal problems 4
Member States 12
Multilateral treaties 13
Names of rivers 18
National legislation 12
Navigation 6, 8
Non-governmental organizations 15
Orders, see: International judicial decisions
Organization of the report 11
Pollution 8
Preliminary studies 7
Protocols, see: International treaties
Régime de voisinage 9
Reports by conferences of government experts, see: Conference of government experts
Reports by intergovernmental organizations, see: Intergovernmental organizations
Resolutions and declarations of intergovernmental organizations, see: Intergovernmental organizations
River, see: International river
Situations, see: Disputes
Sixth Committee 3; foot-notes 1, 3, 4, 5
Spring, see: International river
Stream, see: International river
Studies by faculties of law and law institutes, see: Faculties of law and law institutes
Studies by non-governmental organizations, see: Non-governmental organizations
Subject index 18
Subjects appropriate for codification 7
Technical aspects 4
Territory 9, 10
Timber-floating 8
Treaties in force 13; foot-note 6
Tribunal, see: International court
Use of the water of international rivers, see: Utilization of international rivers
Uses of waterways, see: Fishing; Navigation; Timber-floating
Utilization of international rivers 4, 5, 8; foot-note 2
Watercourses, see: International river

Part I

Information provided by Member States regarding their legislation

Apportionment of costs 26
Canals 57
Concessions
  embankment operations 50
  utilization of waters 45
Construction, modification and upkeep of works and installations 24, 30, 41
  authorizations 26, 28, 29, 30, 31, 34, 35, 36, 39, 41
  canalizations 35
  change in watercourses 48, 62
  clearing 55
  domestic uses 29
  fish 29
  hydroelectric power 29, 30, 33, 38, 41, 43
  in conformity with or in application of existing treaties, agreements and laws 29, 30, 35, 37, 38, 39, 41
  industrial uses 29
  international storage dams 41
  irrigation 29, 31, 34, 35, 39, 51
  navigation 42
  previous authorizations 51, 53, 55, 57, 61, 62
Damage and injury
  compensation 47
  protection of interests 43, 44
  protection of neighbouring territory 47
Diversion of water 28, 31, 34
Dredging
  previous authorization 53, 54
Fishing
  movement of fish 48
  prohibition of certain methods 49
  propagation 29
  right 49
Frontier waters 22, 24, 43, 47
International Commissions:
    International Boundary and Water Commission (Mexico-United States)
  construction, maintenance and operation of works 26, 37, 38, 39, 41
  investigations 24
    International Joint Commission (Canada–United States)
  construction, maintenance and operation of works 43
  duties 22
  powers 23
  protection of interests 43, 44
  salaries of members 23
International rivers 46, 48, 49, 61
  natural outlet 22
  river basin 32
  sovereignty 46
  tributaries 48
Maintenance of rivers 52
Uses of river waters:
    Domestic uses 29
    Hydroelectric power
  construction, maintenance and operation of works 20, 29, 30, 33, 38, 41
  development 20, 43
  exportation 20, 21
  navigation interests 42, 44
  transfer to consumers 40
    Industrial uses 29
    Irrigation
  construction of works 29, 31, 34, 35, 39, 51
  regulations 51
    Navigation
  construction of works 42
  protection 44
    Timber-floating
  operations 48
  prohibition 49
Uses of river water (continued)
  regulations 63
  right 49
National bodies:
    Federal Power Commission (United States) 20, 21, 33, 40
    Ministry of Transport and of the "Waterstaat" (Netherlands) 53
    Saint Lawrence Seaway Development Corporation (United States) 42
Ownership of interior waters 45
Policing of waterways 57, 59, 60, 61
Pollution
  discharge of inflammable liquids 59
  discharge of waste matter 56, 61
  prevention of 47
Protection of dikes 54
Public interest 52
Regulating of waters 34, 44
Sovereignty over international rivers
  restrictions based on a treaty 46
  restrictions based on international law 46
Treaties:
    Conclusion 26, 39, 40
    Execution
  action to enforce 32
  appropriation of funds 27, 37
  authorizations 25, 39
  construction and maintenance of works 35, 38, 41
  negotiation of agreements 38
Utilization and use of rivers
  investigations 24
  permitted by international agreement 33
    in conformity with existing treaties, compacts and acts 28, 31, 32, 33, 34
  possible uses 61
  previous authorizations 52, 54
  rational use 53
Water-conduits 57
Water diversion or taking
  previous authorization 57
  regulations 51
Water storage 32

Part II

Summary of existing bilateral and multilateral treaties

CHAPTER I—GENERAL CONVENTIONS

Apportionment of costs
  execution, upkeep and operation of works 74 (*c*), 81
Closing of navigable waterways of international concern
  by a riparian State on the ground of an interest clearly greater than navigation 82
  conditions under which unilateral closing may be carried out—notice—opposition of another riparian State—settlement of the dispute 82
  with the consent of all the riparian States 82
  with the consent of all the States represented on the international commission for the river in question 82
Commissions:
  Advisory and Technical Committee for Communications and Transit (1921) 65, 66; foot-note 37
  Committee on Electric Questions of the Second General Conference on Communications and Transit (1923) 68
  Sub-Committee for Hydro-Electric Questions of the Advisory and Technical Committee for Communications and Transit 66
Conferences:
  Congress of Paris (1856) 79
  Congress of Vienna (1815) 79
  General Conferences on Freedom of Communications and Transit (Barcelona 1921 and Geneva 1923) 64, 66, 68
Construction, modifications and upkeep of works and installations
  contributions by the States concerned 74 (*c*)
  existing works 73 (*b*)
  general conditions 74 (*c*)
  meeting the cost of upkeep 74 (*c*)

Construction, modifications and upkeep of works and installations *(continued)*
modification of river conditions 70
national legislation 74 (*b*); foot-notes 49, 50
projected works 73 (*b*)
technical selection 74 (*a*); foot-notes 49, 50
ways of communication 81
works under construction 73 (*b*)
Co-operation
financial co-operation 74 (*c*)
technical control 74 (*c*)
Damage and injury
apportionment 74 (*c*)
as a result of the execution of development operations 73 (*c*)
every kind 73 (*c*)
necessary guarantees foot-note 48
obligation to make reparation 73 (*c*)
reparations foot-note 48
responsibility 73 (*c*)
serious injury 73 (*c*); foot-note 48
to the national economy or security 78
Development of rivers
collaboration among States 71; foot-note 46
comparison of projects 73 (*b*)
conditions governing execution of works 81
execution of works 70, 72, 73 (*c*), 81
facilities 76
international investigations 73 (*b*)
international law 73 (*a*)
maximum yield 73 (*b*)
negotiation 69
obligation to negotiate 73 (*c*)
preliminary agreement 69, 70, 72; foot-note 43
programmes 73 (*b*)
provisions of the preliminary agreements 74 (*c*)
responsibility 73 (*c*)
river basin 66, 68, 70
solution most favourable to the interests of the Parties 73 (*b*)
technical considerations—political factors 70, 74 (*a*); foot-notes 43, 49, 50
vital interest of States foot-note 46
Equality of treatment 79
Facilities
general facilities—special facilities 76
Frontier 74 (*a*); foot-note 49
General conventions 64, 65, 67
subject to rights and obligations arising out of special treaties 75, 77
Good faith
negotiation 73 (*c*); foot-note 48
Interests
any interest whatever over a river 70
clearly greater economic interest 82
common and different interests 70
complementary interests foot-note 43
conflict of interests foot-notes 48, 52
consideration 72
irrigation 81
navigation 81
use of water-power 81
vital interests 81; foot-note 46
water conditions 81
International responsibility
in damages 73 (*c*)
International rivers
foot-note 49
basin 66, 68, 70
navigability 81
navigable waterways of international concern 75, 79, 82
prohibition against prejudicing navigability 80
International solidarity 71
Law
general public international law foot-note 48
international law 73 (*a*) and (*c*)
treaty law 71
National legislation 74 (*a*) and (*b*); foot-notes 49, 50
Negotiations
development of rivers 69, 73 (*b*)
good faith 73 (*c*)
obligation to negotiate 73 (*b*) and (*c*); foot-note 48
Obligations
obligations formally accepted 73 (*b*)
to carry out works 73 (*b*), 81
to conclude agreements 70, 73 (*c*); foot-notes 43, 48
to make reparation 73 (*c*)
to negotiate 73 (*c*); foot-note 48
treaty obligations 75, 77
Operation of works
conditions 74 (*c*)
contributions by the States concerned 74 (*c*)
national legislation 74 (*b*); foot-note 50
Preliminary agreement
compulsory agreement 69, 70, 73 (*c*); foot-note 43
conclusion 72, 73 (*c*); foot-note 48
execution of works 73 (*b*) and (*c*)
provisions 74 (*c*)
voluntary agreement foot-note 43
Priority as between different uses
preference given to navigation 75, 79; foot-note 52
Prior notice
closing of a navigable waterway 82
Protection of sites 74 (*c*)
Public safety
securing public safety 74 (*c*)
Regulation of the flow of water 74 (*c*)
Right of veto foot-note 46
Rights
any rights whatever over a river 70
protection of the interests of third parties 74 (*c*)
treaty rights 75, 77
Sovereignty over natural resources
exercise within the limits of international law 73 (*a*)
principle of free disposition of territory and resources—limitations 72, 73
Settlement of disputes
advisory opinion of the body established by the League of Nations 78
advisory procedure 78
application and interpretation of treaties 74 (*c*), 78
arbitration 78
diplomatic channel 78
exception because of serious detriment 78
judicial procedure 78
methods of amicable settlement 78
procedure for settlement of disputes 82
provisions of the judgement of the body called upon to settle the dispute 82
States
contracting States 73 (*c*)
interested States 69, 70, 73 (*c*)
riparian States 70, 71, 80, 81, 82; foot-notes 43, 46
States possessing a right or interest over the river 70
States represented on river commissions 82
States territorially interested 81
Territorial sovereignty
exercise of territorial competence—limitations 72
incompatibility of compulsory agreement with territorial sovereignty 70
Territory
execution by a State of works on its own territory 73 (*c*)
execution of works affecting the territory of another State 73 (*c*)
execution of works exposing the territory of another State to serious prejudice 73 (*c*)
execution of works on the territory of another State 73 (*c*), 81
Theoretical principles foot-note 46
Treaties
interpretation and application 74 (*c*), 78
rights and obligations arising out of treaties concluded prior to or subsequent to a general convention 75, 77

Uses of river waters:
Hydroelectric power
development 66, 68, 69, 70, 72, 73 (*b*) and (*c*), 76
exploitation 69, 70, 73 (*b*)
general convention 67
generation 69, 81
increasing the yield 69, 70
international investigations 73 (*b*)
the maximum yield 73 (*b*)
order of priority 75
hydroelectric potential foot-note 43
preliminary agreements 69, 70, 72; foot-note 43
right 75
transmission foot-note 38
use 81
utilization 67, 72
works 72, 73
Industrial uses 74 (*a*); foot-note 46
Irrigation
order of priority foot-note 52
requirements 81
Navigation
closing of a navigable waterway 82
elimination of obstacles to navigation 80
execution of works 81
exercise of navigation 79
freedom of navigation 79; foot-note 52
general convention 67
order of priority 75, 79; foot-note 52
right of navigation foot-note 52
Utilization and use of river waters
collaboration among States 71; foot-note 46
exploitation 69, 70, 74
interests of other States 72
international agreement 69
international regulation foot-note 46
the maximum yield 73 (*b*)
negotiation 69
possible uses 79
preliminary agreement 69, 70, 72; foot-note 43
theoretical principles foot-note 46
vital interests of States foot-note 46
Water conditions
maintenance 81
modification 70

CHAPTER II—AFRICA

Acquired rights
respect for 87 (*e*), 110 (*a*), 125, 126, 127, 130, 151 (*a*); foot-note 95
Aquatic plants
respect for acquired rights 87 (*e*)
Commissions:
International Commission for the Congo (1885) 83
Joint Technical Commission for the Kunene River (Portugal–South Africa, 1926) 98 (*a*) and (*c*)
Joint Technical Committee for the Nile (Sudan–United Arab Republic, 1959) 112; foot-note 81
Nile Commission (Egypt–United Kingdom, 1925) 101; foot-note 75
Commissions
membership, functions and powers 83, 98 (*a*) and (*c*), 101, 112; foot-notes 75, 81
Concessions
concessionaires 87 (*c*), 142
conditions 87 (*c*), 142
fishing concessions 146 (*c*)
for the production of hydroelectric power 142
hydraulic power 97 (*b*)
inspection 87 (*c*)
water rights 87 (*c*)
Conferences:
Berlin Conference (1885) 83
Brussels Conference (1890) 83
Conference of Saint-Germain-en-Laye (1919) 83
Construction, modification and upkeep of works and installations
apportionment of costs 97 (*a*)
consent 141
diversion works 98 (*d*)
hydroelectric power 96, 97, 102, 107, 110, 113 (*b*), 114–118, 141
intake works 97 (*c*)
in the territory of a third State 113 (*b*)
irrigation 87 (*b*), 98 (*d*), 102
previous agreement 129
previous authorization 102
prior notice 87 (*b*), 97 (*a*)
prohibition of operations interfering with navigation 88 (*a*)
prohibition of works which would modify water conditions 128, 129
retention and control of water 114–118
retention of water 97 (*a*), 107, 110 (*b*)
right to appropriate materials in the territory of the other State 99 (*c*)
right to construct works 96
Damage and injury
compensation 110 (*d*), 142
Development of rivers
apportionment of costs 90, 111, 119
arrangements 139
by the up-stream State 128, 129, 149
compensation 119
limitations 128, 129, 149
regulation of waters 84
studies and projects 89–90, 104, 111, 120–123
Diversion of water
limitation 98 (*b*)
right to divert water 98 (*a*)
Division of water 93, 94, 97 (*b*), 98 (*a*), 101, 107, 110 (*a*) and (*c*), 111, 113 (*c*)
Dredging of rivers
for gold 124
Equality of treatment 83
Extraction of salt 148
Facilities
for the study and record of hydrology 104
Fishing
authorization to fish not more than is necessary for one's own consumption 134
concessions 146 (*c*)
control—arrangements 140
equal rights of fishing of inhabitants of banks 133, 138, 148
freedom of fishing 138
freedom of fishing for nationals of the Parties 140
principle of non-discrimination 146 (*b*)
prohibition of certain methods 134
regulation of methods 146 (*a*)
respect for acquired rights 87 (*e*), 126
rights to fish 138, 145; foot-note 92
Floods
benefits from 96
control of waters 114
periodic inundations 96
Flow from rivers
determination 87 (*a*), 94, 100, 101, 110 (*e*)
Good faith
mutual good faith 106
Interests
local interests 103
reconciliation 101
representation 116
safeguarding 84, 100, 103
International rivers
affluents 84
contiguous rivers 87, 88
conventional basins 83
prohibition against altering the banks or the course of the water by use 134
river basin 121
successive rivers 86, 88
unity and international character of a river basin 114

Joint corporations
production of hydroelectric power 91
National bodies:
Uganda Electricity Board 115–117
National legislation
application 99 (*d*), 131, 151 (*b*)
Operation of works 91, 117
Pollution
as a result of operations of a mining or industrial nature 88 (*b*)
poisonous, noxious or polluting substances 88 (*b*)
protection of waters against pollution 88 (*b*)
tributary rivers 88 (*b*)
Previous consent
works 99
Principle of non-discrimination
fishing 146 (*b*)
Public services
right of access 87 (*d*)
Reasons of humanity
conceding of rights 96
Return of water
see: Water diversion or taking without substantial reduction 86, 87 (*a*)
Right
of access 87 (*d*), 123
of access or entry 99 (*b*)
Rights
customary rights 87 (*e*)
grant of rights 110 (*f*)
historical rights 110
natural rights 100
sovereign rights 96, 99 (*a*)
Settlement of disputes
arbitration 88 (*c*), 99 (*e*), 118, 135, 143
consultation 118
negotiation with third States 113 (*a*)
Permanent Court of Arbitration 150
Technical co-operation
agricultural expansion programmes 110 (*e*)
arrangements for 105, 144 and annex II, section B
exchange of meteorological and hydrological information 122 and annex II, section C
study and record of hydrology 104
Territory
ceded for the purpose of providing drinking water—conditions of cession 147
Third riparian States
construction of works 113 (*b*)
negotiations 113 (*a*)
right to utilize waters 113 (*c*)
Up-stream State 128, 129, 149
Uses of river waters:
Domestic uses
equal rights of inhabitants of banks 148
respect for acquired rights 87 (*e*), 125; foot-note 95
supply of water 134, 136, 147, 148
Hydroelectric power
compensation for damage 142
concessionaire for use—obligations 142
construction, maintenance and operation of works and installations 91, 96, 97 (*a*) and (*c*), 114, 115, 117, 141
construction of works—notice, cost 97 (*a*), 119
diversion of water 97 (*a*)
division of water 97 (*b*)
establishment of joint corporations 91
granting of rights by contract 97 (*b*)
impounding of water 97 (*c*)
production 91, 114, 142
production—previous agreement 137
sale of power—charge 91, 142
technical co-operation 116, 117
transmission and distribution of power 91, 142
Irrigation
acknowledgement of natural and historical rights 100
Uses of river waters (continued)
compensation 95
construction, maintenance and operation of works 98 (*c*), 103, 107
construction of works—modification of water conditions 102, 107, 128
construction of works—previous agreement 102
determination of the quantity of water withdrawn 94, 101
diversion of water 98 (*a*) and (*d*)
division of water 93, 98 (*a*), 100, 101, 107
joint programmes and projects 92, 107, 110 (*e*) and (*f*)
joint technical investigating commissions 98 (*c*)
limitations on account of power plants 98 (*b*)
reconciliation of interests 101
safeguarding of other Party's interests 100
system of works 92
technical co-operation 105, 106, 107, 144
water supply 103
Navigation
freedom of navigation 83
general principles 83
maintenance of navigability of rivers 83
policing of navigation 83
prohibition of interference with navigation 88 (*a*)
Watering
respect for established rights 125, 127; foot-note 95
supply of water 134, 136
Utilization and use of river waters
actual use 110 (*a*)
agreed arrangements 139
application of local laws and regulations 99 (*d*), 131, 151 (*b*)
common use 96, 132
compensation 95
concessionaires—obligations 142
concessions 146 (*c*)
co-operation among riparian States foot-note 61
equal rights of the inhabitants of the banks 133, 138
established rights 109, 110 (*a*), 125, 126, 127, 130, 151 (*a*)
establishment of joint corporations for utilization 91
full use 108
grant of water rights 110 (*f*)
improvement 110 (*b*)
most suitable arrangements for use 136
needs of the inhabitants 147
partial use 108
previous agreement 113 (*c*), 124, 129, 137, 139
principle of freedom of use 140
principle of non-discrimination 146 (*b*)
projects for the exploitation of waters lost 109, 111
relinquishment of use 110 (*d*)
rights of third States to utilize waters 113 (*c*)
rights of use 85, 96, 98 (*a*) 148
technical studies and projects—preparation, sharing cost 89, 90, 92, 98 (*c*), 109
temporary movements of peoples for the purpose of using river waters 134
territory ceded to permit use 147
use for legitimate purposes 145
Water diversion or taking
determination of volume of water diverted 87 (*a*)
return of water 86, 87 (*a*)
right to divert water 87 (*a*)

CHAPTER III—AMERICA

Acquired rights
construction of works 160 (*a*)
creation 242
industrial use 285
jurisdiction 208
navigation 158–160 (*a*), 266
property rights 208
use of waters 165 (*c*)

Canals
canalization works 216 (*h*), 277
changing of course 285
drainage 154
easement 285
navigation 229, 294
widening 285
Claims
damage 179, 181, 205, 210, 216 (*c*); foot-note 228
delivery of water 204
recognition 204
right foot-note 228
waiver 204, 205, 216 (*c*)
Collection of water 277, 285
Commissions:
(See: International bodies)
Great Lakes Fishery Commission (Canada–United States, 1954) 218, 219, 220
International Boundary and Water Commission (Mexico–United States, 1944) 212, 213, 214, 216 (*a*)
International Boundary Commission (Mexico–United States, 1889) 185, 206, 207, 212
International Water Commission (Mexico–United States, 1927) 211
International Waterways Commission (United Kingdom (Canada)–United States, 1905) 155; foot-note 142
Joint Commission (Bolivia–Peru, 1955) 296
Joint Commission for the Administration and Supervision of the River Pilcomayo (Argentina–Paraguay, 1945) 290 (*b*)
Joint Frontier Commission (Argentina–Paraguay, 1939) 289
Joint International Commission of the River Pilcomayo (Argentina, Bolivia, Paraguay, 1941) 152
Joint International Commission (United Kingdom (Canada)–United States, 1909) 160, 164, 165, 174, 177, 183, 186, 187, 188, 195, 199, 239, 240, 295; foot-notes 142, 159, 262
Joint Study Commission (Bolivia–Peru, 1935) 245–250, 253, 256
Joint Sub-Commission for the utilization of the waters of Lake Titicaca (Bolivia–Peru, 1957) 252, 253
Joint Technical Commission (Argentina–Paraguay, 1958) 234–238; foot-note 207
Joint Technical Commission (Argentina–Uruguay, 1938) 298; foot-note 273
Joint Technical Commission (Argentina–Uruguay, 1946) 259–264; foot-note 273
Joint Technical Commission for Hydraulic Works (Argentina–Paraguay, 1945) 290 (*a*)
Joint Technical Commission of the River Pilcomayo (Argentina–Paraguay, 1939) 288–289
St. Lawrence River Joint Board of Engineers (Canada–United States, 1953) 295
Commissions
membership, functions and powers 164, 165, 183, 185–187, 195, 212–215, 218, 220, 228, 235, 236, 238–240, 245–250, 252, 259, 263–264, 290 (*c*), 295, 296, 298; foot-notes 159, 207
Companies:
Minnesota Canal and Power Company 155
Rio Grande Dam and Irrigation Company 201
Concessions
construction of works by concessionaires 282
dredging 283
granting of concessions by interested Governments acting in concert 283
obligations of concessionaires 283
prohibition against granting concessions to foreign undertakings 279
Conferences:
Regional Conference of the Countries of the River Plate (Montevideo, 1941) 153
Seventh Inter-American Conference (Montevideo, 1933) 153
Tripartite Conference on the Uruguay River (Argentina, Brazil, Uruguay, Buenos Aires, 1960) 153; foot-note 228
Conferences
invitation to third Parties 267
Construction, modification and upkeep of works and installations
allocation of construction work 228
alteration in the flow of rivers—preliminary agreement 269, 277, 282
alteration in water conditions—preliminary consultation foot-note 228
application of existing rules in the territory 282
apportionment of costs 123 (*b*), (*c*) and (*d*), 214 (*b*), (*c*) and (*e*), 228, 233, 262
approval of Governments 213 (*b*), (*c*) and (*d*), 214 (*e*), 228
approval of joint commissions 165 (*e*), 213 (*b*), (*c*) and (*d*), 214 (*a*) and (*e*)
canalization 216 (*h*), 277
capacity of water outflow 178
claims for damages foot-note 228
construction by concessionaires 282
construction by each of the Parties 215 (*b*), 262
construction by public authorities 282
consultation in case of change of plans foot-note 228
control and regulation 178
conveyance canals 214 (*c*)
damage 165 (*e*), 166, 216 (*d*); foot-note 228
design of works 228
development of electrical power 277
diversion of water 202, 214 (*b*)
execution of works 201, 202, 228, 269; foot-notes 184, 214 (*c*) and (*d*), 228
existing rights 160 (*a*)
existing works 178
financing 173
flooding 195, 216, 214 (*b*)
flow of water 160 (*a*)
general principles of international law foot-note 184
hydroelectric plants 166, 213 (*d*), 251, 262
international doctrine and practice foot-note 228
international dams 216 (*f*)
international studies 169, 170, 262, 287
irrigation 277
joint construction 213 (*b*), 262
joint execution of works foot-note 228
jurisdiction and property rights 216 (*h*) and (*j*)
navigation 160 (*a*), 294; foot-note 184
necessary works 180, 262
new works 178
pollution 292
preliminary plans 213 (*b*) and (*d*), 214 (*e*), 236, 262, 288, 289, 295
prevention of seasonal fluctuations 188
private works 282
prohibition of works 160 (*a*), 161, 274, 277
prohibition of works liable to interfere with navigation foot-note 184
protection 161, 165 (*e*), 180, 214 (*b*), 228, 233
protection of scenic beauty of sites 228
protective works 214 (*b*)
public works 216 (*i*), 282
recommendations of joint commissions 228
recording of water 213 (*h*), 214 (*d*)
rectification 207, 216 (*h*)
regulations 213 (*b*) and (*c*), 214 (*c*) and (*e*)
repercussions on neighbouring regions 169, 170
stability of the boundary line 206, 207, 216 (*g*), 280, 288, 289
suspension of work 209
use of waters 289
water level 160 (*a*), 161
water rentention 161, 195, 213 (*b*), 262, 277
water storage 189, 213 (*b*)
works having an international character foot-note 262
works not altering the flow of rivers 282
Conveyance of water
rules 213 (*e*)
to diversion points 214 (*c*)
use of river channels 213 (*g*)
Damage and injury
act of God 198

Damage and injury *(continued)*
acts authorized or provided for by a treaty 232
as a result of the breach of a treaty 198
as a result of the construction or operation of works 165 (*e*), 166, 214 (*b*), 216 (*d*); foot-note 228
as a result of the discharge of flood or other excess waters 216 (*c*)
as a result of the diversion of waters 205, 213 (*f*) (ii) and (*f*) (iii)
claims 179, 181, 205; foot-note 228
compensation 165 (*e*), 198, 255; foot-note 228
exercise of due diligence 198
existing cases 158
in the territory of another State 179, 181, 214 (*b*), 216 (*d*); foot-note 228
judicial recourse 158
material damage or injury 159, 216 (*d*)
navigation 159
physical damage or injury 232
pollution 162
prevention of damage 214 (*b*)
responsibility—exemptions 179, 181, 182, 198, 205, 232
special agreements 158
strikes 198
to health 162
to owners of land 205
to persons 179, 181, 232
to property 162, 232
uncontrollable force 198
war 198
canals 154
Declarations:
Declaration of Montevideo concerning the industrial and agricultural use of international rivers (Seventh Inter-American Conference, Montevideo, 1933) foot-note 135
Declaration of the Presidents of Bolivia and Peru (Lima, 1955) foot-note 220
Joint Declaration of Argentina, Brazil, Uruguay (Tripartite Conference, Buenos Aires, 1960) foot-notes 137, 228
Development of rivers
alteration in water conditions—preliminary consultation foot-note 228
appreciable and permanent alteration in water conditions—preliminary agreement 269, 282
compensation for loss or reduction of economic benefits 255
consultation with third States foot-note 288
distribution of benefits 195
economic developments 168, 188
existing works foot-note 201
formulation of regional plans foot-note 228
Harmon doctrine foot-note 175
interests of populations 216 (*h*); foot-note 228
international doctrine and practice foot-note 228
international studies 87, 215 (*a*), 236, 238, 287, 288, 296
negotiation for the contracting of preliminary studies 252, 256
operation and inspection of works 201, 202, 206, 207, 214 (*c*) and (*d*), 228, 269, 277, 282; foot-notes 184, 228
plans altering present conditions foot-note 228
preservation of the countryside 227, 228, 230
protection of water resources 272, 273
restrictions foot-note 175
right of way 172, 237
studies by one of the interested Parties 169, 170
studies of hydrographic and hydrological conditions 169, 170, 236, 297, 299
suspension of work 209
Diversion of water
acquired rights 159
approval by joint commissions 183; foot-note 159
control 158, 160, 213 (*f*)
damage 205
diversion points 214 (*c*)
equality of rights 158
equivalent compensation 223
extraordinary drought 213 (*f*) (ii)
from one watershed to another 183; foot-note 159
Diversion of water *(continued)*
in accordance with a former treaty 188
in accordance with international law 188
limitations 166, 230
modification of the flow of waters 160, 160 (*a*)
modification of the water level 160, 160 (*a*)
permanent diversion 158, 160, 263; foot-note 159
preliminary report of joint commissions 263
preservation of scenic sites 230
prior authorization 183, 193, 263
production of hydroelectric power 154, 155, 213 (*f*) (iii)
prohibition 166, 183
return of diverted waters 213 (*f*) (ii)
temporary diversion 158, 160, 165, (*d*), 213 (*f*) (ii), 263; foot-note 159
use of diverted waters 213 (*f*) (i)
use of other river channels 167 (*c*)
valuation of volume of water 229, 251, 254; foot-note 201
water belonging to the country making the diversion 213 (*f*) (i)
water not belonging to the country making the diversion 213 (*f*) (ii) and (*f*) (iii)
without injury to the other Party 213 (*f*) (ii) and (*f*) (iii)
works 202, 213 (*b*) and (*f*) (i), 214 (*b*)
Division of water
additional quantity 189, 214 (*a*)
allocation of waters 154, 213 (*e*), 229, 285; foot-note 201
claims 204
conditions for the delivery of waters 202, 214 (*a*)
controversy 201
cost of delivery 203
delivery of water by the up-stream State 189, 202, 211, 214 (*a*)
determination of percentages belonging to each Party 213 (*a*), 215(*b*)
distribution of water by the up-stream State 203
drought or serious accident—compensation 203, 213 (*a*), 214 (*a*)
empirical criteria 213 (*a*)
equal apportionment 165 (*d*), 231, 268, 279
equitable apportionment 167 (*b*), 211, 215 (*a*)
general principles 213 (*a*)
guaranteed annual quantity 214 (*a*)
Harmon doctrine foot-note 175
international comity 201, 211
measurement of water 167 (*b*)
plans formulated by commissions 215 (*a*)
preliminary studies—co-operation 287
procedure 167 (*b*)
proportional apportionment 287
prior appropriations 167 (*b*)
provisions 213 (*e*)
quantity fixed by conventions 202, 204, 211, 214 (*a*)
tributary waters 213 (*a*)
without regard to the boundary line 213 (*a*)
works 213 (*h*)
Down-stream State
construction of works 195
delivery of water 202
division of water 214 (*a*)
flooding 191
operation of works 190
Drainage
system foot-note 159
Emergency conditions
control by joint commissions 240
Excess waters 213 (*e*), 216 (*c*)
Facilities
preliminary studies 237
Fishing
applicability of territorial laws and regulations 220
apportionment of costs 247, 249
ascent of salmon foot-note 151
conclusion of conventions 247
conservation 187, 217, 261, 299; foot-note 151
development 244, 245
distribution stations 246, 247
economic importance 244

Fishing *(continued)*
equality of opportunities 247
equality of rights 247
execution of programmes 249
exercise of fishing rights 271, 278
fish hatcheries 246, 247
freedom of fishing for riparian States 276, 281
industrial exploitation 245
national and international economic assistance 249
order of priorities 216 (*a*)
permanent fishery régime 247
pollution 292
prohibition of certain devices 278
prohibition of certain methods 278
recommendations of joint commissions 247, 248
regulations 220
research 217
studies 244, 245, 248, 249
use of waters 174, 176, 249, 251
varieties of fish 245
Floods
damage and injury 216 (*c*)
flood control 187, 188, 191, 195, 206
flood control by the up-stream State—compensation by the down-stream State 191
protective works 214 (*b*)
regulatory plans worked out in common 214 (*a*)
regulatory works 213 (*b*) and (*c*), 214 (*c*) and (*e*)
use of channels of rivers for the discharge of flood waters and other excess waters 216 (*c*)
Flow from rivers
changes 274
increase 178
recording 214 (*d*), 229
regulating 213 (*b*) and (*c*), 214 (*c*) and (*e*), 215 (*a*)
Flow of water
control and regulating 178, 213 (*a*)
easement 285
modification 160, 160 (*a*)
regulations 165, 213 (*e*)
use of channels of rivers 216 (*c*)
Frontier
allotment of waters 213 (*a*), 287
delimitation 216 (*h*); foot-note 140
economic life 244
freedom of navigation, foot-note 184
frontier régimes 270
no changes in river beds resulting from artificial causes 280
no changes produced by construction of works 216 (*g*)
rectification 207; foot-note 180
stability of the fluvial boundary 206, 207, 216 (*g*), 280, 288, 289
Frontier waters
acquired rights 165 (*c*)
definition 157; foot-note 142
distribution 211
diversion 158, 160
pollution 162
priority among uses 165 (*b*)
regulations 155; foot-note 142
utilization 158, 160, 165 (*a*)
works 160 (*a*)
Harmon doctrine foot-note 175
Hunting
conservation of wildlife 187
order of priorities 216 (*a*)
pollution 292
Interests
common interests 213 (*e*), 298
conservation and storage of water 213 (*e*)
protection of interests 165 (*e*)
use of waters 156, 159, 213 (*e*)
Interests of nationals
frontier populations foot-note 228
use of waters 216 (*h*); foot-note 228
International bodies:
(see: Commissions)
Columbia Permanent Engineering Board 197
International Columbia River Engineering Board 188
International Lake Memphremagog Board 224
(Inter-State agency (Argentine–Uruguay)) 264
International comity
supply and division of waters 201, 211
International responsibility
for damage—exemptions 179, 181, 182, 198, 205, 232
International rivers
adjacent regions foot-note 228
artificial change in river beds 280
boundary waters 239, 240
change of course 274
change in river bed 184, 185
contiguous rivers 157, 274–277, 279, 280
deep water channel 208
falls 227, 228, 230, 233, 240; foot-note 207
flow 178, 213 (*b*) and (*c*), 214 (*c*), (*d*) and (*e*), 215 (*a*), 229, 274
international character foot-note 142
international section 222, 294, 295
natural course 154, 157, 158, 161, 166, 193, 274; foot-notes 142, 159
natural level foot-note 215
non-navigable rivers 278
old river bed 280, 301
present course 277
rectification 207, 210
river basin 167 (*a*), 183, 186, 187, 193, 200, 215 (*a*), 222, 223; foot-notes 151, 159, 201, 228
rivers flowing from boundary waters 161, 174
rivers flowing into boundary waters 158, 174
seasonal fluctuations 188
sources 161, 174, 274
successive rivers 157, 158, 161, 162, 274, 275
tributaries 157, 158, 167 (*a*), 168, 174, 213 (*a*) and (*h*), 263; foot-notes 159, 228
Lakes 157, 174–183; foot-note 142
artificial lakes 216 (*e*) and (*g*)
level of lakes 240, 242, 243; foot-note 215
prohibition of use for military purposes 216 (*e*)
use of water surfaces 216 (*e*)
watersheds 183, 239, 240
Law
international law 188, 200; foot-notes 175, 184, 228
Losses of water
regulations 213 (*e*)
National bodies:
Federal Power Commission of the United States foot-note 262
Hydro-Electric Power Commission of Ontario (Canada) 295
Irrigation Congress of the United States (1895) foot-note 142
Power Authority of the State of New York 295
National legislation
concurrent legislation 163; foot-note 262
reciprocal legislation foot-note 262
National rivers foot-note 151
Negotiations 155, 211, 252, 256; foot-notes 142, 185
Obligations
furnishing of information to joint commissions 219
Harmon doctrine 175
use of waters 156, 200, 227
Operation of works
by the down-stream State 190
damage 214 (*b*), 216 (*d*)
emergency conditions 240
hydroelectric power stations 213 (*d*)
international operation 213 (*d*), 264; foot-note 262
most effective operation 190
regulatory works 214 (*c*)
works for recording waters 214 (*d*)
Policing of waterways
frontier régimes 270
policing by a State in its own territory—limitations 270

Policing of waterways *(continued)*
regulation 300
regulations 216 (*e*)
Pollution
application of national laws and regulations 292
damage and loss 214 (*b*)
effects upon birds and fish 292
prejudicial to the health, well-being and activities of owners of land 292
prejudicial to the health, well-being and activities of users of water 292
protection against pollution 162, 292, 299
sanitary measures with regard to the use of water 216 (*b*)
works in progress 292
Preliminary agreement
modification of rights 211
operation of works 269, 277, 282
use of waters 192; foot-note 220
Principle of non-discrimination
navigation foot-note 228
Priority as between different uses 165 (*b*), 216 (*a*), 260
theory of navigability of rivers 211
theory of principal uses 211
use which restricts water-use priorities 260
Protection of sites
obligation to preserve and enhance scenic beauty 227, 228, 230
Public interest 187
Public utility
declaration 216 (*i*)
use of waters 187
works 216 (*i*), 282
Reclamation of wet lands 174, 187
Recognition, claims 204
Resolutions:
Resolution concerning the establishment of joint technical commissions to study the hydrographic system of the River Plate. (Regional Conference of the Countries of the River Plate, Montevideo, 1941) foot-note 136
Right of access 172, 237
Rights
cession of rights 194 (*c*), 285
conflicting rights foot-note 142
easement 285
equality 158, 165 (*a*), 247
existing in international law 200; foot-note 228
Harmon doctrine foot-note 175
in accordance with treaty provisions foot-note 228
modification 211; foot-note 228
of consultation foot-note 228
of free navigation 211; foot-note 228
of property 208
private rights 208
recognition foot-note 228
reservation of rights foot-note 228
retention of sovereignty 285
sovereign rights 266
territorial rights 208
to hydroelectric power 194 (*b*)
to the uses of water 156, 158, 200, 268, 275, 279
Rights and obligations of nationals
damage 179, 181, 205, 232
use of boundary waters 156, 158
Riparian States 276, 277, 281; foot-note 228
River systems
international instruments 270
joint ownership of water 270; foot-note 220
Servitudes
in perpetuity 285
rights 285
rights contained therein 285
Settlement of disputes
arbitration 199
arbitration of the President of the United States 286
commissions 185, 199
Settlement of disputes *(continued)*
composition of arbitral tribunals 199
decisions of commissions 199
definitive and binding decisions 199
diplomatic channel 284
International Court of Justice 199
Permanent Court of Arbitration 284
procedure established by the Parties 199
solution 291
Solidarity among States foot-note 158
Special agreement
damage and injury 158
form—concurrent legislation 163, 241
generation and disposition of hydroelectric power 216 (*f*)
jurisdiction and control over the utilization and diversion of waters 158, 160
works raising the natural water level 161
Storage of water
by the up-stream State 189
common interest 213 (*e*)
plans 215 (*a*)
regulations 213 (*e*)
use of waters stored by the other State 192
use of waters stored in international reservoirs 213 (*e*)
works 189, 213 (*b*)
Technical co-operation
organization 197
preliminary studies and investigations 169, 170, 188, 215 (*a*), 222, 236, 238, 245–256, 262, 287–289, 296–299
protection of water resources 272, 273
Territorial sovereignty
distribution of jurisdiction 216 (*h*)
exercise 285
exclusive competence 158
frontier régimes 270
Harmon doctrine foot-note 175
jurisdiction 208, 216 (*j*), 263, 266, 270, 271, 300
limitation of competence 160, 285
perpetual rights 285
policing of waters 270
property and jurisdictional rights 208, 216 (*h*) and (*j*)
reservation of sovereignty 285
respect for sovereign rights 266
sovereign rights 266
territorial rights 208
territory 208, 216 (*j*)
works 216 (*j*)
Territory
allocation 285
damage and injury 179, 181, 214 (*b*), 216 (*d*); foot-note 228
easement 285
Third States 267; foot-note 228
Treaties
application and interpretation 284, 285; foot-note 279
applicable international instruments 270
clause declaring that claims are not recognized 204
clause declaring that general principles and precedents are not conceded 205
clause declaring that responsibility for damage is not conceded 205
clause waiving any and all claims 204
conclusion 155, 188, 247; foot-notes 142, 182
execution 184, 196
exemption from responsibility 232
existing international instruments foot-note 228
expiration or termination 200
specific and general treaties 200
national legislation 220
provisions 154–156, 168, 174, 184, 186, 201, 206, 211, 217, 221, 224, 227, 233, 234, 239, 241, 244, 248, 250, 257, 288; foot-notes 138, 140, 188
purposes 156, 188
rights and obligations 181, 188; foot-note 228
third States 267
violation 198

Up-stream State
delivery of water 202
division of water 214 (*a*)
entitlement to down-stream hydro-electric power benefits 194 (*b*)
flooding 191
flood control 191
operation of water storage 191
water storage 189
Uses of river waters:
Beneficial uses
order of priorities 216 (*a*)
Domestic uses
amount of necessary water 229
development 215 (*a*)
order of priorities 165 (*b*), 216 (*a*), 260
regulations 300
use of waters 160 (*a*), 174, 176
water supply 187
Hydro-electric power
apportionment of power produced 171, 213 (*d*)
available waters 229, 231
compensation 255
consumption 236, 251
cost of production 188, 262
cost price 265
delivery 194 (*b*)
demand for power 251
determination of power benefits 194 (*a*)
development 188, 216 (*f*), 293; foot-notes 262, 263
disposal of entitlement 194 (*c*)
distribution of waters 231
diversion 213 (*f*) (iii), 230
exportation 216 (*f*)
hydro-electric power stations 166, 213 (*b*) and (*d*), 251, 262
international power stations 216 (*f*)
international production 213 (*f*) (iii)
order of priorities 165 (*b*), 211, 216 (*a*), 260
operation of power stations 190, 213 (*d*)
payment 171
prior approval 192
production 154, 155, 187, 188, 191–194 (*d*), 213 (*f*) (iii), 216 (*f*), 221–223, 227, 229–231, 243, 257
provision 265
regulation 231, 294, 295
return of diverted water 213 (*f*) (iii)
right of access 172
rights to power benefits 194 (*b*)
special agreements 216 (*f*)
studies and reports 169, 176, 194 (*d*), 234, 236, 251, 296, 298; foot-note 207
technical co-operation 188, 222
use of waters 167, 168, 171, 174, 191, 192, 216 (*f*)
works 169, 251, 262, 277, 294, 295
Industrial uses
acquired rights 285
diversion 251
order of priorities 216 (*a*)
ownership of waters foot-note 220
regulations 300
rights 275, 279
use of waters 251; foot-note 206
Irrigation
compensation 255
delivery of water 202
development 215 (*a*)
diversion 251
division of water 167 (*b*), 203
drought or serious accident 203
irrigation system 203, 214 (*a*)
needs 187
order of priorities 165 (*b*), 216 (*a*), 260
regulations 300
rights 275, 279
studies 251
Uses of river waters (continued)
use of waters 167 (*a*), 174, 251
works 201, 202, 277
Municipal uses
order of priorities 216 (*a*)
Navigation
acquired rights 158–160 (*a*), 266
canals 229, 294
damage and injury 159
deep-water navigation 294
freedom of navigation foot-notes 184, 228
improvement 257, 294; foot-notes 206, 262, 263
interests 159
navigability 251
order of priorities 165, 211, 216 (*a*), 260
principle of non-discrimination foot-note 228
rights 211; foot-note 228
studies 234
treaties foot-notes 138, 140, 188
use of waters 174, 176, 187, 251
works—prohibition 160 (*a*), 294; foot-note 184
Possible uses
development 215 (*a*)
Sanitary uses
amount of necessary water 229
order of priorities 165 (*b*), 260
use of waters 160 (*a*), 174, 176
water supply 187
Uses
compensation 255
diversion 251
ownership of waters foot-note 220
studies 234
use of waters 251
Uses in the public interest
studies 187
Watering
order of priorities 216 (*a*)
Utilization and use of rivers
acquired rights 165 (*c*)
additional waters 223
advantageous use 167 (*b*), 174, 234
by the up-stream State 191
common interest 213 (*e*), 298
common use 167, 249, 251, 258
compensation 223, 255
concessions 279
conditions foot-note 142
control 158, 160, 213 (*f*) (i) and (*f*) (ii)
consumptive use 193
use in accordance with treaty provisions 191
beneficial use 213 (*e*)
equal sharing 227, 258
equality of rights 158, 165 (*a*)
existing use 215 (*a*), 291
financing of projects 256
Harmon doctrine foot-note 175
improvement 215 (*a*)
international studies 236, 238, 251–256, 298
joint formulation of regional schemes 228
just and equitable use 275
limitations 291
modification of the flow of waters 160, 160 (*a*)
modification of the water level 160, 160 (*a*)
most beneficial use 174, 213 (*e*), 227, 257
most complete and satisfactory use 211
most constant use 213 (*e*)
most regular use 213 (*e*)
mutually advantageous use 296
national and international economic assistance 249
permanent use 158, 160, 263
pollution 216 (*b*), 292
preliminary projects 288, 289, 298
preliminary report of joint technical commissions 186, 187, 263

Utilization and use of rivers *(continued)*
preservation of scenic sites 227, 230
principles 153
prior agreement 192; foot-note 220
prior authorization 263
prohibition of use for military purposes 216 (*e*)
protection 176
public and common use 216 (*e*)
public interest 187
rectification of the boundary foot-note 180
regulations 299
respect for acquired rights 159, 165 (*c*)
right of use 156, 158, 200, 268, 275, 279
temporary use 158, 160, 213 (*f*) (iii), 263
use as determined 187
use in compliance with regulations of river commissions 195
use in the common interest 298
use in such a way as not to affect other uses 251
use of natural advantages 257
use of water surfaces of international dams 216 (*e*)
use within the limits of the territory of the State 275
water belonging to the country making the diversion 213 (*f*) (i)
water not belonging to the country making the diversion 213 (*f*) (ii)
waters as joint and indivisible property foot-note 220
waters not utilized by the State to which they belong 231
Vessels
flying the flag of a Government foot-note 228
in the service of a Government foot-note 228
general principles 205
Water conditions, alteration 269, 282; foot-note 228
Water diversion or taking
control 213 (*f*) (i)
generating of hydro-electric power 213 (*f*) (iii)
regulations 213 (*e*)
use of released waters 213 (*e*)
Water level
fluctuations 182
gauging stations 213 (*h*), 214 (*d*)
high waters 240
international control 175
low waters 240, 242, 243; foot-note 215
lowering 175, 176
maintenance 224
modification 160, 160 (*a*)
national control 175
natural 160, 161, 165 (*e*)
raising 161, 165 (*e*), 175, 176, 195, 242, 243; foot-note 215
regulating 174, 176, 180, 182, 225, 226
regulations 213 (*e*)
responsibility for damage 182
Water supply 187, 189, 201, 202, 204, 211, 214 (*a*), 301

CHAPTER IV—ASIA

Acquired rights
respect for 304, 323, 332, 352, 361 (*m*), 404, 412; foot-note 289
Canals
canal systems 347, 350, 356
construction 309, 315, 324, 357, 361 (*a*) and (*i*), 376
feeding 323
hydraulic system 304
Claims
private rights 384
settlement 400
Cleaning of rivers 332
Cleaning of watercourses 390
Collection of water, works 392, 361 (*d*)
Commissions:
(see: International bodies)
Joint Commission on the Yarmuk (Jordan–Syria, 1953) 378
Permanent Indus Commission (India–Pakistan, 1960) 358, 361 (*q*)
Technical Mixed Commission (Turkey–USSR, 1927) 308 (*a*)
ECAFE 302, 303; foot-note 282
Bureau of Flood Control and Water Resources Development foot-note 282
Commissions
membership, functions and powers 361 (*q*), 374, 378–381
Construction, modification and upkeep of works and installations
acquired rights 323
apportionment of costs 324, 344, 350, 357, 361
artificial reservoirs 309, 376
changes in rivers 388
choice of type of constructions 308 (*a*)
claims 391–400
consent 391–400, 406
conservation works 341, 346
construction by common agreement 346
construction of joint works 376
construction of works 309, 310, 314, 315, 321, 324, 326, 327, 337, 341, 342, 345–347, 350, 351, 357, 361 (*a*), (*c*), (*d*) and (*i*), 362, 366, 376, 380, 383, 388, 392, 400
damage—protection from, compensation for 312, 313, 315, 323, 361 (*c*), (*d*) and (*i*)
dams 309, 321–323, 341, 342, 347, 361 (*i*), 362, 376, 380, 400
disputes 354
drainage works 361 (*d*) and (*p*)
economic benefits to States 324
execution of works in the territory of another State 322, 335, 337, 349, 351, 362, 366, 377, 383, 414
execution of works—limitations 311, 314–316, 322, 323, 361 (*a*)
free passage of fish 309
free passage of water 309, 335, 337
hydro-electric power stations 315, 351, 376
hydrotechnical installations 335, 337
improvement works 361 (*d*)
international financing of works 357, 358, 361 (*n*); foot-notes 306, 310
irrigation canals 309, 315, 323, 324, 350, 357, 361 (*i*)
locks 323
mills 315, 317
necessary works 345
notification of data, on request 361 (*p*)
observation stations 308 (*b*), 319, 341, 342, 344, 345, 359 (*a*), 360 (*a*), 361 (*p*)
preservation of existing works 393
previous agreement 394
previous notice 314, 335, 337
prior notification of plans of work 361 (*p*)
prohibition 361 (*d*), (*h*) and (*i*)
protection of existing works 307, 315
protective works 313, 361 (*c*) and (*d*), 361, 388
public interest 361 (*e*)
pumps 316
recommendations of joint commissions 380
regulation works 314
repair works 314
requirements of the technique of water utilization 307
return by supplying power 351, 362, 366, 376, 383
right of access 330, 348, 381
sharing of works 350
special agreements 327, 345
storage works 327, 361 (*c*)
structures for collection of water 392
studies and projects 345, 346, 348
supervision of construction 323
supply canals 376
temporary constructions 311
waiver of right to construct works on adjacent territory 414
water gauges 326
works affecting another State materially 361 (*p*)
works for supplying water 330, 376; foot-note 290
works for the distribution of power 351
works influencing river flow 394
works of public interest 361 (*e*)
works to facilitate flow of water 388, 392
works to re-establish a canal 330
Custom
customary practice 361 (*j*)
respect for custom 304

Damage and injury
as a result of construction 312, 313, 315, 361 (*c*), (*d*) and (*i*)
as a result of obstruction of flow 361 (*f*)
compensation 312, 323, 389
deliberate damage 389
exemption from liability 361 (*h*)
inflicted by one State 389
material damage 312, 323, 361 (*c*), (*d*), (*f*) and (*i*), 389
protection from damage 312, 313, 315
to existing works 315
to the banks 389
to uses 361 (*b*)
Development of rivers
apportionment of costs 342, 377, 410
common interest in optimum development 361 (*p*)
consent 372
co-operation of States concerned 302–304, 343, 346, 361 (*p*), 363, 410; foot-note 282
development of resources 302, 303, 318, 329
execution of works 304, 364, 377; foot-note 289
facilities 343, 363, 377
hydraulic and geological studies 342
Indus Basin Development Fund 361 (*n*); foot-note 310
international financing of works 357, 358, 361 (*n*); foot-notes 306, 310
of use to several countries foot-note 282
planning 303, 318, 319, 342
protection of banks 388, 389
public utility of works—declaration 410
right of access 343, 363, 377
safeguarding of acquired interests and rights 304
studies and projects 303, 318, 319, 342, 362, 377, 410; foot-note 282
Diversion of water
execution of temporary works 311
placement of sites for detours 315
prohibition 361 (*g*), 401
Division of water
according to State needs 382
according to the recommendations of joint commissions 380
acquired rights 332
apportionment of water 325, 329, 331–333, 359 (*a*), 360 (*a*)
based on technical aspects 357
determination of water available 359 (*a*), 360 (*a*)
equal division 306, 324, 325, 328, 334, 336
equitable division 409
frontier rivers 306
guaranteed quantity 309
special agreements 327
stored waters 324
surplus waters 411
transition period 357
unequal division 326, 329
water measurement 326, 338
water of tributaries 334, 359 (*a*)
waters from a basin 357
Down-stream State 341
Drainage
administrative functions 371
hydraulic system 304
studies and projects foot-note 282
works 361 (*d*) and (*p*)
Facilities 343, 363, 377
Fishing
economic measures 397
equality of rights 416
exercise of fishing rights 317, 370, 397, 416
forbidden at night 317, 397
frontier waters 397
passage of fish through works 309
preservation and breeding of fish 397
prohibition of certain methods 397
prohibition of fishing near barrages 370
regulations 397
respect for existing rights, usages and customs 304
Fishing *(continued)*
special agreements 397
use of waters 317
Floods
exchange of information 391
flood control 341, 361 (*c*), 362, 391; foot-note 282
flows 361 (*h*), 392
hydraulic system 304
prohibition of works preventing the flow of flood waters 361 (*h*)
studies and projects foot-note 282
use of river channels for discharge of floods—previous notice—damage 361 (*h*)
works 313, 361 (*c*) and (*d*), 362, 388
Flow from rivers
determination 308 (*a*) and (*c*)
decrease 308 (*c*), 414
exchange of information 391
increase 410
maintenance 376
regulation 341
Flow of waters
artificial drainage 361 (*d*)
exchange of data 361 (*o*)
floods 361 (*h*)
improvement 361 (*a*)
natural drainage 361 (*d*)
obligation of a State to let waters flow through its territory 359 (*b*), 360 (*b*)
prevention of obstructions and damage 361 (*f*)
prohibition against increasing catchment area 361 (*d*)
prohibition against obstructing flow 390
public interest 361 (*e*)
sites for draining 315
temporary flow 310
use of river channels 361 (*g*) and (*h*)
works 388, 392
Frontier
demarcation of river frontier—low water mark, thalweg, *medium filum aquae* 408
disputes 403
hydraulic system 304, 356; foot-note 315
Frontier waters, use 317, 395, 397, 405, 407
Indus Basin Development Fund 361 (*n*); foot-note 310
Interested States 304
Interests
common interests 361 (*p*)
economic benefits 324
optimum development 361 (*p*)
respect for interests 386
safeguarding of interests 304, 312, 323, 346
Internal waters, rules governing 387
International bodies:
(see: Commissions)
Committee for Co-ordination of Investigations of the Lower Mekong Basin (Cambodia, Laos, Thailand and the Republic of Viet-Nam, 1957) 303; foot-note 283
Co-ordination Committee for the Kosi river (India–Nepal, 1954) 374
Joint Scientific Council of the Amur (People's Republic of China–USSR, 1956) 319 (*a*)
International conventions
source of rules recognized by States 361 (*r*)
International rivers
artificial change of the thalweg 314
artificial changing of direction 388, 405
change in river bed 388
change of flow in channel 361 (*b*), (*f*) and (*g*), 388; foot-note 315
frontier waters 305, 306, 317, 395, 405
lower basin 302
natural channel 359 (*a*) and (*b*), 361 (*f*) and (*g*)
river basin 356, 357, 358, 361 (*n*); foot-note 310
tributaries 334, 341, 342, 359 (*a*)
water flow 308 (*a*) and (*c*), 341, 376, 410, 414

International Bank for Reconstruction and Development 357, 358, 361 (*n*); foot-notes 306, 310
Law
customary international law 361 (*r*)
international law—general principles 387
municipal law 361 (*m*)
Losses of water 327
Measurement of water
construction of works 326
jointly 338
right of access 338
works 326
National legislation, internal waters 387
Operation of works
administrative functions 371
apportionment of costs 344
damage 361 (*i*)
existing works 361 (*i*), 371
irrigation works 344
observation stations 344
operation agreements 345
regulators 352
works for the production of hydro-electric power 344, 351, 365
Prescription
releases of water 359 (*c*)
uses of water 359 (*c*), 361 (*l*)
Previous agreement
execution of works 394
use of waters 304
water levels 394
Previous notice
discharge of flood waters 361 (*h*)
works 314, 335, 337
Policing of waters, regulation 340
Pollution
as a result of industrial waste 361 (*j*)
as a result of sewage 361 (*j*)
materially affecting uses 361 (*j*)
obligation to take reasonable measures to prevent pollution 361 (*j*)
protection from pollution 398
undue pollution 361 (*j*)
Public interest, works 361 (*e*)
Public utility, declaration 410
Release of water
enjoyment of waters released without acquiring rights 359 (*c*)
floods 361 (*h*)
prescription 359 (*c*)
rights to releases by another State 359 (*a*)
supervision 359 (*a*), 360 (*a*)
Regulating of water 314, 352, 365, 376
Return of water
transitional 359 (*c*)
use of returned waters 359 (*a*)
waters used for purposes other than those for which they were withdrawn 361 (*k*)
Right
of access 320 (*b*), 330, 332, 338, 343, 348, 363, 377, 381
to oversee 323
Rights
acquisition 359 (*c*), 361 (*h*), 367
private rights 361 (*m*), 367, 384
respect for rights 353, 367, 386
sovereign rights 353, 367
territorial rights 361 (*m*)
River systems
drainage 304
fixing of new frontiers—acquired rights 304; foot-note 289
internal waters 387
inundation 304
irrigation 304
special agreements 386
study of river systems 308 (*b*)
works 394
Settlement of disputes
ad hoc commissions 403
agreement between local authorities 400
appointment of arbitral tribunals 354, 373; foot-note 309
arbitral tribunals 354, 361 (*r*), 373, 385; foot-note 309
arbitration 304, 354, 361 (*r*), 373, 385
arbitration committees 385
composition of arbitral tribunals 361 (*r*), 385
disputes—differences 361 (*r*)
frontier commissioners 405
good offices 355, 358
law applicable by arbitral tribunals 361 (*r*)
mediation 361 (*r*)
negotiation 354, 355, 357
neutral experts foot-note 309
neutral technical commissions 355
permanent joint commissions 361 (*r*)
preliminary examination by joint commissions 361 (*r*)
preliminary technical fact-finding 355
procedure 355, 358, 361 (*r*)
settlement by agreement 361 (*r*)
technical experts 355, 357
treaties 356
Special agreement
division of water 327
preservation and breeding of fish 397
use of waters 386, 395
Statements:
Joint statement of the lower Mekong riparian countries (1957) foot-note 282
Storage of water
apportionment of stored waters 324
by a State foot-note 309
consent 372
construction of works 327, 361 (*c*) and (*d*), 380
floods 327
prohibition 360 (*c*)
utilization of stored waters 324
Technical assistance, surveys 320 (*c*)
Technical co-operation
arrangements 361 (*p*)
exchange of information 320 (*a*), 344, 358, 361 (*o*), 391
joint scientific councils 319 (*a*)
organization 358, 361 (*p*)
publication of research and survey results 320 (*d*)
technical assistance 320 (*c*)
Territorial sovereignty
exercise of administrative functions 371
respect for existing rights, usages and customs 304
sovereign rights 353, 367
territorial jurisdiction 353, 367
works—claims 400
Territory
execution of works 322, 335, 337, 349, 351, 362, 366, 376, 383, 414
Timber-floating
for local uses 407
frontier waters 407
prohibition of floating near barrages 369
Treaties
application and interpretation 354, 361 (*q*) and (*r*), 373, 377, 378, 405
breach 361 (*r*)
disputes 354, 361 (*r*), 373, 377, 378, 385, 405
extinction foot-note 309
formal arrangements 361 (*p*)
modification—outbreak of hostilities 358
preliminary negotiations 357
precedence of treaty rights over private rights 384
provisions 305, 321, 325, 341, 355–358, 375, 385
regulation and exercise of treaty rights and obligations 378
transitional arrangements foot-note 309

Uses of river waters:
Domestic uses
equal rights of utilization 415
flow of waters 359 (*b*), 360 (*b*)
use of water belonging to another State 361 (*k*)
use of waters 359 (*b*), 360 (*b*) 361 (*k*)
Hydro-electric power
administrative functions 371
apportionment of power generated—guaranteed minimum share of power 383
development 302; foot-note 282
hydro-electric power stations 315, 351, 376
international co-operation 302; foot-note 282
production 360 (*c*), 365
rates for power 366
royalty to be paid to the State in which the power is generated 368
sharing of power generated 366, 383
storage 360 (*c*)
studies and projects foot-note 282
supply 351, 362, 366, 376, 383; foot-note 309
use of waters 304, 360 (*b*), 365, 375
withdrawal of water 352
works 315, 341, 344, 345, 347, 351, 361, 365, 376
works for distribution 351
Industrial uses
equal rights of utilization 416
use of water belonging to another State 361 (*k*)
Irrigation
canals 309, 315, 323, 324, 350, 357, 361 (*i*)
equal rights of utilization 416
existing rights 412
flow of waters 359 (*b*), 360 (*b*)
hydraulic system 304
reduction of water supplies during periods of shortage—*pro rata* 350
studies and projects 410; foot-note 282
supply of water 361 (*a*)
use of waters 317, 359 (*b*), 360 (*b*), 361 (*k*), 375, 382, 416; foot-note 309
withdrawals of water 352, 365, 406, 410
works 309, 324, 335, 337, 341, 344, 345, 347, 350, 361 (*a*) and (*i*), 362, 376
Usage, respect for 304
Watering
existing rights 404
frontier rivers 396
use of waters 317, 396
watering points 317
Up-stream State 341
Utilization and use of river waters
acquired rights 323, 332, 412
additional uses 361 (*c*) and (*d*)
cancellation of prohibition of utilization of waters 413
consultations 399
determination of water available 359 (*a*), 361 (*k*)
disputes 339, 405
efficient use 375
equal rights of usage 402, 415, 416
exchange of data 361 (*o*)
floods 327
free use 395
frontier waters 317, 395, 405
international financing 361 (*n*); foot-note 310
international surveys 318, 319 (*b*)
limitations 359 (*a*)
meteorological conditions 335, 337
multi-purpose exploitation 318, 319 (*b*)
needs of inhabitants 333
non-consumptive use 359 (*b*), 360 (*b*), 361 (*b*)
not in accordance with treaty provisions—non-acquisition of rights 361 (*l*)
passage of waters through the territory of another State 329
passage of waters through works 309
prescription 359 (*c*), 361 (*l*)
Utilization and use of river waters *(continued)*
previous agreement 304
previous usage 304
quantity of water utilized—sharing of construction costs of works 324
return of waters used 361 (*k*)
right of access 332
rights of utilization 317, 366, 382, 396, 408, 415, 416
special agreements 395
stored waters 324
surplus waters 327
technique of utilization of waters 307
unrestricted use 359 (*a*) and (*c*), 360 (*a*)
use according to treaty 359 (*a*) and (*c*), 360 (*a*), 386, 416
use by a State foot-note 309
use during the day 317
use during the night 317
use not affecting the other State 361 (*b*)
use under the rules of frontier commissions 416
use without acquiring rights 359 (*c*), 361 (*l*)
use without reference to the fixing of the frontier 408
waters belonging to another State—return 361 (*k*)
waters superfluous to the needs of a State 382, 411
water the source of which is on the territory of another State 304
Water diversion or taking
acquired rights 352
authorizations 406, 407, 409
irrigation 352, 365, 406, 410
limitations 352
production of hydro-electric power 352
prohibition 413
reasonable quantities 412
requirements of a specific region 409
rights of withdrawal 365
status quo 413
transitional withdrawals of water 359 (*c*)
Water level
change—previous agreement 394
drop 308 (*c*)
exchange of information 391
maintenance 379
observation 344
optimum level 379
rise 309
Water supply 323, 330, 341 361 (*a*), 371, 376

CHAPTER V—EUROPE

Acquired rights
acquired damming rights 563 (*c*)
acquired fishing rights 454 (*a*), 554 (*a*), 634, 637, 638, 639, 931 (*a*), 965, 987, 1021
acquired mill rights 427
acquired water rights 427
claiming of acquired rights 891 (*a*) (i)
enjoyment 563 (*c*)
frontier changes 891
leases 892 (*a*)
legitimate possessors 637–639
national legislation 586, 891
of ancient standing 891 (*a*) (v)
official documents 891 (*a*) (i)
of operation of works 562 (*b*), 891 (*a*) (vi), 965
of timber-floating 965
of use of waters 465 (*a*), 586, 897, 929, 963; foot-note 718
of water diversion 638
proof 891 (*a*) (i), 931 (*a*)
recognition 891 (*a*) (i), 897
register 891 (*a*) (i)
renunciation—compensation 434
respect for acquired rights 454 (*a*), 465 (*a*), 539 (*a*), 554 (*a*), 570, 586, 634, 637–639, 865, 891, 902, 903 (*a*), 929, 931 (*a*), 933, 939, 963, 965, 987, 1012, 1021; foot-notes 671, 718
rights acquired by concession 89 (*a*) (v), 897

Acquired rights *(continued)*
to take water 903 (*a*), 933, 1012
transmission 891 (*a*) (i)
verification 902
works 639, 891, 929
Agreements between communes 888 (*a*)
Alpine pastures foot-note 608
Canals
administration 701; foot-note 546
alterations—prior agreement 702
apportionment of costs 497, 984 (*c*); foot-note 797
allocation of water 738
communicating canals 834
connected with boundary waters 556
connecting canals 807 (*a*)
construction 474, 484 (*a*), 485, 807 (*a*), 827, 829, 847, 940
correction of river courses 846, 847
derivation canals 807 (*a*), 812
development of rivers 807 (*a*), 846
diversion of water 649, 650, 652; foot-notes 624, 627
drainage canals 650, 651, 811 (*b*) and (*c*)
drainage—previous notice 790
expropriation foot-note 797
feeding of canals 484 (*a*), 649, 700, 736, 737, 1010
fishing 618, 834
flow 984 (*b*)
flow of water 493, 519, 647, 659, 701, 702, 970; foot-note 546
Grand Canal of Alsace 819; foot-notes 624, 627
irrigation 484 (*a*)
maintenance 496; foot-note 719
migration of fish 519
navigation 474, 484 (*a*), 819; foot-notes 546, 624
operation of works 495
ownership 959; foot-note 797
pollution 1009, 1010
removal of water 1012
timber-floating 519, 546
use of canals 497, 521, 701; foot-note 546
use of waters 959, 979
water level 1011
works 474, 536, 737, 770
Claims
change in water conditions 899
damage 560 (*c*), 562 (*c*), 603, 857 (*f*), 899, 910 (*c*) and (*e*)
diversion of water 903 (*a*)
timber-floating 903 (*a*)
under national laws 903 (*a*), 910 (*c*)
under treaty provisions 903 (*a*)
Cleaning of water courses 467 (*c*), 559 (*a*), 601, 770, 885 (*b*), 888 (*a*), 891 (*d*) (ii), 905, 911, 945 (*e*), 953, 973 (*a*)
Commissions
Central Rhine Navigation Commission (Belgium, France, Germany, Netherlands, Switzerland, United Kingdom, United States, 1816, 1870, 1919, 1934, 1937, 1945, 1950) 483, 484, 486, 488, 802, 820; foot-notes 360, 425, 626
Commission of the European Atomic Energy Community (Belgium, Federal Republic of Germany, France, Italy, Luxembourg, Netherlands, 1957) 464
Danube Commission (Austria, Bulgaria, Czechoslovakia, Hungary, Romania, Ukrainian SSR, USSR, Yugoslavia, 1948) 472 (*a*)
European and Riparian Danube Commissions foot-note 360
Frontier Water Commission (Denmark–Germany, 1922) 557, 558, 559 (*b*), 560 (*a*) and (*c*), 561 (*a*) and (*b*), 562 (*a*) and (*c*), 563 (*b*); foot-notes 482, 484
Inspection Commission (Germany–Netherlands, 1895) 771
International Administrative Commission of the Canal of Angoustrine and Llivia (France–Spain, 1868) 984
International Administrative Commission of the Puigcerdá Canal (France–Spain, 1868) 959, 960, 982
International Commission (Portugal–Spain, 1927) 691, 692
International Commission for the Protection of the Rhine Against Pollution (Federal Republic of Germany, France, Luxembourg, Netherlands, Switzerland, 1948) foot-note 383
Commissions (continued)
International Commission of Engineers (France–Spain, 1866) 902, 979; foot-note 706
Joint Commission (Finland–Sweden, 1927) 759, 762
Joint Commission (Italy–Yugoslavia, 1954) 714, 717, 719
Joint Committee (France, Spain, 1958) foot-note 699
Joint Committee of Engineers (France–Switzerland, 1926) 823, 824
Joint International Commission for the Regulation of the Rhine (Austria–Switzerland, 1892) 813
Joint Permanent Hydro-Economic Commission (Greece–Yugoslavia, 1959) 530, 531
Joint Supervisory Commission (Italy–Switzerland, 1955) 727
Joint Technical Commission (France–Federal Republic of Germany, 1956) 807 (*f*); foot-note 628
Joint Water Economy Commission (Albania–Yugoslavia, 1956) 500
Fishery Sub-Commission 501
Joint Water Economy Commission (Bulgaria–Yugoslavia, 1955) 517
Sub-Commission for the regularization of the Timok River foot-note 454
Joint Water Economy Commission (Hungary–Yugoslavia, 1955) 543
Mixed Commission (German Democratic Republic–Poland, 1952) 914
Mixed Commission for Fishing in the Danube (Bulgaria, Romania, USSR, Yugoslavia, 1958) 445 (*c*)
Mixed Commission to supervise the execution of the work at the Châtelot Falls on the Doubs (France–Switzerland, 1930) 676
Mixed Technical Commission (France–Switzerland, 1904) 615
Mixed Water Control Commission (Romania–Yugoslavia, 1955) 549, 551, 552, 553, 554
Permanent Boundary Waters Commission (Federal Republic of Germany–Netherlands, 1960) 916, 920–922
Permanent Joint Drava Commission (Austria–Yugoslavia, 1954) 698
Permanent Mixed Commission (Austria–Yugoslavia, 1954) 765, 767, 769
Permanent Mixed Commission (Hungary–Yugoslavia, 1957) 596 (*a*)
Permanent Water Commission (Austria–Hungary, 1956) 569, 570, 573, 579
Pyrénées Commission (France–Spain, 1856–1966) foot-note 703
Standing International Committee for the Protection of the Waters of Lake Constance (Austria, Baden-Württemberg, Bavaria, Switzerland, 1960) 437
Supervisory Committee (Italy–Switzerland, 1949) 793 (*c*)
Supervisory Technical Commission (France–Italy, 1947) 491 (*c*) (iii), 751
Supreme Frontier Water Commission (Denmark–Germany, 1922) 557, 558; foot-notes 482, 484
Tripartite Standing Committee on Polluted Waters (Belgium, France, Luxembourg, 1950) 424, 425; foot-note 374
Joint technical sub-committee for the Espierre 425; foot-note 374
Water-Economy Commission (Bulgaria–Yugoslavia, 1958) foot-note 670
Sub-Commission para. 864
Commissions
membership, functions and powers 437, 438, 445 (*c*) and (*d*), 464, 486, 488, 491 (*b*) and (*c*) (iii), 500, 517, 530, 540, 549, 551–554, 558, 559 (*b*), 560 (*a*) and (*c*), 551 (*a*) and (*b*), 562 (*a*) and (*c*), 563 (*b*), 569, 570, 573, 579, 615, 676, 691, 692, 697, 698, 714, 717, 719, 727, 751, 759, 762, 765, 767, 769, 771, 793 (*c*), 807 (*f*), 813, 823, 824, 864, 914, 920–922, 982 (*c*), 984 (*d*); foot-notes 374, 385, 429, 482, 484, 536, 699, 798
Companies:
Azienda elettrica municipale de Milan 849
Compagnie générale d'électricité de Paris 672
Consolidated Network Company (Austrian) 644, 645
Danube Power Plant and Jochenstein Joint Stock Company (Austro–German) 644, 645
Electroenergetshi Sistem Slovenije foot-note 537
Espierre Canal Company foot-notes 540, 542

Companies (continued)
International Company of the Moselle foot-note 410
Italian Edison Company 792
Italian electricity company foot-note 435
Italian Montecatini Company 849
Österreichische Elektrizitätswirtschafts A.G. foot-note 537
Rhätische Werke für Elektrizität 792
Rhine, Main and Danube Joint Stock Company (German) 644, 645
Service nationale d'électricité de France foot-notes 436, 624, 653
Société d'électricité et de traction de Bâle 672
Société électrique de l'Our 774, 775, 777, 779
Société française d'énergie électrique foot-note 435
Société hydro-électrique du Piémont 749
Société suisse de la centrale électrique de l'Engadine 849
Uprava Goriskih Vodovodov de Nova Gorica 712, 715, 717
Usines électriques de l'Engadine 849
activities 503, 506, 507, 510
arbitration 510
dissolution 504
establishment and organization 503, 504
Concessions
allocation of contracts by concessionaires—guarantees for the States 779
alteration 794 (*a*); foot-note 616
alteration of water flow conditions 899
alternate grant foot-note 616
applications 672, 792
approval 794 (*a*)
assurances on the granting of new concessions 804; foot-note 620
carrying out of concessionaire's activities—territorial competence of the State foot-note 639
cessation of operations 852 (*d*)
concessionaires 489, 850 (*b*), 851 (*a*); foot-note 430
concessionaires—change 825 (*b*)
concessionary companies 684, 774, 775, 779, 792, 824, 1006; foot-notes 624, 653
concessionary companies—constitution 684
concessionary companies—nationalizing foot-note 653
concessionary companies—taking over of controlling shares foot-note 653
concordance and close agreement of concessions granted by States foot-notes 616, 621
consortium of concessionaires 684
construction authorizations not to be considered concessions 624
construction, maintenance and operation of works 483, 585, 645, 675, 677, 749, 750, 774, 699, 793, 825 (*b*), 843, 850 (*c*), 851 (*b*), 852 (*a*), 1006; foot-notes 616, 652, 653, 699, 815
damage foot-note 530
deeds of concession 678, 774, 793 (*a*), 794 (*a*) and (*d*), 825, 891 (*a*) (i) and (*a*) (vi); foot-notes 614, 616, 621
deeds of concession—co-operation between Governments 845
deeds of concession—effectiveness 678
deeds of concession—notification 678, 852 (*b*); foot-note 616
deeds of concession—harmonization 852 (*b*)
development of rivers 489, 684, 792
drafts of concessions—delivery to the other State 485
effect in domestic law foot-note 621
effect of international law foot-note 621
entry into force 825 (*a*), 852 (*b*)
expiry 678, 794 (*c*), 825 (*b*), 845, 852 (*b*) and (*d*)
express concession 891 (*a*) (i)
facilities 794 (*d*)
falls 489, 672, 673; foot-note 625
fixing of time-limits for the execution of work 825 (*b*)
fishing 755, 931 (*b*); foot-note 696
forfeiture 678, 794 (*b*), 825 (*b*), 852 (*b*)
grant of concessions—conditions 489, 585, 678, 684, 755, 774, 794 (*a*) and (*b*), 802, 804, 821, 843, 845, 850 (*b*), 851 (*a*), 852 (*b*), 899, 931 (*b*), 1006, 1007; foot-notes 614, 616
grant of concessions for operation of the same plant to different concessionaires—control by the same financial group 843; foot-note 653
grant of concession to a concessionaire nominated by the other State 821
Concessions *(continued)*
grant of fresh leases 852 (*b*)
industrial use of water 585
international agreements foot-notes 614, 616
irrevocable concession 1006
limitation foot-note 616
maintenance of inflow and outflow of water in hydraulic installations 891 (*a*) (vi)
mills 483
national legislation 489, 852 (*b*); foot-notes 614, 652
negotiations before expiry 852 (*d*)
non-discrimination between concessionaires foot-note 529
obligation of a State with regard to concessions granted by another State 585
period 794 (*c*)
plans formulated by concessionaires—execution after approval by Governments or joint commissions 675, 794 (*a*), 843, 852 (*a*)
principal and supplementary concessions 850 (*b*)
principle of agreed action by the Governments concerned foot-note 529
prior agreement 675, 794 (*b*), 933
prior consent of States 905, 933
prior fact-finding procedure 899; foot-note 703
prohibition 483
prohibition of unilateral steps by a State regarding a concession foot-note 621
protection of general interests 677; foot-note 530
protection of the interests of States—participation in concessionary companies 775
recognition 891 (*a*) (i)
redemption 678, 825 (*b*)
renewal 678, 825 (*b*), 852 (*d*)
right of concessionaires to expropriate 851 (*e*)
right of reversion 852 (*d*)
rights acquired by concession 891 (*a*) (v), 897
sole concessionaire 680, 828; 673, 821; foot-note 639
transfer 794 (*a*); foot-note 621
use of alpine pastures foot-note 608
use of hydraulic power 672, 673, 792, 843, 849, 851 (*a*); foot-notes 621, 652
use of power produced by third Parties 750, 844
use of waters 489, 585, 815, 824, 849, 850 (*b*), 851 (*d*), 931 (*b*), 1006; foot-notes 614, 624, 639
valid 1006
validity foot-note 616
water level 793 (*a*)
water supply foot-note 815
withdrawal 794 (*a*), 852 (*b*); foot-notes 615, 621
Conferences:
Congress of Berlin (1885) foot-note 359
Congress of Rastatt (1797) foot-note 348
Congress of Vienna (1815) 419; foot-notes 359, 413
Construction, modification and upkeep of works and installations
accessory works 685
acquired rights 639, 891, 929
agricultural dams 808 (*b*)
allocation of contracts by concessionary companies—guarantees 779
alteration of works 801 (*b*), 991
alteration of works—previous consultation 902
alteration of works—prior agreement 702, 784, 890 (*d*), 1007
alteration of works—prior authorization 561 (*a*), 702, 784
amendment to international regulations 450
apportionment of costs of construction and upkeep 426, 428, 491 (*c*) (i), 492 (*c*), 497, 514, 553, 632, 726, 797, 808 (*b*), 811 (*a*), (*b*) and (*c*), 812, 829, 847, 848, 855 (*a*), 857 (*f*), 877, 891 (*a*) (iii) and (*b*) (i), 908 (*a*); foot-notes 410, 592, 611
authorizations 539 (*b*), 545, 561 (*a*), 624, 702, 808 (*b*), 829, 843, 852 (*a*)
bridges 958, 989
canalization works 474, 930
canals 474, 475, 484 (*a*), 485, 807 (*a*), 827, 829, 847, 940
care of works 704
cession of territory foot-note 826

Construction, modification and upkeep of works and installations *(continued)*
change in the frontier line 891 (*a*) (vi)
changes in the level and volume of waters—special agreements 951
characteristics of the works 890 (*a*), 993
collecting reservoirs 849, 850 (*c*), 851 (*a*)
collectors 849, 850 (*c*)
concessions 483, 585, 645, 675, 677, 774, 793, 825 (*b*), 843, 850 (*c*), 852 (*a*), 1006; foot-notes 616, 815
consolidation works 731
construction of works 421, 474, 476, 482, 484 (*a*) and (*b*), 485, 487, 494, 495, 505, 524 (*b*), 538, 545, 551, 552, 560 (*b*) and (*c*), 561 (*a*), 566, 568, 574, 577, 602 (*b*), 604 (*b*), 624, 627, 628, 639, 643, 645, 648, 669, 676, 685, 698, 700, 707, 728, 772, 784, 793, 801 (*a*) and (*b*), 805, 807 (*a*) and (*c*), 808 (*b*), 811, 812, 823, 824, 827, 829, 842, 843, 846, 847, 849, 850 (*c*), 851 (*b*), (*d*) and (*e*), 852 (*a*), 855 (*a*), 872, 876, 878, 887 (*a*), 891 (*a*) and (*b*), 901, 940, 982 (*b*), 989, 991, 993, 1005; foot-notes 616, 620, 624, 650
construction of works—prior agreement 513, 525 (*b*), 553, 602 (*b*), 868, 869, 881, 903 (*b*), 908 (*b*), 930, 945 (*g*), 969, 975, 978, 989, 991, 997, 1005, 1017
construction of works—prior notice 728, 731, 786; foot-note 562
construction of work—special permission 941
control works 536, 599, 600 (*d*), 668, 669, 731, 793 (*b*), 901, 931 (*b*), 975, 993
damage 520, 545 (*d*), 560 (*a*), (*b*) and (*c*), 689, 777, 787, 801 (*a*), 857 (*f*), 958, 1006
damming rights 563 (*c*)
dams 426, 428, 443, 447, 448, 450, 475, 485, 489, 559 (*a*), 582, 627, 628, 631, 643, 648, 685, 722, 784, 793 (*a*) and (*b*), 807 (*a*) and (*d*), 819, 820, 843, 851 (*b*) and (*d*), 872–876, 891 (*b*) (i); foot-notes 429, 507
development of administrative practices foot-note 616
dikes 669, 685, 731, 807 (*a*)
drainage works 648, 827, 891 (*b*) (iii)
dredging works 536, 538 (*b*) and (*c*)
electric lines 989
embankment works 801 (*a*)
engineering works 483, 495, 702
emergency works 731, 956
existing works 550, 581 (*a*), 602 (*a*), 730, 766, 908 (*a*), 945 (*g*), 962, 981, 1017
facilities 645, 685, 785, 805, 852 (*c*), 856, 875, 995, 1006; foot-notes 592, 620
fish hatcheries 625
fish hatchery 431 (*b*)
fisheries—establishment 624
fishing—damage 544
fishing—protection 931 (*b*)
fluviographs 559 (*a*)
flow of water 494, 600 (*b*), 648, 702, 793 (*b*), 851 (*d*), 890 (*a*), (*b*), (*c*), (*d*) and (*e*), 893, 1015, 1016
guarantees 545 (*g*), 749, 857
hydraulic works 426, 432, 443, 450, 559 (*a*), 731, 801 (*a*), 953, 989
hydro-electric power stations 447, 448, 450, 475, 476, 491, 505, 645, 673, 693, 696, 698, 707, 748, 750, 772, 784, 793 (*a*), 805, 807 (*a*), 819, 822, 843, 849, 855 (*a*), 857, 908 (*d*); foot-notes 412, 431, 434, 436, 437, 614, 616, 620, 621, 624, 650
hydro-technical works 889 (*a*), 945 (*g*), 955
illegal installations 561 (*a*)
improvement of works 550, 572, 749, 766, 955
improvement works 525 (*b*), 526, 536, 538 (*c*), 572, 629, 631, 669, 737, 770; foot-note 567
interest of third States 819, 820
international financing foot-note 410
joint works 881
legal status of the frontier sections of rivers 479
legitimate interests of the inhabitants 891 (*b*) (ii)
levelling bench-marks 770
locks 669, 807 (*a*), 890 (*a*), (*c*) and (*d*), 893
machinery 989
maintenance of works 496, 512, 515, 550, 572, 581 (*a*), 602 (*a*), 631, 677, 749, 766, 793 (*d*), 797, 807 (*d*), 812, 843, 848, 852, 876, 890 (*c*) and (*d*), 891 (*a*) (v), 908 (*a*), 945 (*g*), 955, 1017; foot-note 611
Construction, modification and upkeep of works and installations *(continued)*
maintenance of works—prior agreement 513, 538 (*d*), 908 (*d*)
maintenance of works—studies 730
maintenance works 525 (*b*), 526, 536, 538 (*e*), 557, 559, 572, 582, 730, 770, 885 (*a*), 888 (*a*), 891 (*b*) (iii)
marking boundaries between works according to their use 475
meteorological stations 660
mills 426, 483, 559 (*a*), 880, 940, 989
modification of the régime of rivers 443, 536, 539 (*b*), 542, 551, 563 (*b*), 582, 599 (*b*), 801 (*b*), 891 (*b*) (ii); foot-note 616
modification of the régime of rivers—negotiations 545 (*a*)
modification of the régime of rivers—prior agreement 513, 582, 602 (*a*), 885 (*a*), 908 (*a*), 997, 1015
modification of the régime of rivers—prior consultation 697, 698
modification of the régime of rivers—prohibition 740, 966, 969, 975
national legislation 545 (*b*), (*d*), (*f*), (*h*) and (*i*), 703, 851 (*d*), 901, 1007
new works 513, 551, 552, 600 (*b*), 602 (*b*)
obligation to permit the erection of subsidiary works 560 (*c*)
observation posts 731
ownership of installations—frontier line 645
passage of fish 639, 857 (*h*)
passage of water 887 (*a*)
permanent works 525 (*b*), 565 (*e*), 582, 728, 743, 846
plans 475, 582, 645, 675, 728, 731, 793 (*c*), 823, 829, 843, 847, 852 (*a*), 881, 908 (*c*), 991, 989, 992, 993
pollution 466 (*a*), 911, 1020
position of installations 784
preservation of the beauty of sites 474
prior fact-finding procedures 899; foot-note 703
prohibition against damaging the other State 801 (*a*)
prohibition against hindering communications 801 (*a*)
prohibition against obstructing the flow of water 599 (*b*), 945 (*c*), 983 (*b*), 1015
prohibition against prejudicing the use of waters 940
prohibition of changes prejudicial to neighbours 901
prohibition of works 421, 426, 469, 471, 483, 485, 520, 539 (*b*), 565 (*e*), 880
prohibition of works impeding navigation 421, 624, 625, 643, 974, 989
prohibition of works in certain zones 901, 980 (*a*); foot-note 704
prohibition of works in the absence of previous agreement 889 (*b*)
protection of fishing 432, 443
protective works 560 (*b*), 868, 891 (*b*) (iii), 930
public interest 561 (*a*)
public notification 561 (*a*)
public safety 1006
public utility of works 724, 897
rectification works 731, 846, 847, 991
regulation 432, 511, 556, 559 (*a*), 764, 945, 937, 941, 942, 953, 972, 992; foot-note 446
regulatory works 525 (*b*), 526, 536, 538 (*e*), 560 (*a*), (*b*) and (*c*), 574, 722, 723, 789, 793, 802, 803, 810, 813, 868, 869, 872, 876, 878, 891 (*b*) (iii), 983 (*c*), 984 (*b*), 991; foot-note 564
removal of works 421, 426, 967, 979 (*a*), 981, 991
removal of works—previous consultation 992
removal of works—prior agreement 602 (*a*), 945 (*g*)
repair works 901
reservoirs 627
right of access 485, 785, 807 (*c*), 891 (*a*) (iv), 956; foot-notes 592, 699
right of expropriation 851 (*e*), 1006
right of occupation of land 807 (*c*)
right of reversion 852 (*d*)
right of storage 785
right of support 785, 807 (*c*)
right to construct 784, 788, 855 (*a*)
right to maintain installations 788
right to use of materials 785
rights and obligations concerning the works 962
safeguarding the interests of States 498, 801 (*b*); foot-note 616
spillways 789, 793 (*b*)

Construction, modification and upkeep of works and installations *(continued)*
status of group of works foot-note 438
submersion of land 787, 793 (*c*)
supervision of the construction, upkeep, modification and removal of works 551, 552, 561 (*a*), 587, 645, 675, 676, 677, 734, 793 (*c*), 823, 824, 829, 832, 843, 847, 848, 852 (*a*), 853, 890 (*e*), 942; foot-note 699
supplementary agreement 784
suspension of works 421
temporary works 560 (*c*), 582, 604 (*b*), 945 (*f*)
timber-launching works 604 (*b*)
use of land 893
utility for interested private persons 545 (*c*)
water-wells 582
water rights granted for construction 506
works for purposes of navigation 474, 475, 645, 688, 802, 989; foot-note 564
works for the utilization of waters 539 (*c*)
works for timber-floating purposes 524 (*b*), 525 (*b*), 526, 604 (*b*), 788, 945 (*f*)
works for water intake 484 (*a*), 491 (*c*) (i), 738; foot-note 576
works interfering with utilization of water 940
works jointly constructed 553
works of construction 801 (*a*)
works providing the maximum safety 851 (*a*)
works required in the public interest 560 (*b*)
works serving common purposes 908 (*c*)
Custom
existing custom 939
regulations 559 (*a*)
rights based on tradition 987
usage 918, 939
use of waters 918
Damage and injury
appropriate compensation 857 (*f*); foot-note 643
as a result of alteration of river régimes 695–697
as a result of backing-up of water 695
as a result of the construction or modification of works 520, 545 (*h*), (*i*) (iii), 689, 728, 777, 787, 857 (*f*), 801 (*a*), 802, 829, 890 (*b*), 897, 909 (*b*), 940, 941, 958, 1006
as a result of culpable acts or negligence of persons having possession of rafts 910 (*d*)
as a result of the demarcation of river beds 980
as a result of the development of rivers 520, 545 (*d*), (*h*) and (*i*) (iii), 559 (*b*), 560 (*a*), (*b*) and (*c*), 802, 808 (*c*), 897
as a result of diversions of water 520, 695; foot-note 643
as a result of the establishment of fisheries 977
as a result of exceptions to treaty provisions 521
as a result of failure in communicating information on floods 603
as a result of floods 426, 603, 665, 721, 909 (*b*)
as a result of interference with the flow of rivers 520
as a result of irrigation works 561 (*b*)
as a result of negligence in construction or maintenance 1006
as a result of non-execution of certain measures 923
as a result of operation of works 521, 651 (*b*), 695, 696, 777, 787, 843, 857 (*f*), 990
as a result of regularization works 560 (*a*), (*b*) and (*c*), 720
as a result of regulation of the régime of waters 720
as a result of stoppage of work 735
as a result of supervision, maintenance and abandonment of works 545 (*i*) (iv)
as a result of the discharge of harmful substances 562 (*c*), 565 (*c*), 594
as a result of the upkeep of rivers 559 (*b*)
as a result of the use of waters 521, 561 (*a*) and (*b*), 695, 696, 917, 918, 944 (*d*)
as a result of timber-floating 755, 910 (*b*), (*c*); foot-note 586
as a result of unilateral withdrawal of concessions foot-note 621
as a result of violation of fishing regulations 745
as a result of violation of treaty provisions 924
claims 560 (*c*), 562 (*c*), 603, 857 (*f*), 899, 910 (*c*) and (*e*)
compensation 545 (*i*) (iii), 559 (*b*) and (*c*), 594, 599, 603, 720, 745, 777, 787, 802, 808 (*c*), 857 (*f*), 910 (*e*), 924, 944 (*d*), 958, 1006; foot-note 643
Damage and injury *(continued)*
compensation agreed upon beforehand 521
compensation—applicable legislation 545 (*d*)
compensation—determination of amount 560 (*c*), 562 (*c*), 910 (*e*); foot-note 643
compensation—exclusion 808 (*c*)
compensation for all damages 521
compensation—renunciation 695, 696
compensation—supply of power 545 (*e*)
compensation to companies foot-note 542
compensation to owners of land or water 521
compensation to third parties 857 (*f*)
damage attributable to a State 1006
deliberate damage 599
determination 745
equitable compensation 808 (*c*)
full compensation 560 (*c*)
future damage 696
legitimate compensation 897
liability of persons having possession of rafts 910 (*d*)
material damage 599, 944 (*d*)
national legislation 910 (*c*) and (*d*), 958
no compensation payable 890 (*b*)
obligation to tolerate damage 545 (*i*) (iii); foot-note 530
possible damage 808 (*c*)
prevention 545 (*d*), 728, 755, 843, 972, 980, 990, 1019
prohibition 520, 565 (*c*), 917, 918, 921, 923
reduction 777
responsibility 599
responsibility towards nationals 720
serious damage 910 (*e*); foot-notes 530, 643
settlement of questions by negotiation 829
substantial damage 917, 918, 921–923
to communications 801 (*a*)
to crops 808 (*c*)
to fishing 521, 545 (*h*) (i), 562 (*c*), 565 (*c*), 594, 755
to land abutting on rivers 561 (*b*), 562 (*c*)
to land and works 560 (*b*)
to power stations 843
to riparians 980
to rivers 958
to the bank belonging to the other State 728, 801 (*a*)
to the banks of rivers 599, 977
to the cleaning works 562 (*c*)
to the interests of the other State 545 (*e*), 689, 787, 923
to the land belonging to the other State 520, 890 (*b*)
to the movement of fish 545 (*h*) (i)
to the neighbouring State 917
to the property of the other State 527
to the public interest 940, 941; foot-notes 530, 643
to the territory of the other State 787, 889 (*b*), 890 (*a*), 891 (*a*) (v), 924
to the utilization of water 897, 940, 941
to the works of the other State 689
to third parties 561 (*a*), 857 (*f*), 910 (*c*)
to timber-floating 545 (*h*) (i), 910 (*d*), 990
unavoidable damage 787
unforeseen damage 787
Development of rivers
adjoining riparian State foot-note 703
agronomic studies 662
apportionment of costs 429, 531, 537, 538 (*a*), (*d*) and (*e*), 559 (*b*) and (*c*), 560 (*d*), 574, 575, 582, 632, 671, 720, 737, 797, 802, 807 (*b*), 869, 888 (*a*), 890 (*b*), 1016; foot-note 567
a river as a physical unit calling for a single set of regulations foot-note 700
by one State 807 (*b*)
canalizations 474, 475, 807 (*a*), 846
change in water flow conditions—prior notice 482, 657, 697, 698, 899
choice of methods 807 (*a*); foot-note 624
concessions 489, 684, 792
co-operation of States 530; foot-notes 468, 616

Development of rivers *(continued)*
damage—compensation 520, 545 (*d*) and (*h*) (i) and (iii), 559 (*b*), 560 (*a*), (*b*) and (*c*), 802, 808 (*c*), 897
development foot-note 718
development of administrative practices foot-note 616
development of lakes as reservoirs 664; foot-note 576
effects on third States 819, 820
elimination of dead river reaches foot-note 627
establishment of "reserved flow" by treaty 807 (*e*), 857 (*b*)
exchange of information 868
execution and control of works 441, 443, 472 (*b*), 474, 475, 482, 484–487, 498, 524 (*b*), 525 (*b*), 526, 536, 538, 545, 548, 559 (*a*) and (*c*), 560 (*a*), 568, 569, 572–574, 576, 582, 629, 631, 648, 649, 669, 670, 675, 676, 686, 688, 689, 703, 723, 730, 731, 734, 737, 738, 770, 786, 793 (*c*), 797, 799, 801 (*a*), 802, 803, 813, 824, 832, 846–848, 868, 869, 885 (*b*), 888 (*a*), 889 (*a*) and (*b*), 891 (*b*) (iii), 897, 901, 945 (*d*) and (*e*), 976, 978, 980 (*b*), 1016
execution of works—preliminary consultation 730, 786, 823, 980 (*b*)
expropriation 687
extraction of sand 815
facilities 532, 541, 630, 685, 723, 734, 976; foot-note 447
fact-finding procedure 899; foot-note 703
frontier-line questions 865; foot-note 671
good neighbours foot-note 507
guarantees 490, 545 (*g*), 749
hydraulic observation 731
hydro-economic studies 658
hydrological studies 660
improvement foot-note 719
in accordance with existing legislation 799
in accordance with requirements of communications 799
in accordance with resolutions of international commissions 820; foot-note 626
industrial development of a river area foot-note 507
interests of third States 689
international agreement 792
international financing of works foot-note 410
in the interest of bordering States 673
legal status of rivers 479
levelling of the river bed 873
liability for upkeep 559 (*b*)
mapping 731
measurement of rate of flow of water 731
modification of river conditions 498, 536, 545 (*h*) (i), 568, 891 (*b*) (ii)
modification of water conditions—preliminary agreement 582, 885 (*a*), 889 (*b*), 908 (*a*), 930
most beneficial development 807 (*b*), 843
objections to certain measures 922
obligations 749
obligation to proceed by agreement 498
participation or supervision of international commissions 484–486, 488, 530, 531, 561 (*a*), 676, 679, 793 (*c*), 813, 820, 922; foot-notes 624, 626
payment of compensation 807 (*a*)
pedological studies 661
preliminary investigation 560 (*a*)
preliminary negotiations of commissions 870
preservation of the scenic beauty of sites 474
principle of agreed action foot-note 529
principle of highest return foot-note 507
prior agreement 538 (*d*), 545 (*h*) (i), 553, 568, 675, 930, 989
prior consent 905
prior notice 899
prior visit to the site 899
prohibition of execution of works by third States 869
prohibition or suspension of certain measures 520, 867, 923
protection from alluvial deposits 664
protection of river beds and banks 599, 600 (*d*), 857 (*d*), 905, 944 (*c*), 945 (*d*), 950, 973 (*a*), 1014
re-establishment of natural contours of waters 807 (*e*)
regulating of falls 672, 842
regulating of hydraulic power 672, 673, 679, 684, 792, 807, 819, 842, 843, 849; foot-note 624
Development of rivers *(continued)*
regulation 518, 555; foot-notes 417, 453
regulations 559 (*a*)
removal of plants foot-note 719
right of access 492, 539, 814 (*c*), 877
right of support 492, 496, 814 (*c*)
right to occupy lands 807 (*c*)
safeguarding of communications 801 (*a*)
safeguarding of interests of States 689, 801 (*a*) and (*b*); foot-note 616
safeguarding of navigation 799, 802, 807 (*a*), 985; foot-note 651
servitude for construction of works 560 (*c*)
servitudes—establishment 687
Special River Administrations 472 (*b*)
studies and projects 475, 482, 485, 488, 491 (*b*), 530, 537, 548, 573, 582, 664, 665, 670, 679, 689, 721, 723, 731, 792, 793 (*c*), 802, 807 (*f*), 810, 830, 831, 842, 843, 863, 868, 962; foot-note 669
studies of subterranean waters 660
system of "dams plus power-plants" 807 (*a*)
system of "navigable derivation canals" 807 (*a*)
territorially competent State foot-note 703
undertakings not affecting the utilization of water 545 (*h*) (ii)
upkeep 467 (*c*), 498, 512, 548, 550, 559 (*a*), (*b*) and (*c*), 560 (*a*), 599, 600 (*d*), 730, 770, 802, 879, 885 (*b*), 888 (*a*), 891 (*b*) (iii), 905, 932, 942 (*a*), 973 (*a*); foot-note 719
zones of development for exclusive utilization 680–682
Diversion of water
acceptance foot-note 507
acquired rights 638
amendment of schemes as recommended by international commissions 488
authorizations 581 (*a*) and (*c*), 967, 980 (*c*), 983 (*c*); foot-note 718
canals 649, 650, 652; foot-notes 624, 627
compensation to be paid by the down-stream State 709
concessions 850 (*b*)
consent of the State 708, 850 (*a*)
damage 520, 695; foot-note 643
determination of quantities of water to be diverted 491 (*c*) (1)
drought 650
fishing interests 638, 732
from one river basin to another 477, 481, 545 (*a*)
from international rivers into national rivers 792
guarantees 581 (*d*)
indemnities to interested parties foot-note 643
irrigation 581 (*d*)
natural courses of rivers 739
navigation 652
new diversions 983 (*c*)
penalties for violations 942 (*b*)
prevention of water pollution 1020
plans 792
prior agreement 466 (*b*), 467 (*b*), 683
production of hydro-electric power 707, 709, 712, 819, 850; foot-notes 576, 624, 643
prohibition 477, 485, 520, 683, 739
prohibition of arbitrary diversions 467 (*a*)
prohibition of certain methods 650
prohibition of diversions for fishing purposes 565 (*c*)
plans for alteration of river régimes—prior consultation 697
public health 683
re-establishment of the natural contours of a river 807 (*e*)
regulations 764, 942 (*b*)
relinquishment foot-note 507
reserved flow 807 (*e*)
river basin 693
safeguarding of the other State's interests 918
special purposes 683
specification in a treaty of the quantity diverted 850 (*c*)
surplus water 647, 649, 651
system of reciprocal compensation 627
water not belonging to the State that diverts it 967
Division of water
additional quantity of water—allocation to the State that bears the cost of new installations 891 (*b*) (i)

Division of water *(continued)*
additional quantity of water—previous agreement 492 (*c*)
agricultural requirements 561 (*b*), 738, 898, 982 (*a*), 983 (*a*), 984 (*a*); foot-note 702
arrangements 891 (*b*) (i)
by agreement between the States concerned 981; foot-note 715
canals 738
condominium 680; foot-note 616
continuous diversion 982 (*a*)
criteria 584
division of river waters by sections 783
domestic requirements 983 (*a*), 984 (*a*)
equal division 539 (*a*), 561 (*b*), 570, 891 (*b*) (i), 967; foot-note 507
equitable division 782; foot-note 507
exclusive allocation 807 (*d*), 842
falls 584
general interest foot-note 702
half of the natural water yield 539 (*a*), 570
half of the volume of running water at the time when the water is lowest 967
industrial requirements foot-note 507
in proportion to the area of irrigable fields 898, 902; foot-note 702
in proportion to the extent of the respective banks foot-note 702
in the case of a water shortage 982 (*a*)
low-water level 898
median line of the stream 938; foot-note 700
most rational utilization foot-note 507
principle of rotation of days and hours 960, 982 (*a*), 983 (*a*), 984 (*a*)
prior agreement 561 (*b*)
prohibition against decreasing the natural water flow 570
quantity of water available 898, 902
quantity of water customarily supplied 492 (*c*), 713
quantity of water determined by treaty 713, 738
quantity of water necessary 902, 967
reduction in the amount of water available due to natural causes 492 (*c*), 715, 982 (*a*); foot-note 553
respect for acquired rights 539 (*a*), 570, 865; foot-note 671
return of waters 584
right of pre-emption foot-note 654
rights of the users of the States concerned 981
safeguarding of interests of the relinquishing State foot-note 507
safeguarding of private rights foot-note 507
section established according to the slope of the river channel foot-note 507
special legal claims foot-note 507
States which are users foot-note 702
system of reciprocal concessions 627
unequal division—consent of proprietors and usufructuaries on the opposite bank 561 (*b*)
view of river as a unit foot-note 700
Drainage
aqueducts 957; foot-note 754
artificial drainage 650
by owners of land 883
canals 650, 651
drainage of lands 563 (*a*), 883
drainage systems foot-note 718
flow of water 957
from the territory of one State in the direction of the territory of another State 957; foot-note 755
frontier 668
participation of Land Drainage Boards 883
prevention of floods 647, 918
prevention of over-flooding 647, 918
prohibition against obstructing 957; foot-note 754
regulations 511, 548, 668; foot-note 446
safeguarding of the other State's interests 918
sewers 883
surplus water 648
underground drains 883
use of jointly-owned rivers 957
works 648, 827, 891 (*b*) (iii)
Equality of treatment 417, 420, 523, 546, 894; foot-note 348
Expropriations 526, 687, 724, 807 (*c*), 851 (*e*), 1006; foot-note 797
Extraction of sand
execution of works 538 (*c*)
previous agreement 767
previous permission 913
protective works 976
safeguarding of the other State's interests 918
special agreements 815
Facilities
application of treaties 580
concession 794 (*d*)
development of rivers 532, 541, 630, 685, 723, 734, 976; foot-note 447
fishing 619, 640
for navigation 484
hydro-electric power 778, 853; foot-note 516
operation of works 856, 1006
regulating of rivers 875
river commissions 765
timber-floating 761
transmission of power 778
use of waters 852 (*c*); foot-note 516
works 630, 645, 677, 685, 723, 785, 805, 852 (*c*), 856, 875, 995, 1006; foot-notes 592, 620
Fishing
acquired rights to the use of fishing devices 454 (*a*)
agreement with a State which is not a party to a treaty foot-note 394
agreements 931 (*d*); foot-note 381
apportionment of costs foot-note 582
artificial fish-breeding 431 (*b*), 445 (*b*), 453, 454 (*c*), 455, 565 (*a*), 612, 640, 758, 837, 892 (*e*); foot-note 391
association of lessees 756
authorizations 608, 624, 836, 838
awarding of rights 906, 977
bilateral agreements—limitations 446
biological measures 501
canalization for purposes of navigation 474
canals 519, 618, 834
catches of fish—information 445 (*a*)
commissions 840
concessions 755, 931 (*b*); foot-note 696
contraventions foot-note 696
control 501, 615, 616, 728, 745; foot-note 582
damage—compensation 521, 545 (*h*) (i), 562 (*c*), 565 (*d*), 594, 745, 755, 977
delimitation of fishing zones 522, 859, 860, 861
destruction of harmful animals 931 (*d*)
development—co-ordination of plans 596 (*d*)
development of rivers 441, 443
distance to be maintained by fishing works 431 (*c*), 459 (*c*)
diversions of water 563 (*c*), 638, 732
division 754, 861 (*c*), 906
division of frontier waters into fishing districts 596 (*b*), 973 (*b*), 999
employee-fishermen 835
exemption of fishery products from duty 620
exercise of right of fishing 470, 459, 522, 590, 605 (*a*), 608, 617, 618, 633, 634, 741, 742, 752, 834, 835, 859, 894, 906, 912, 944 (*g*), 945 (*h*), 948, 971, 973 (*b*), 999; foot-notes 516, 694, 696
exchange of scientific information 596 (*c*)
exclusive right of fishing 618, 633
facilities 619, 640
financing of fishing by timber-floating associations 758
fish hatcheries 431 (*b*), 640, 758
fisheries 421, 501, 522, 755, 892 (*a*), 894, 940, 977; foot-notes 394, 579
fishermen's books—entries 835
fishery commissioners or inspectors 642 (*b*), 840, 861 (*a*)
fishery guards 840
fishery leases 755, 892 (*a*) and (*b*)
fishery permits 565 (*a*) and (*g*), 596 (*b*), 608, 634, 743, 755, 861 (*a*) and (*b*), 931 (*a*); foot-note 696
fishing permits for nationals of non-riparian States 861 (*b*)
fishing permits—withdrawal 610

Fishing *(continued)*
fixed installations 728
force majeure 459 (*d*)
hydrobiology 443, 445 (*b*)
identity cards 835
improvement 642 (*b*), 758
independent fishermen 835
innovations in fishing tackle—prior authorization 836
international regulations 439, 445 (*c*), 446; foot-notes 387, 391
introduction of new species of fish—prior agreement 433, 462, 614, 641, 839; foot-note 387
joint experimental fishing operations 445 (*d*)
leasing 755, 756, 759
levy of taxes 758
levy of taxes on timber-floating for preserving fish stocks 762
migratory fish 458
migratory movements of fish 443, 445 (*a*)
national legislation 508, 590, 634, 756, 860, 862, 892 (*c*)
nets foot-note 647
parallel regulations 859, 860
passage and circulation of fish 454 (*a*), 519, 639, 732, 857 (*h*), 892 (*d*)
polders 890
policing 456, 565 (*h*), 616, 626, 746, 834, 840, 861 (*a*), 971, 988, 999, 1021
preliminary agreements 445 (*d*), 931 (*d*), 977
present exploitation 663
previous notice 433, 637, 860
principle of reciprocity and equality 894
private fishing rights 633, 634, 637, 755, 841, 987
prohibition 608
prohibition against draining watercourses 637
prohibition against fishing close to dams 608, 635
prohibition against fishing for certain species 944 (*g*), 945 (*h*)
prohibition against fishing immediately off the shore of the other State 742
prohibition against hindering the flow of water 565 (*e*), 889 (*c*)
prohibition against interfering with navigation 565 (*f*), 624, 625, 912
prohibition against polluting waters containing fish 460
prohibition of certain methods 431 (*a*), 459 (*a*), 520, 522, 565 (*c*), 595, 605 (*a*), 609, 623, 635, 744, 834, 892 (*d*), 912, 931 (*c*), 944 (*g*), 945 (*h*), 948; foot-notes 387, 647
prohibition of certain tackle and gear 431 (*b*), 454 (*a*), 458, 459 (*b*), 522, 565 (*e*), 595, 609, 610, 623, 635, 744, 834, 892 (*d*); foot-notes 387, 394, 647
prohibition of fishing during certain periods—exceptions 431 (*d*) and (*e*), 454 (*c*), 459 (*d*), 565 (*b*), 593, 612, 621, 635, 744, 837, 892, 944 (*g*), 945 (*h*); foot-notes 387, 394, 647
prohibition of fishing during dry periods 608
prohibition of fishing in certain zones 635, 753
prohibition of fishing when water level is lowered 608
prohibition of night fishing 431 (*a*), 459 (*a*), 565 (*c*), 605 (*c*), 609, 834, 892 (*d*), 912, 944 (*g*), 945 (*h*)
prohibition of sale of fish the capture of which is prohibited 431 (*d*), 455, 459 (*d*), 612
protection against damage resulting from timber-floating 755
protection and breeding of fish 430, 432, 439, 441, 442, 443, 453, 454 (*c*), 455, 501, 522, 544, 565 (*b*) and (*e*), 592, 605 (*b*), 613, 625, 633, 663, 710, 762, 834, 931 (*b*), 944 (*g*), 945 (*d*), 948, 999; foot-notes 391, 465, 696
protection and breeding of fish—special agreement 605 (*b*)
protection of oyster beds 621
protection of salmon spawning 454 (*c*), 455, 456, 564, 565 (*b*), 710, 753; foot-note 487
protection of trout 430
protection of waters against pollution 444, 562 (*c*), 565 (*d*), 613, 636, 911
public auctioning 755
rational utilization 439, 445 (*a*)
régime of frontier fishing areas 859, 860, 861
registry of permanent installations 743
registry of vessels 743
Fishing *(continued)*
regulation 420, 501, 508, 522, 530, 543, 564, 565 (*b*), 567, 589, 605 (*a*), 607, 633, 741, 742, 834, 859, 892 (*b*), 894, 906, 953, 971, 988, 999, 1021; foot-notes 446, 487, 726
regulation of fishing in national tributaries of international rivers 862
regulations 430, 456, 463, 596 (*e*), 642 (*a*), 663, 732, 745, 747, 834, 841; foot-note 579
removal of hindrances to timber-floating 757
requirements 474
respect for acquired rights 454 (*a*), 554 (*a*), 634, 637–639, 931 (*a*), 965, 987, 1021
right of access 1028
right of first occupant 842
right of fishing 421, 440, 453, 454 (*a*), 508, 563 (*a*), 565 (*d*), 634, 835, 892 (*e*), 931 (*b*), 1018
right of pursuit 460
right to sell catches of fish 1028
rights based on documents 994
rights based on tradition 994
safeguarding of fishing interests 432, 434, 456, 463, 545, 565 (*a*) and (*e*), 612, 615, 638, 753, 759, 931 (*b*)
scientific research 431 (*e*), 445 (*d*), 565 (*a*), 838
scientific research—authorization 640
shellfish 622, 624
shellfish—artificial beds foot-note 696
situations authorizing temporary complete prohibition of fishing 461
size of fish which may be taken—exceptions 431 (*e*), 459 (*d*), 565 (*a*), 593, 611, 622, 635, 834, 892 (*c*); foot-notes 387, 647
sovereignty over fishing—demarcation 889 (*d*), 892 (*b*)
special agreements 841, 892 (*d*), 944 (*g*), 945 (*h*), 948
stations for artificial fish breeding 442
studies 663
technical co-operation 434, 445, 457, 458, 596 (*d*) and (*e*), 759, 892 (*e*), 931 (*d*)
technical questions 501, 931 (*d*)
vessels 618, 743, 746; foot-note 696
vessels—*quebrados* or *cabrados* 744
works 441, 443, 544, 545, 624, 635, 639, 710, 728, 857 (*h*), 892 (*d*), 931 (*b*)
Floods
building of dikes 668
damage 426, 603, 665, 721, 909 (*b*)
damaging overflow 562 (*c*), 647
drainage 647, 918
exchange of information concerning danger from flooding 499, 516, 533, 578, 603 768, 944 (*e*), 952, 998, 1019
flood control 499, 500, 516, 533, 548, 554, 578, 603, 647, 653, 669, 721, 765, 770, 789, 796, 843, 893, 909 (*a*) and (*b*), 918, 944 (*e*), 953, 956; foot-notes 446, 473, 694, 718
flow of water 426, 796, 851 (*d*), 890 (*d*), 893, 970, 997
joint action when a dike bursts 909 (*a*)
joint action with respect to the formation of ice barriers 909 (*b*)
major flooding 843
natural phenomena 993
operation of works 789, 843
ordinary high-water level 901
prohibition of unilateral activity which may adversely affect the territory of the other Party 867
protective works 536, 599, 600 (*d*), 668, 669, 731, 793 (*b*), 901, 931 (*b*), 975, 993
rectification and canalization 846
regulating 810, 866, 868
regulatory works 515, 525 (*b*), 526, 536, 538 (*e*), 560 (*a*), (*b*) and (*c*), 574, 722, 723, 789, 793 (*b*), 802, 803, 810, 813, 868, 869, 872, 876, 878, 891 (*b*) (iii), 983 (*c*), 984 (*b*), 991; foot-note 564
safeguarding of the other State's interests 925
sharing of cost of flood control 916
works 797, 810, 843, 851 (*d*), 868, 891 (*b*) (iii), 901, 909 (*b*), 993, 997
Flow from rivers
canals 984 (*b*)
collection foot-note 607
decrease 983 (*c*)

Flow from rivers *(continued)*
diversion 807 (*e*)
exchange of information 491 (*c*) (i), 542, 944 (*e*), 951 (*e*), 952, 959, 1019, 1026
harnessing 851 (*a*)
increase foot-note 576
international regulations foot-note 391
maintaining 887 (*a*), 911
measurement 660, 983 (*c*), 984 (*b*); foot-note 699
natural flow 570, 911; foot-note 607
prohibition of interference 520
reserved flow—determination by treaty 807 (*e*), 857 (*b*)
Flow of water
arrangements 888 (*b*)
canals 499, 519, 547, 659, 702, 970
conditions 890 (*a*)
discharge canals 890 (*b*)
discharge coefficient 667
drainage 647, 883, 957
drainage area 545 (*a*), 658, 662, 667
drainage of canals, previous notice—*force majeure* 790
dues 493
exchange of information 667
flow 448, 694
flow capacity 889 (*d*)
frontier changes 891 (*a*) (vi)
inland waters 811 (*c*), 888 (*b*)
inland waters (*Binnenwasser*) 888 (*b*)
inspection and regulation 448, 493, 655, 890 (*e*)
international regulations 448; foot-note 391
locks 890 (*a*), (*c*) and (*d*), 893, 970
maintenance during low-water periods 627
measures to improve the discharge of water 552, 811 (*c*)
modification to works—prior agreement 890 (*d*), 997
national legislation 563 (*a*)
natural flow 600 (*a*) and (*b*), 708, 851 (*c*), 900 (*a*), 945 (*c*), (*d*) and (*e*), 1015
obligation to allow for flow 519
operation of works 647, 677, 694, 970
prevention of flooding 426, 668, 796, 851 (*d*), 890 (*d*), 893, 970, 997
prevention of variations 843
previous consent 903 (*b*)
prohibition against altering the flow of water 600 (*b*)
prohibition against interfering with the flow of water to the lower reaches 900 (*a*)
prohibition against obstructing the flow of water 565 (*e*), 732, 887 (*a*), 889 (*c*), 945 (*c*) and (*e*), 1015, 1016
prohibition against prejudicing riparian proprietors up-stream 900 (*a*)
prohibition against prejudicing the defence of boundaries 893
prohibition against prejudicing users down-stream 983 (*b*), 984 (*d*)
prohibition of damage 888 (*b*), 889 (*b*) and (*c*), 997
prohibition of damage to adjoining territory, 890 (*a*)
raising of land 890 (*b*)
regulation 548, 647, 694, 736, 738, 893; foot-note 694
regularization 600 (*c*), 694, 814
removal of obstacles 600 (*a*), 648, 733, 900 (*b*), 945 (*d*), 957
servitudes attached to the lower reaches 900 (*a*)
servitudes on a private footing 687
studies and plans 658
supply to collecting reservoirs 851 (*c*)
through a former river bed 814
through canals 493, 499, 519, 647, 659, 701, 702, 970; foot-note 546
through streams 790
through the territory of another State foot-note 567
treaties 423
upkeep of rivers with outlets on the other side of the frontier 563 (*a*)
upkeep of works 890 (*c*)
works 494, 600 (*b*), 648, 702, 793 (*b*), 851 (*d*), 890 (*a*), (*b*), (*c*), (*d*) and (*e*), 893, 1015, 1016
Force majeure 459 (*d*), 790
Frontier
change 468, 792, 965; foot-note 606
demarcation of the frontier 904, 963; foot-notes 699, 700, 705
Frontier *(continued)*
frontier relations foot-note 703
frontier zone 668, 859, 860, 861
joint sovereignty over sectors of rivers forming frontiers 932; foot-note 787
limit of the bank 965
median line of rivers 961; foot-note 700
median line of watercourses 467 (*c*), 679
middle of the river 967
readjustment—acquired rights 891
rectification foot-note 655
regulating of rivers 865; foot-note 671
rivers free to both riparians foot-note 785
safeguarding of the integrity of the frontier line 980
thalweg 740, 963, 977
use of waters 679, 961, 963, 967
General principles
of international law 927
of law 994
Inland waters 552, 811 (*c*), 814, 888 (*b*)
Interests
agricultural interests 793 (*c*); foot-note 817
apportionment of costs 538 (*e*)
common interests 531, 941
community of interests 801; foot-note 621
diversions of water 683, 918
division of water foot-note 702
fishing 432, 434, 443, 612, 615, 638, 732, 759, 931 (*b*)
general interests 677; foot-notes 530, 702
hydro-electric power 803, 804
injury to interests—compensation 545 (*e*), 689, 787, 940, 941; foot-notes 530, 643
major interests 849
mutual interests 919
national interests 421, 805
navigation 803, 804, 989
operation of works 495, 538 (*e*)
of third States 819, 820
pollution 436
procedure to safeguard all interests 899
reciprocal interests 534
reconciliation 525 (*a*), 526
relinquishment foot-note 507
respect for interests 944 (*d*), 945 (*b*), 946, 1013
safeguarding 432, 434, 436, 456, 463, 498, 501 (*b*), 509, 531, 545, 561 (*a*), 565 (*a*) and (*e*), 572, 580, 598, 612, 615, 638, 677, 679, 689, 753, 759, 775, 788, 794 (*c*), 801 (*a*) and (*b*), 804, 891 (*a*) (v), 917, 918, 931 (*b*), 940, 941, 989; foot-notes 507, 530, 616, 817
serious injury to interests 923
special interests 683
timber-floating 525 (*a*), 526, 759, 788, 800 (*a*)
treaties—application 534
works—execution 561 (*a*), 689, 819, 820, 891 (*b*) (ii)
Interests of nationals
interests of the riparians 941
legitimate interests 891 (*b*) (ii); foot-note 507
restrictions required by the public interest 994
International rivers
administration of rivers 420
artificial watercourses foot-note 445
banks 486, 599, 685, 726, 731, 801, 819, 857 (*d*), 977; foot-note 704
bed 484, 486, 498, 512, 539 (*b*), 548, 550, 600 (*a*), 627, 635, 685, 731, 767, 811 (*b*), 814–816, 857 (*d*), 873, 889 (*b*), 891 (*b*) (iii), 902, 911, 945 (*d*) and (*e*), 953, 969, 973 (*a*), 979, 980, 1014, 1020; foot-notes 507, 700
change in course or bed 600, 885 (*a*), 945 (*d*), 953, 966, 969, 975, 1014
common waters 934
contiguous rivers 421, 467, 503, 519, 523, 536, 544, 679, 760, 767, 881, 885, 889, 891, 892, 896, 901, 905, 911, 935, 937, 944 (*c*), 945 (*f*), 947, 950, 962, 966, 968, 969, 973 (*a*), 996, 1014; foot-note 394
depth 582
drainage area 658, 662, 667

International rivers *(continued)*
economic annexation of a frontier section to a State under terms of a peace treaty foot-note 624
economically usable portion foot-note 624
falls 489, 584, 672, 673, 675, 680, 842, 851 (*a*); foot-notes 430, 529, 624, 639
former beds 811 (*b*), 814
frontier changes—maintenance of watercourses 891 (*a*) (vi)
frontier—median line of watercourses 467 (*c*), 679
frontier—thalweg 740, 963, 977
frontier watercourses 582
international character foot-note 624
international part 421, 679, 680, 682, 683, 686, 688
jurisdiction 896
legal status 419, 479, 565, 680, 905, 932; foot-notes 413, 616, 651, 787
lakes 633, 656–658, 660, 662, 664–667, 708, 721, 724; foot-note 576
marking of banks foot-note 704
natural flow of water 739, 962; foot-notes 445, 507, 700
natural rivers foot-note 445
navigable channels 471
navigable rivers 419, 420, 484, 688, 818, 819; foot-notes 320, 413
non-navigable rivers 885, 887
part forming frontier 479, 484, 486, 607, 643, 672, 679, 871, 932; foot-notes 394, 413, 425, 624, 650, 787
rectification 722, 731, 816, 846, 847, 972
rectification—previous agreement 467 (*b*)
rectification—special agreement 731
river basin 445 (*b*), 455, 466, 477, 481, 545 (*a*), 693, 695, 792, 811 (*b*), 816, 850, 882; foot-notes 434, 699
rivers connecting with frontier watercourses, without forming part of them 563
side branches foot-note 394
single unit calling for a single set of regulations foot-note 700
springs 492 (*a*), 715, 716, 739; foot-note 553
subsidiary arms 731
successive rivers 465, 503, 519, 523, 536, 544, 886–888, 891, 892, 896; foot-notes 445, 507, 686
tributaries 430, 433, 436, 439, 454 (*a*), 455, 458, 477, 478, 481, 511, 512, 607, 613, 627, 660, 707, 708, 731, 764, 816, 834, 849, 862, 886, 887, 1000; foot-notes 357, 394, 567, 576, 643, 719
underground rivers foot-notes 445, 511
unused branches 807 (*a*); foot-notes 394, 627
width—measurement 454 (*a*), 458, 582, 889 (*c*)
International waters foot-note 507
Land
cession—compensation 545 (*i*) (iii)
damage 560 (*b*), 561 (*b*), 562
damming rights 563 (*c*)
expropriation 526, 724
irrigation 561 (*b*)
non-riparian land 561 (*b*)
proprietors 556, 561 (*b*)
protection 560 (*b*)
reconciliation of interests 525 (*a*), 526
right of use 526
riparian land 525 (*a*), 561 (*b*)
servitudes 560 (*c*), 900 (*a*)
situation relating to the frontier line 556, 563 (*a*) and (*c*)
titles to ownership 556
usufructuaries 556
Land drainage boards 650, 703, 704, 705, 706, 883; foot-note 546
Law
domestic law 615, 632
European law on rivers 421
general principles 994
general principles of international law 927
international law 927, 937; foot-note 621
international law on rivers 419
international law on rivers in Europe 419
international law on rivers throughout the world 419
recognized principles of international law relating to the utilization of waters 937
river law 891 (*c*) (i)
Law *(continued)*
treaty law 979
treaty law concerning the use of international rivers for purposes other than navigation 420
treaty law governing river navigation 417
treaty law relating to international rivers 417
National legislation
application 436, 524 (*a*) and (*b*), 526, 545 (*b*), (*d*), (*f*), (*h*) and (*i*), 556, 780, 891; foot-note 482
associations of lessees of fisheries 756
concessions 489, 852 (*b*); foot-notes 614, 652
damage 910 (*c*) and (*d*), 958
expropriation 807 (*c*)
fishing 508, 590, 634, 756, 860, 862, 892
hydro-electric power 674, 792, 819, 842, 850 (*d*), 851 (*f*)
legal position with regard to waters 891; foot-notes 650, 652
nationalization foot-note 653
pollution 436
reciprocal communication 527
respect for acquired rights 586, 891
temporary occupation of lands 807 (*c*)
timber-floating 524 (*a*) and (*b*), 800 (*b*)
treaties 456, 463, 502, 509, 518, 521, 528, 535, 545 (*a*), 555, 556, 780; foot-note 482
use of waters 539 (*c*), 577, 958, 996; foot-note 793
water outlets 563 (*a*)
water supply 581 (*b*)
works 545 (*b*), (*d*), (*f*), (*h*) and (*i*), 703, 851 (*d*), 901, 1007
National river
diversions of water 792
fishing 862
near frontiers 490
protection against radioactivity 464
régimes of watercourses 563 (*b*)
Neighbourliness
good neighbourliness 507
relations between neighbours 557; foot-notes 530, 616, 621
rights of neighbouring owners 801; foot-note 654
settlement foot-note 654
use of waters 557, 801; foot-notes 507 621, 654
Obligations
concessions 585
damage 545 (*i*) (iii), 910 (*e*); foot-note 530
development of rivers 498, 749
fulfilment 507
international obligations foot-note 705
recognition 498
timber-floating 519
Obligations of nationals
exercise of rights—restrictions—public interest 994
obligations of non-riparian proprietors 561 (*b*)
obligations of persons using the waters 903 (*c*)
obligations of private persons 556
obligations of riparian proprietors 561 (*b*)
Operation of works
agricultural interests 808
amendment to international regulations—previous agreement 450
apportionment of costs 492 (*c*), 645, 726, 808 (*b*), 855 (*a*)
apportionment of costs—criterion of interest in operation of works 538 (*e*)
by concessionaires 677, 749, 750, 774, 793 (*c*) and (*d*), 825 (*b*), 843, 851 (*b*), 852 (*a*), 1006; foot-notes 652, 653, 699, 815
by one State alone 492 (*a*), 495, 807 (*d*); foot-note 715
by operating companies 645, 749
by two different concessionaires controlled by the same financial group 843; foot-note 653
canals 495
cession of administration 749, 750
change in level and volume of waters—special agreement 951
charges to be paid 492 (*c*)
concessionary companies 774
control and inspection 507, 561 (*b*), 794 (*d*), 807 (*f*), 968; foot-note 628
co-operation between States 498

Operation of works *(continued)*
culverts 647
damage—compensation 521, 561 (*b*), 695, 696, 777, 787, 843, 857 (*f*), 990
dams 725
diversion of water 707
drainage of water 496
exchange of information foot-note 533
facilities 856, 1006
factories 677, 965, 967, 968
flow of water 647, 677, 694, 970
frontier change 965
full output 716
guarantees 521, 749, 857
hydro-electric power stations 491 (*b*) and (*c*) (ii), 908 (*d*)
in the interest of the States concerned 495
joint utilization of installations 561 (*b*)
legal status of frontier sections of rivers 479
maintenance of operations 550
maintenance of works in good condition 852
measures for the prevention of flooding 789, 843
mills 967, 990
navigation 496, 645
normal operation 677
obligations of riparian and other proprietors 561 (*b*)
operation by a State of works in the territory of another State 749, 891 (*a*); foot-note 576
owners—interested persons 891 (*a*) (ii)
prevention of flooding 789, 843
prior agreement 450, 479, 538 (*d*), 908 (*d*)
private agreements between users foot-note 437
prohibition against diminishing the volume of rivers 887 (*a*)
prohibition against obstructing the flow of water 887 (*a*)
protection of fishing interests 443
pumping plants 491 (*c*) (ii)
régime 693, 696, 748; 951; foot-notes 576, 651
regulating 694, 772, 789, 876
regulation 508, 628
regulations 677, 843
renunciation of the use of works 497
reservoirs 492 (*a*)
respect for acquired rights 562 (*b*), 891 (*a*) (vi), 965
responsibility 645
right of access 485, 807 (*c*), 891 (*a*) (iv)
right of expropriation 1006
right of extension 562 (*b*)
right of occupation of land 807 (*c*)
right of operation 784, 788, 855 (*a*)
right of support 485, 807 (*c*)
safeguarding of general interests 677
safeguarding of the interests of riparians resident down-stream 891 (*a*) (v)
servitudes on a private footing 687
sluices 700; foot-note 651
testing of works before entry into operation 857 (*c*)
variations in water flow 677
variations in water level 677
water distribution systems 492 (*a*) and (*c*)
water intake works 491 (*c*) (i)
water level 677
without hindering the operation of works by another State foot-note 576
works 495
Polders 890
Policing of waterways 891 (*d*), 903 (*c*), 964
Pollution
artificial pollution 1014
associations to maintain the salubrity of waters 1000
canals 1009, 1010
committees and commissions 425, 717
control 436, 466 (*a*), 1009, 1010; foot-note 821
damage—compensation 562 (*c*), 565 (*c*), 594
deflection of river beds 1020
determination of extent of radioactivity 1009; foot-note 821
Pollution *(continued)*
disposal of radioactive waste—previous consultation 464
exchange of information 542
fishing 444, 460, 562 (*c*), 565 (*d*), 613, 636, 911
health technology 717
improvement and maintenance of water conditions 436, 572, 593
interest of States 436
national legislation 436
origin and intensity 425
plans 424, 425, 436
prevention of increased pollution 436
previous agreement 466 (*a*)
previous notice 436, 464
prohibition 460, 466 (*a*), 561 (*a*)
protection 435, 436, 438, 444, 460, 464, 466 (*a*), 478, 511, 543, 548, 562 (*c*), 571, 594, 601, 613, 636, 765, 857 (*c*), 887 (*b*), 911, 918, 944 (*b*), 949, 953, 980 (*c*), 1000, 1014, 1020; foot-note 383
purification of waters 571, 717
regulation 764
responsibility 425
safeguarding of the other State's interests 918
salinity of waters 1010
salubrity of waters 436, 887 (*b*), 911, 1000
standards of quality 1009; foot-note 821
technical co-operation 478
use of waters 436, 561 (*a*), 911
works 466 (*a*), 911, 1020
Prescription
acquisition of rights 987
Principle of reciprocity
exportation of power—special agreement 690
Prior agreement
canals 702
concessions 675, 794 (*b*), 933
conduit 903 (*b*)
diversion of water 466 (*b*), 467 (*b*), 683
division of water 492 (*a*), 561 (*b*)
execution of projects 675
execution of works 538 (*d*), 545 (*h*) and (*i*), 553, 568, 869, 930, 989
extraction of gravel 767
fishing 445 (*d*), 931 (*d*), 977
introduction of new species of fish 433, 462, 614, 641, 839; foot-note 394
modification of water conditions 582, 885 (*a*), 889 (*b*), 908 (*a*), 930
operation of works 450, 479, 538 (*d*), 908 (*d*)
pollution 466 (*a*)
re-routing of watercourses 467 (*b*)
timber-floating 604 (*b*), 800 (*b*)
use of waters 419, 930, 996
water intakes 933
water rights of third Parties 506
water supply 465 (*b*), 492 (*c*)
works 513, 525 (*b*), 538 (*d*), 553, 582, 602 (*a*) and (*b*), 702, 784, 868, 869, 885 (*a*), 889 (*b*), 890 (*d*), 903, 908, 930, 945 (*g*) and (*h*), 969, 975, 978, 989, 991, 997, 1005, 1007, 1015, 1017
Priority as between different uses
priority of production of hydro-electric power over navigation or timber-floating 688
Private agreements 891 (*a*) (ii); foot-note 437
Public interest 560 (*b*), 561 (*a*), 940, 994; foot-notes 530, 616, 643, 650, 702
Public services foot-note 436
Public utility
concessions foot-note 621
declaration 686, 776
expropriation 526
works 724, 897
Regulating of rivers
apportionment of costs 560 (*a*) and (*d*), 720, 829–831
conditions 560 (*a*)
control 813, 832, 870
damage 560 (*a*), (*b*) and (*c*), 720
development of rivers 873, 972; foot-note 718
expropriation 724

Regulating of rivers *(continued)*
facilities 875
flooding 810, 866, 868
investigation by or prior consultation of joint commissions 560 (*a*), 728, 802
navigation 802; foot-note 564
operation of works 694, 772, 789, 876
plans 721, 802, 810, 830, 831, 863, 878, 891 (*b*) (iii), 983 (*c*), 984 (*b*), 991; foot-note 669
public interest 560 (*b*), 724
question of connecting frontiers 865; foot-note 671
regulation 511, 548, 721, 802, 827; foot-notes 465, 525
regulatory syndicates 581 (*a*)
right of access 880
servitudes imposed on riparian proprietors 560 (*c*)
special agreement 803
technical co-operation 828
upkeep of sections regulated 802, 816, 879
water conditions 447, 720, 891 (*b*) (iii); foot-note 429
water flow 600 (*c*), 694, 814
water level 515, 828, 874
works 515, 525 (*b*), 526, 536, 538 (*e*), 560 (*a*), (*b*) and (*c*), 574, 722, 723, 802, 803, 810, 813, 868, 869, 872, 876; foot-note 564
Resolutions:
Central Rhine Navigation Commission
development plans foot-note 627
resolution of 16 December 1921 foot-note 624
resolution of 10 May 1922 820
resolution of 29 April 1925 802
Responsibility
damage 599, 720, 910 (*d*)
joint responsibility 910 (*f*)
losses of water 850 (*c*)
of the persons in possession of rafts 910 (*d*)
operation of works 645
pollution 425
timber-floating 910 (*f*)
Return of water
division of water 584
measurement of amounts of water returned foot-note 699
regularity of compensation foot-note 699
Right
damming rights 563 (*c*)
floating rights 523, 524 (*a*), 525 (*a*), 526, 800 (*a*), 910 (*b*), 945 (*f*), 947
of access 451, 485, 532, 604 (*b*), 719, 761, 785, 807 (*c*), 870, 891 (*a*) (iv), 945 (*f*), 956, 1021; foot-notes 447, 451, 516, 541, 549, 592, 699
of expropriation 851 (*e*), 1006
of first occupant 835
of fishing 421, 440, 453, 454 (*a*), 508, 563 (*a*), 565 (*d*), 618, 633, 634, 637, 755, 835, 841, 892 (*e*), 931 (*b*), 987
of neighbourly owner 801
of occupation and utilization of land 526, 807 (*c*)
of pre-emption foot-note 654
of pursuit 453
of reversion 852 (*d*)
of storage 785
of support 485, 489, 807 (*c*)
of use of waters 421, 484, 506, 539 (*c*), 561 (*a*) and (*b*), 577, 654, 681, 697, 782, 783, 806, 855 (*b*), 897, 959, 960, 967; foot-notes 434, 507, 516, 624, 654
to construct works 784, 788, 855 (*a*)
to maintain installations 788
to operate works 784, 788, 855 (*a*)
to sell a catch of fish 1021
to take water 421, 484, 806
to use of materials 785
to use power generated 750
Rights
acquisition by concession 891 (*a*) (v), 897
acquisition by documents 987
acquisition by prescription 987
application of treaties 534
authentic deeds 841
Rights *(continued)*
claiming of rights 891 (*a*) (i)
exercise 507, 891 (*b*) (i), 994
fishing rights 421, 440, 453, 454 (*a*), 508, 563 (*a*), 565 (*d*), 618, 633, 634, 835, 892 (*c*), 931 (*b*), 1018
frontier changes 891
legitimate possessors 637–639
new rights 891 (*b*)
of neighbours foot-note 654
of private persons 556, 697
placing rights at another's disposal 645
private rights 633, 634, 637, 755, 800 (*a*), 841, 895, 937, 981, 987, 994; foot-note 507
proof 891 (*a*) (i)
property rights 645, 750
reciprocal rights 534
recognition 498, 634, 637, 891 (*a*) (i), 897, 987; foot-note 701
redemption 634
regulation 895
relinquishment foot-note 542
respect for rights 598, 944 (*d*), 945 (*b*), 946, 1013
riparian rights 561 (*b*); foot-note 654
seignorial rights 965
traditional rights 987
water rights 506, 681, 697, 842, 891 (*b*) (i), 910 (*b*); foot-notes 507, 516, 701
Servitudes
acquired rights 891 (*a*) (iii)
compensation 560 (*c*)
decisions of frontier water commissions 559 (*b*)
divisions of land 559 (*b*)
expropriations 687
for construction 560
for development of rivers 687
for upkeep of rivers 559 (*b*)
general servitudes 559 (*b*)
Government lands 687
private servitudes 687
prohibition against increasing 900 (*a*)
prohibition against prejudicing 900 (*a*)
subsidiary works for regularization 560 (*c*)
upper reaches—lower reaches 560 (*c*), 900 (*a*)
use of waters 472 (*a*), 694, 465 (*a*), 687
usufructuaries 559 (*b*)
with respect to dam-supports 687
with respect to off-lets 687
with respect to reservoirs 687
Settlement of disputes
amicable settlement 697, 795, 884, 891 (*c*) (iii)
applicable law 891 (*c*) (i), 927
appointed delegates 525 (*a*)
apportionment of costs 927
arbitral commissions 510
arbitral tribunals 480, 510, 646, 692, 697, 699, 781, 795, 809, 817, 833, 858, 920, 927; foot-note 818
arbitration 484 (*b*), 535, 646, 727, 735, 769, 781, 795, 809, 854, 891 (*c*) (ii), 1001
arbitrators foot-note 699
bipartite commissions 502, 518, 528
by agreement between local authorities 596 (*a*), 809, 884, 891 (*c*) (ii)
by mutual agreement 480, 579, 706, 920
conciliation 706
conciliation commissions 473, 763
co-operation 892 (*e*)
criminal cases involving private persons 891 (*c*) (ii)
decision by a single arbitrator 884; foot-note 640
decisions of arbitral tribunals 535, 795, 809; foot-note 699
emergency procedure—arbitration by an expert 480
execution of decisions of national tribunals 547
general principles of international law 927
Hague Convention for the Pacific Settlement of International Disputes, 18 October 1907 769, 833, 927
inquiry foot-note 435

Settlement of disputes *(continued)*
interim measures 927
international commissions 691
International Court of Justice 735, 858; foot-note 566
interpretation and execution of arbitral awards foot-note 699
joint administrative commissions 884
joint commissions 452, 697, 698, 706, 769, 824, 920; foot-note 435
joint permanent commissions 579
negotiation 473, 545 (*a*), 555, 697, 729, 763
organization and procedure of arbitral tribunals 535, 646, 692, 699, 769, 771, 795, 833, 858, 927
Permanent Court of International Justice 421, 826
previous administrative action 902
previous inspection of sites 968
private disputes between users 892 (*e*), 902; foot-note 705
procedures to be followed 891 (*c*) (ii)
through the diplomatic channel 452, 473, 502, 518, 525 (*a*), 795, 826, 1001; foot-note 640
umpire 692, 795, 858
within a reasonable period of time 795, 826; foot-note 640
Special agreement
between local authorities foot-note 719
conclusion 943; foot-note 719
conservation and breeding of fish 605 (*b*)
exportation of power 690
fishing 841, 892 (*d*), 944 (*g*), 945 (*h*), 948
implementation of a treaty 925
management of works 951
policing of rivers 964
rectification of the course of rivers 731
regulating of rivers 803
timber-floating 606, 944 (*f*)
shipping 815
use of waters 479, 606, 792, 815
water conditions 606, 951
works 951
Special river administrations 472 (*b*)
States
adjoining States foot-note 703
contracting States 463
interested States 891, 892, 899, 942 (*a*), 968, 981, 992; foot-notes 703, 715
members of river commissions 421
non-riparian States 861 (*b*); foot-note 348
parties to a treaty 556
riparian States 419, 421, 428, 436–438, 455, 456, 458, 467 (*b*), 472 (*b*), 482, 483, 991, 992; foot-notes 348, 425
territorially competent States foot-note 703
third States 819, 820; foot-note 394
users foot-note 702
Storage of water
collecting dams 793 (*a*); foot-note 607
collecting reservoirs 849, 850 (*c*), 851 (*a*)
pumping of water from a balancing reservoir foot-note 607
taking of water by underground pipes foot-note 607
Supplementary agreement
construction of works—demarcation 784
Technical co-operation
administrative regulations 902
ascertaining the condition of rivers 483
collaboration of administrative authorities 705
collaboration of experts 657, 902
communication of national laws and regulations 527
co-ordination of hydrological services 472 (*a*)
development of a common policy 498
establishment of joint permanent bodies 666, 902
exchange of information 491 (*c*) (i), 499, 516, 530, 533, 542, 548, 596 (*c*) and (*e*), 657, 667, 689, 768, 828, 850, 944 (*e*), 952, 998, 1019; foot-notes 446, 465
fishing 434, 457, 458, 931 (*d*)
fishing—exchange of information 445 (*a*)
fishing—mutual assistance 445 (*b*)
fishing—preparation of development plans 596 (*d*)
fishing—settlement of disputes 892 (*e*)
Technical co-operation *(continued)*
fishing—technical agreements 445 (*b*)
investigation of the possibilities of hydro-economic co-operation foot-note 468
organization 451; foot-note 465
pollution—co-operation of prevention services 478
preliminary studies 658
settlement of disputes between riparian proprietors 902
supervision of frontier watercourses 559 (*c*)
visit to the site by authorities of the States concerned 899, 942 (*a*), 967, 968, 992; foot-note 703
Territorial sovereignty
alienation of competence—exceptional character foot-note 639
drainage 893
exceptions 896; foot-notes 700, 705
exclusive competence foot-notes 700, 705
exercise of powers foot-note 705
fishing 889 (*d*), 892 (*b*)
freedom of navigation 420
frontier rivers—condominium 565 (*h*), 680, 905, 932; foot-notes 413, 616
frontier rivers—legal status 419, 473, 479, 565 (*b*), 680, 905, 932; foot-notes 413, 616, 651, 787
joint exercise foot-note 700
jurisdiction 679, 680, 896; foot-note 348
jurisdiction *ratione loci* 920
marking the limits of territorial sovereignty 895, 967; foot-note 705
respect for acquired rights 963
restrictions foot-note 653
rights of sovereignty 453
undivided territorial sovereignty foot-note 700
Territory
cession foot-notes 413, 816
damage and injury 787, 889 (*b*), 890 (*a*), 891 (*a*) (v), 924
exercise of sovereignty 892 (*b*)
territorial changes 490, 492 (*a*) and (*b*); foot-notes 434, 435, 438
Timber-floating
abolition of exclusive private rights 800 (*a*)
amendment to international regulations—previous agreement 450
canals 519, 546
damage 545 (*h*) (i), 910 (*c*) and (*d*), 755, 990; foot-note 586
damage as a result of culpable acts or negligence of the person in charge of the raft 910 (*d*)
damage suffered by third parties 910 (*c*)
damage to fishing 755
definition of "rafts" 910 (*a*)
development of rivers 799
diversions of water—claims 903 (*a*)
equality of treatment 523, 546
execution of foreign decisions which have acquired legal force 547
facilities 761
financing of fishing by timber-floating associations 758
freedom to float timber 523, 604 (*a*), 800 (*a*), 986
international regulations 450; foot-note 391
levy of taxes for promoting fishing 762
logging route 524 (*b*), 525 (*a*) and (*b*), 526
logging route—widening foot-note 586
national legislation 531 (*a*) and (*b*), 524 (*a*) and (*b*), 800 (*b*)
obligation to permit timber-floating 519
policing of timber-floating 800 (*b*), 910 (*b*), 990; foot-note 586
prior agreement 604 (*b*), 800 (*b*)
rafts 990
reconciliation of interests with owners of land or water 525 (*a*), 526
regulating 525 (*b*), 910 (*f*)
regulation 524 (*a*), 525 (*a*), 544, 800 (*b*), 910 (*b*), 947, 953; foot-note 461
regulations 760; foot-notes 587, 596
removal of hindrances to timber-floating caused by fishing—compensation 757
removal of obstructions 910 (*f*), 985
rescue operations 910 (*c*)
respect for acquired rights 965
restrictions 800 (*a*)

Timber-floating *(continued)*
right of access 604 (*b*), 761, 945 (*f*)
right to float timber 523, 524 (*a*), 525 (*a*), 526, 800 (*a*), 910 (*b*), 945 (*f*), 947
right to utilize land or water areas 526
safeguarding of timber-floating—hydroelectric installation 788, 800 (*a*)
safeguarding of timber-floating interests 759
safety of floating—responsibility 910 (*f*)
security given by persons engaging in timber-floating 546
settlement of private differences 525 (*a*)
shortest common floating route 524 (*a*)
special agreement 606, 944 (*f*)
supervision—delegates appointed to timber-floating 525 (*a*) and (*b*)
timber-floaters 523, 524 (*a*) and (*b*), 525 (*a*)
timber-floating 525 (*a*), 604 (*a*), 760, 800 (*a*), 910 (*b*), 947
timber-floating associations 757, 758, 761, 762; foot-note 586
timber-launching 947
treaty provisions 523, 525 (*a*)
works 524 (*b*), 525 (*b*), 526, 604 (*b*), 788, 945 (*f*)
Treaties
accession foot-note 487
agreements between communes 888 (*a*)
agreements concerning execution of an arbitral award foot-note 699
agreements for implementing a treaty 588, 701, 810, 925
application and interpretation 434, 451, 452, 473, 533, 534, 556, 557, 565 (*h*), 580, 588, 596 (*a*), 626, 633, 642 (*a*), 691, 692, 699, 701, 706, 729, 735, 736, 771, 795, 809, 810, 817, 819, 826, 833, 834, 925; foot-notes 395, 482, 539, 567
boundary treaties 984 (*a*); foot-notes 699, 700, 705
character of joint legislation imposing direct liability on private owners 556, 557
conclusion 479, 701; foot-notes 620, 621
conclusion—limitations 446
continuance in effect 926
definition of the extent to which a treaty is binding in relation to national laws in force 556; foot-note 482
denunciation 487
existing treaties 479
facilities for application 580
incompatibility with a subsequent treaty 679
in simplified form foot-note 575
laws and regulations for application 456, 463, 502, 518, 528, 535, 545 (*a*), 555
modification 487, 509, 521; foot-note 438
national legislation 509, 521, 556, 780; foot-note 482
obligation to comply with treaty provisions 484
pactum de contrahendo 419
peace treaties 421, 422, 484, 488, 490, 491 (*c*) (ii), 492 (*a*) and (*b*); foot-notes 370, 435, 438
previous negotiations foot-notes 410, 620
primacy of treaty provisions 780
provisions 418, 419, 430, 435, 439, 447, 453, 458, 470, 488, 490, 493, 503, 511, 536, 543, 544, 548, 556, 559 (*a*), 564, 566, 583, 589, 607, 617, 633, 643, 653, 658, 668, 672, 679, 693, 701, 707, 711, 721, 736, 741, 748, 752, 764, 782, 791, 792, 799, 802, 806, 810, 818–820, 827, 834, 842, 846, 849, 859, 866, 871, 892, 895, 904, 943, 953–955, 972, 979, 1002; foot-note 410
respect for treaty provisions 598
special conventions 419
supplementary agreements 679
violation of treaties 616, 626, 922, 924
Uses of river waters:
Domestic uses
charges for water 718
division of water 983 (*a*), 984 (*a*)
freedom of use 934, 982 (*a*)
pollution 911
recognition of acquired rights 897
use of water 562 (*a*)
Uses of river waters (continued)
Hydro-electric power
allocation of hydraulic power 849, 850 (*d*), 851 (*f*), 852 (*d*); foot-note 616
allocation of power produced 476, 484 (*b*), 491 (*a*) and (*c*) (ii), 674, 793 (*e*), 807 (*d*), 822, 842, 844, 849, 850 (*d*), 851 (*f*), 855 (*c*), 1008; foot-note 639
allocation of power produced—division of rivers into zones for exclusive use 680, 682
allocation of power produced—without distinction as to location of works foot-note 616
apportionment of costs 491 (*c*) (i), 807 (*b*), 855 (*a*)
charge—determination 491 (*a*) and (*c*) (ii)
concessionary companies 684, 1006
concessions 672, 673, 678, 684, 749, 750, 792, 793, 794, 802, 804, 821, 824, 825, 843, 844, 845, 849, 850 (*b*), 851, 852 (*a*), 931 (*b*), 1006; foot-notes 614, 616, 620, 621, 624, 639, 653
condominium over power resources 680; foot-note 616
consortium of concessionaires 684
control 676, 677, 844, 852 (*a*), 853
co-ordinated plan for utilization 491 (*b*)
damage—compensation 545 (*e*), 695, 696, 777, 787, 844 (*c*)
development 509, 849
development of rivers 672, 673, 679, 684, 792, 807, 819, 842, 843, 849; foot-note 624
diversion of water 707–709, 772, 819, 850; foot-notes 576, 624, 643
division of water foot-note 507
ensuring production 477
exchange of energy foot-note 661
exclusive right of a State—compensation to the other State 484 (*b*)
exportation 793 (*e*), 805, 850 (*d*), 851 (*f*)
exportation—agreement between users foot-note 436
exportation—local requirements 491 (*c*) (ii)
exportation—special agreement—reciprocity 690
facilities 853; foot-note 516
flow of water 793 (*b*)
good neighbourliness foot-note 507
hydro-electric power stations 447, 448, 450, 475, 476, 491 (*a*), (*b*), (*c*) (i) and (ii), 505, 645, 673, 693, 694, 696, 698, 707, 748, 750, 772, 784, 793 (*a*), 805, 807 (*a*), 819, 822, 843, 849, 855 (*a*), 857, 908 (*d*); foot-notes 412, 431, 434, 436, 437, 614, 616, 620, 621, 624, 650
improvement of navigability of rivers 818, 819
improvement of use of water 805
joint use of power produced 643
joint utilization 1003; foot-note 616
legal status of rivers—agreement of States concerned 479
losses—exemption from compensation 850 (*c*)
maintenance of transmission line 491 (*c*) (ii)
measures for the prevention of overflows 789, 793 (*b*)
national legislation 674, 850 (*d*), 851 (*f*)
navigation 688, 803, 804
operating companies 503, 504, 643, 644, 1004, 1006; foot-note 516
operation of works 694–696, 748, 749, 772, 784, 787, 789, 793 (*d*), 807 (*d*), 843, 852 (*a*); foot-note 817
operation of works—agreements between users foot-note 437
operation of works—guarantees 677, 857; foot-note 434
ownership 855 (*c*)
power actually produced 484 (*b*), 491 (*c*) (ii)
plans 491 (*b*), 792, 793 (*c*), 823, 852 (*a*); foot-notes 620, 624, 626
priority 688
production 421, 477, 484, 491 (*a*), 643, 679, 681, 693, 750, 792, 806, 807 (*b*), 819, 842; foot-note 391
production—previous furnishing of information 491 (*b*) and (*c*) (i)
prohibition against interfering with operations 688
prohibition against obstructing navigation 643
rational utilization foot-note 507
requirements of irrigation foot-note 434
requirements of the economy 481, 482, 474, 475, 491 (*a*)
reserved flow 807 (*e*)

Uses of river waters:
Hydro-electric power *(continued)*
restoration of the agricultural economy of the developed region 793 (*c*)
right of access 807 (*c*); foot-note 516
right of support 807 (*c*)
right to occupy lands 807 (*c*)
right to use power generated 750
rights to utilize waters 421, 484, 681, 782, 783, 806, 855 (*b*); foot-note 624
rights to water 506, 681; foot-note 516
safeguarding of agricultural interests 793 (*c*); foot-note 817
safeguarding of fishing interests 931 (*b*)
safeguarding of navigation interests 803, 804, 989
safeguarding of timber-floating interests 788
sole concessionaire 673, 821; foot-note 639
sole power station 673, 674, 792, 793 (*a*) and (*e*), 794 (*c*), 805, 822, 842, 843; foot-notes 616, 620, 621, 650
supervision by river commissions 491 (*b*) and (*c*) (iii), 728, 823; foot-note 626
supplying of power 545 (*e*), 1008; foot-note 434
supplying of power—contracts between companies foot-note 547
surplus production—application of surplus 690
transmission 491 (*a*), 778, 793 (*e*), 822, 850 (*d*), 851 (*f*)
transmission—facilities 778
use of additional output of hydraulic power 819, 820; foot-note 431
use of power—compensation 750
use of power produced 476, 503, 674, 690, 844, 850 (*d*), 851 (*f*); foot-note 661
use of waters 479, 548, 693, 715, 773, 782, 792, 794 (*a*), 818, 819, 842, 849, 850, 851, 1002, 1003; foot-notes 431, 616, 650, 653, 654
utilization—choice of methods foot-note 624
utilization of falls 672
utilization—system of "dams plus power-plants" 807 (*a*)
utilization—system of "navigable derivation canals" 807 (*a*)
utilization without consideration of the frontier line 679
water supplied to power stations foot-note 576
water level 789, 793 (*a*)
works 421, 475, 476, 484 (*b*), 505, 536, 538 (*d*), 643, 676, 685, 689, 698, 707, 728, 772, 784–787, 793, 805, 807 (*a*), (*c*) and (*d*), 842, 843, 849, 852 (*a*), 855 (*a*), 989, 1003; foot-notes 620, 650
works—public utility 686
Industrial uses
concessions 585, 931 (*b*)
prohibition against impairing fishing 565, 931
prohibition of intakes of water 700
pollution 911
recognition of acquired rights 897
regulation 583
respect for acquired rights 637
taking of water 808 (*a*)
Irrigation
agricultural dams 808 (*b*)
apportionment of costs—criterion of area subjected to irrigation 984 (*c*)
authorization 561 (*b*)
canalization for purposes of navigation 474
canals 484 (*a*)
control by joint commissions 561 (*b*), 728
discharge of water 563 (*a*), 736; foot-note 567
disputes—inspection of sites 968
diversion of water 581 (*d*), 650
division of waters 561 (*b*), 738, 898, 982 (*a*), 984 (*a*); foot-note 702
droughts 650
guarantees foot-note 434
irrigation associations 561 (*b*)
operation of works foot-note 817
pollution 911
prohibition against injuring fish 565 (*c*)
recognition of acquired rights 897

Uses of river waters:
Irrigation *(continued)*
regulation 511; foot-note 446
regulation—joint commissions 959, 960
requirements 474, 983 (*a*), 984 (*a*); foot-note 434
requirements—determination 662
respect for acquired rights 637, 903 (*a*)
right of utilization of waters 421, 959, 960, 967
rights of riparian proprietors 561 (*b*)
safeguarding of agricultural interests 793 (*c*); foot-note 817
supplying canals 736
taking of water 561 (*b*), 700, 736, 737, 808 (*a*), 903, 968; foot-note 434
works 421, 536, 538 (*d*), 728, 808 (*b*), 891 (*b*) (iii)
Navigation
agreements foot-note 381
canalization 474, 475
canals 474, 484 (*a*), 819; foot-notes 546, 624
companies—payment of emoluments 986
development of rivers 799, 802, 807 (*a*), 985; foot-note 651
diversions of water 652
facilities 484
feeding of canals 736
fishing 912
foreign flags foot-note 348
freedom of navigation 417, 420, 986; foot-notes 348, 349
improvement 688, 818, 819; foot-note 564
international character of rivers foot-note 624
legal status of rivers—agreement of States concerned 479
main waterway 802–804; foot-note 620
navigability of rivers 484
operation of navigable waterways 479
operation of works 496, 645
plans foot-note 620
policing of navigation 910 (*b*), 990; foot-note 348
priority 688
prohibition against impeding navigation 565 (*f*), 624, 625, 643, 802, 912, 989
prohibition against interfering with hydr-oelectric operations 688
protection of navigation 484
régime foot-note 410
regulating 802; foot-note 564
regulation 418–421, 472 (*b*), 543, 910 (*b*), 914; foot-notes 348, 413, 446, 726
related questions 420
removal of obstacles to navigation 420, 421, 469, 471, 483, 880, 940, 974, 985
renunciation of use of canal for navigation 497
requirements 421
requirements of other uses of waters 474, 475
river commissions 420, 914
safeguarding the generation of hydroelectric power 803, 804
special administration 472 (*b*)
special agreements 815
tolls foot-note 348
use of waters 939; foot-notes 348, 363
water level 911
works 474, 475, 645, 688, 801 (*a*), 802, 989; foot-note 564
works impeding navigation 421, 624, 625, 643, 974, 989
Uses
common uses 681
other than navigation 421, 939
Watering
use of waters 562 (*a*), 934, 982 (*a*)
Utilization and use of river waters
abuses 897
applicable legislation 539 (*c*), 577, 958, 996; foot-note 793
best possible use foot-note 507
balancing reservoir foot-note 607
choice of methods foot-note 624
collection of water 850 (*c*)
common use 503, 562 (*a*), 643, 902, 905, 936–942 (*b*), 979; foot-notes, 348, 616, 706
community of interests 801; foot-note 621

Utilization and use of river waters *(continued)*
concessions 489, 585, 815, 824, 849, 850 (*b*), 851 (*b*), 931 (*b*), 1006; foot-notes 613, 624, 639
conditions foot-note 431
condominium 680; foot-note 616
consent of States 850 (*a*)
control by river commissions 491 (*b*), 824, 921; foot-note 624
co-operation between administrative authorities 902
customary use 918
damage—compensation 521, 561 (*a*) and (*b*), 695, 696, 897, 917, 918, 940, 941, 944 (*d*)
determination of charges to be paid for water 492 (*c*)
development of administrative practices foot-note 616
development zones for exclusive utilization 680, 682
division of rivers by sections 783
enterprise for operating purposes 1004
equitable apportionment of waters 782; foot-note 507
equitable financial participation 919
exclusive use 680–682, 807 (*d*)
existing use 929
facilities 852 (*c*); foot-note 516
free use 481, 905, 934
full output 716
good neighbourliness 507
guarantees 490, 521, 546
improvement 653, 666, 805, 919
incompatibility with full use 688
indemnity 688
indemnity foot-note 643
industrial use 432, 679; foot-note 507
interested private persons 556
joint utilization 1003
jurisdiction over waters 679, 680
legal status of rivers 479
major interest of utilization 849
mass of water physically indistinguishable but legally earmarked for the needs of two different States foot-note 576
modification of water conditions—prior consultation 916
modifications 930
most effective use 773, 849
mutual interest 919
mutually beneficial conditions 782
neighbourliness 557, 801; foot-notes 507, 621, 654
normal use 887 (*a*), 996
obligations 465 (*a*)
obligations of users 903 (*c*)
operating companies 503, 504, 643, 644, 1004, 1006; foot-note 516
optimum use 849
penalties for violations 942 (*b*)
plans 665, 792, 849
plans—co-ordination 491 (*b*)
plans—execution after express consent 436
plans—execution after exchange of information 491 (*b*)
plans—execution after joint discussion 436
plans—execution after previous notice 436
plans—execution supervised by commissions 491 (*b*); foot-note 624
pre-existing usage 490
present use 663, 665
previous agreement 419, 930, 996
prior authorization 561 (*a*) and (*b*)
prior notice 921
private agreements between owners of works and interested persons 891 (*a*) (ii)
prohibition 562 (*a*)
prohibition against causing substantial prejudice to the neighbouring State 917, 918, 921, 923
prohibition against reducing the volume of water which should reach the zones of development 682
protection of fishing interests 432, 931 (*b*)
public use 939, 940
quantity of water available 491 (*b*), 492 (*c*)
quantity of water available—exemption from responsibility in cases of losses of water 850 (*c*)

Utilization and use of river waters *(continued)*
quantity of water available—reduction due to natural causes 492 (*c*)
rational utilization 439, 445 (*a*), 792; foot-notes 507, 650, 653
régimes 693–695, 806
regulation 422, 432, 511, 539 (*c*), 556, 557, 562 (*a*), 583, 818–820, 849, 895, 942 (*b*), 953, 996; foot-notes 446, 507, 651
regulations 902; foot-note 706
relations with canal owners 959
reserved flow 807 (*e*)
respect for acquired rights 465 (*a*), 539 (*a*), 637, 902, 929, 963; foot-note 718
respect for existing rights, agreements and customs 939
respect for the rights and interests of the other State 598, 944 (*d*), 945 (*d*), 946, 1013
restrictions 562 (*a*)
restrictions on the sovereignty of States foot-note 653
right of access foot-note 516
right of expropriation 851 (*e*)
right of pre-emption foot-note 654
right of use 441, 506, 539 (*c*), 561 (*a*) and (*b*), 577, 654, 681, 697, 782, 783, 806, 855 (*b*), 897, 959, 960, 967; foot-notes 434, 507, 516, 654
riparian rights foot-note 654
safeguarding of interests of private persons foot-note 507
safeguarding of interests of States 917, 918; foot-note 507
safeguarding of public interests 561 (*a*)
satisfaction of genuine needs 897
servitudes on a private footing 687
settlement of private difficulties between riparian proprietors of different nationalities 902
sole generating station 792
special agreement 479, 606, 792, 815
special legal claims foot-note 507
springs 492 (*a*)
suspension of measures 923
territorial changes 490
use according to the principles of international law in the matter 937
use as if the waters came under the sovereignty of one State 849
use by other persons 562 (*b*)
use in accordance with the regulations of river commissions 562 (*a*), 914, 959, 979, 981–983
use in accordance with treaty provisions 422, 598, 654, 945 (*b*), 946, 1013
use in the territory of another State 523, 524 (*a*), 525 (*a*)
use of water belonging to the other State foot-note 507
use without altering river courses, 561 (*a*)
use without altering the height of the waters 561 (*a*)
use without being detrimental to third parties 561 (*a*)
use without changing conditions for other uses 939
use without distinction as to the origin of the waters foot-note 616
use without polluting waters 561 (*a*)
use without regard to the drawing of the boundary line 679, 961, 963, 967
use without trespassing on land of third parties 562 (*a*)
utilization of hydraulic resources 479, 1002–1006
water rights 427, 506, 697, 842, 891 (*b*) (i), 910 (*b*); foot-notes 507, 516, 701
waters retained by dams 874
Vessels, foot-notes 348, 696
Water diversion or taking
alteration of river conditions 933
authorizations 808 (*a*), 1012; foot-note 787
balancing reservoir foot-note 607
canals 1012
claims 903 (*a*)
conditions foot-note 434
control 903 (*b*) and (*c*), 933
control by joint commissions 484
determination of volume of water 738, 983 (*c*)
division of waters 584
industrial uses 808 (*a*)
irrigation 561 (*b*), 700, 736, 737, 808 (*a*), 903, 968; foot-note 434

Water diversion or taking *(continued)*
new diversions 903 (*b*), 933
obligations of persons using the waters 903 (*c*)
previous agreement 933
previous consent 903 (*b*), 905, 933
prohibition 700
proposed schemes—prior communication 484
regulation 981; foot-note 794
respect for acquired rights 903 (*a*), 933, 1012
restrictions 484
rights 421, 484, 806
sluices 970
storage of water foot-note 607
supply to canals 736, 737
underground pipes foot-note 607
works 484 (*a*), 491 (*c*) (i), 738; foot-note 576
Water level
absolute data 659
bench marks 677, 793 (*a*)
canals 1011
concessions 793 (*a*)
development of rivers 819
exchange of information 667, 944 (*e*), 998, 1019
fishing 608
international regulations foot-note 391
lowering 426, 428, 557, 608, 656, 793 (*b*)
maintenance 653, 655, 789, 1011
maintenance—special agreement 606
maintenance—water levels necessary for navigation 911
maximum and minimum levels 654, 655
mean water level 635
measuring 655
modification—prior authorization by joint commissions 561 (*a*)
modification—prior consent 908 (*a*)
navigation 911
normal water level 653
operation of works 677
pluviometric surveys foot-note 391
raising 656, 798, 807 (*a*), 819, 843, 891 (*b*) (i)
regulating of rivers 515, 828, 874
regulation 857 (*a*), 874; foot-note 651
subterranean waters 660
Waters
common waters 633, 634, 895, 934; foot-note 706
drinking water 581 (*b*) and (*c*); foot-note 815
evaporation 667
jurisdiction 679
ownership of areas of waterway 525 (*a*)
percolated waters 811 (*b*)
private waters 633, 896
public waters 633, 896
reconciliation of interests 525 (*a*)
running waters 591, 896; foot-note 700
sovereignty 896
stagnant waters 591, 896; foot-note 700
subterranean waters 660, 811 (*b*)
surface waters 811 (*b*)
surplus waters 647, 648, 649, 651
temperature 667
Water supply 422, 465 (*b*), 484 (*a*), 491 (*a*), (*b*) and (*c*) (i), 492 (*a*) and (*c*), 511, 536, 538 (*d*), 548, 562 (*b*), 581 (*b*) and (*c*), 649, 700, 711–716, 718, 736, 737, 849, 851 (*c*), 882, 891 (*a*) (vi) and (*b*) (iii), 1010; foot-notes 438, 446, 553, 576, 676, 815

Part III

Summary of decisions by international tribunals, including arbitral awards

Analogy
air pollution and water pollution 1053; foot-note 856
international law and internal law 1050, 1052, 1053, 1054
Arbitration
agreement (*compromis*) 1039, 1040, 1047, 1050, 1053, 1060
Arbitration *(continued)*
applicable law 1050, 1052, 1053
arbitral commission 1043–1048; foot-note 852
arbitral tribunal 1050, 1051, 1052, 1060, 1061
arbitration treaty 1060
arbitrator 1035, 1036, 1039–1041; foot-note 839
cause for claims 1046
disclaimer of awards by the parties foot-note 843
interpretation of the agreement (*compromis*) 1063, 1064
judgements, final decisions and awards 1035, 1036, 1041, 1046, 1048, 1051–1054, 1063–1068
parties to the dispute—interested individuals 1052
powers of the arbitral tribunal 1050, 1052, 1053
requests of the parties 1062
umpire 1048
Bad faith 1064
Boundary relationships 1066
Boundary system
community system 1066
system of joint community pasturage rights (*faceries* and *compascuités*) 1065, 1066
Canals
construction 1025, 1026, 1033, 1036, 1041
contract of canalization 1038, 1041
development 1033
feeding 1024, 1030, 1031, 1033
irrigation 1023, 1044, 1046
navigation 1023
ownership 1055
repair 1036
use 1033
Commissions:
Helmand River Delta Commission (Afghanistan–Iran) 1036, 1037
International Joint Commission (Canada–United States) 1050
Joint Claims Commission (Germany–Venezuela) 1047
Joint commissions established with a view to elucidating the Kushk river case (Great Britain–Russia) 1043, 1044
Special Joint Commission (France–Spain) 1068
Common good 1064
Concessions
changing the administration or the volume of waters 1068
contracts of canalization 1938, 1041
previous consultation 1041
Construction, modification and upkeep of works and installations
alteration of natural conditions 1064
canalization 1038
canals 1025, 1026, 1029, 1033, 1036
development 1059
execution without a preliminary agreement 1060, 1062, 1063, 1065, 1068
feeding conduit 1024
feeding of canals 1029
freedom to undertake 1065, 1066
improvement 1041
in conformity with or in application of a treaty 1033
intakes 1024
interference with flow of water 1036
interference with natural flow of water 1058
irrigation 1035, 1044
legality 1064
limitations 1036, 1041, 1044
on own territory 1063, 1068
prior notice 1038, 1068
prohibition 1030, 1035, 1036, 1064
public works 1068
responsibility and burden 1068
right to carry out works 1036
safeguarding all interests 1068
violation of a treaty 1026
Custom
customary system 1066
recognition by treaty 1066
Damage and injury
as a result of construction of works 1041

Damage and injury *(continued)*
as a result of operations of industrial undertakings 1049, 1050, 1052, 1053
as a result of unilateral use of a river 1064
as a result of use of its territory 1054
compensation 1041, 1050, 1052, 1053
determination 1052, 1053
future damage and injury 1053
interest of parties in indemnity for proven damage 1053
just and adequate indemnity 1053
limited harm 1064
minimal inconvenience 1064
refraining from causing damage in the future 1050, 1053, 1054
reparation due to the State and damage suffered by individuals 1052
to crops and vegetation 1049
to navigation 1041
to property or persons in the territory of another State 1054
to territory 1041, 1052, 1053, 1054
to the riparian population 1064
treaty prohibition 1041
violation of sovereignty 1052
Delimitation of boundaries
delimitation treaties 1038, 1041, 1042, 1043
demarcation line 1066
dispute 1035; foot-note 839
frontier zone 1066
limits to sovereign rights 1066
zone organized in accordance with a special law 1066
Development of rivers
carrying out 1064
execution of projects based on a right 1068
good faith 1068
joint search for solutions 1068
multilateral projects 1068
obligation to examine projects of the lower riparian State 1068
obligation to give notice of projects 1068
principle of absolute equality 1068
prior notice 1068
projects 1058
reconciliation of interests 1068
refusal to consider counter-projects 1068
renunciation of works planned 1068
responsibility and burden of works 1068
rights of initiative of the upper riparian State 1068
trends in river development 1068
works 1059
Diversion of water 1058, 1064
compatibility with treaty provisions 1064
compensation by equivalent return from another basin 1064
diversion with return 1068
Division of water 1035, 1036, 1044, 1046; foot-notes 843, 852
treaty regulations 1029
Equality among States
equality in fact 1064
equality in law 1064
principle 1064
Equity 1054
Evidence
clear and convincing 1054
conclusive proof 1065
Exercise of territorial competence
exclusively 1065
jointly by means of an agreement between States—indivisum, co-imperium, condominium 1065
jointly on behalf of international institutions 1065
Floods 1036, 1041
Frontier zone, idea 1066
Fungible thing, water 1064
General principles of law, recognition 1066
General rules of international law as regards rivers, application 1027
Injurious act, determination 1053
Good faith, rules 1068
Innocent passage 1048
Interests
adjustments 1066
agriculture—industry 1053
balance 1064
common interests 1066
conflict 1053
conflicting interests 1066
confrontation 1066
consideration of adverse interests 1068
determination of interests to be safeguarded 1068
equitable balance 1068
just solution of the conflict 1053
legitimate interests 1064
nuisance 1064
procedure for safeguarding—good faith, complaints, protests, expressions of regret 1068
protection 1053
reasonable consideration 1068
reconciliation 1068
system of safeguards and complaints 1068
safeguarding 1068
satisfaction 1064
Internal law
application by analogy 1050, 1052, 1053, 1054
principles 1053, 1054
International case law 1065
International law
analogy to internal law 1053
application 1050, 1053
as regards rivers 1063
based on treaty 1066
binding character 1054
customary international law 1065
generally accepted international law 1063, 1064, 1065, 1066
general rules 1053, 1063, 1065
positive international law 1066
principles 1054, 1066
provisions 1066
sources 1065
violation 1052
International practice 1050, 1065, 1066
concerning the industrial use of international rivers 1065
current international practice 1068
International responsibility
for damage 1052
for injurious acts by private persons from within its jurisdiction 1053, 1054
International river 1022, 1034, 1038, 1055
alterations of natural flow 1064
changes in course 1036
compensation between two basins 1064
development project 1058
execution of development projects without preliminary agreement 1060, 1066
hydrographic basin 1064
jurisdiction over water 1063
natural flow 1058
river traversing two States 1068
unity of river basin 1064
International waterway, see: International river
Law
applicable law 1050, 1051, 1053
customary law 1066
positive law 1066
treaty law 1063
National bodies, Electricité de France 1058
Natural order, respect for 1064
Neighbourliness
good neighbourliness 1064
neighbourly relations 1064
Obligations
contacts and negotiations prior to the execution of projects 1066
derogating from sovereignty 1063
enforcement of obligations 1065

Obligations *(continued)*
establishing obligations 1063
nature of obligations 1065
to conduct oneself in conformity with international law 1054
to give notice prior to the development of rivers 1068
to negotiate agreements 1065
to observe treaties 1065
to protect other States against injurious acts by individuals from within their jurisdiction 1053
to reach an agreement prior to the execution of the works 1065
to refrain from acts injurious to the territory of another State or the persons or property therein 1054
to refrain from constructing works 1030, 1031
to respect other States and their territory 1053
to take adverse interests into account 1068
to take into consideration the interests concerned 1068
Permanent Court of International Justice
application to the Court 1026
application of the general rules of international law as regards rivers 1027, 1063
counter-claim 1026
judgements 1027–1033
proceedings 1027, 1030
submissions of the parties 1029, 1032
Points at issue 1027, 1045, 1063
just solution 1052, 1053, 1054
permanent settlement 1052, 1053
submission to arbitration 1051
Pollution
analogy to air pollution 1049, 1053; foot-note 856
Preliminary agreement
compromise 1066
execution of projects 1066
execution of works without a preliminary agreement 1068
necessity 1065, 1066
obligation 1066
provisions—matters of common interest 1066
reciprocal good will 1066
search for preliminary agreement 1065
treaty obligation 1066, 1067
Preliminary negotiations 1059, 1065
agreement in good faith to enter into negotiations 1066
conduct of negotiations with understanding and good faith 1068
disregard of established procedures 1065
furnishing evidence for a determination 1068
infringement of the rules of good faith 1065
interruption 1068
obligation 1065
spirit of collaboration 1066
systematic refusal to consider adverse interests 1065
unjustified breaking-off 1065
unusual delays 1065
Prior notice
development of rivers 1068
works of canalization—time-limits 1038, 1041
Reciprocity 1064
Régime of the Pyrénées communities
joint community pasturage rights (*compascuités and faceries*), generalized community 1066
traditions of the Pyrénées 1066
Reprisals 1064
Return of water
compensation between two water basins 1058, 1064
complete return 1068
equivalent to the quantity of water taken 1064
Right
of access 1036
of consent 1065
of initiative 1068
of supervision of territory 1030
of the riparian population 1068
of veto 1065
to act in its own territory 1033
Rights
claim 1031
exercise 1059
invoking 1068
natural rights 1038, 1041
of the States of the United States 1053
pasturage rights 1066
quasi-sovereign rights 1053
respect for rights 1068
resulting from position or necessity 1031, 1048, 1068
sovereign rights 1066
special rights 1048
to alienate 1036
to execute works 1036
use of rights 1068
water rights 1035, 1036, 1044, 1046
Risks
political risks—technical risks 1064
Servitude
imposed on the lower water for the benefit of the higher water 1064
Special privileges
claim to special privileges 1030, 1031
control over diversions of water 1029
Territorial sovereignty
change in sovereignty over running water 1063
constitutional limitations or restrictions 1053
delimitation of sovereignty 1035, 1038, 1055, 1066; foot-note 839
essential limitations or restrictions 1065
exercise of competence 1065
freedom to act in its own territory 1033
infringement 1065
joint exercise of competence 1065
limitations or restrictions 1036
limitations or restrictions arising from a treaty 1063
paralysis of the exercise of competence 1065
presumption 1063
quasi-sovereignty 1053
respect for territorial sovereignty 1053, 1054
restrictive interpretation of limitations or restrictions 1063
right of supervision—enjoyment 1030
violation of territorial sovereignty 1052
water subject to territorial sovereignty 1063
Treaties
application and interpretation 1027, 1030, 1031, 1033, 1040, 1041, 1043, 1045, 1046, 1052, 1060, 1063, 1064, 1065, 1066, 1068; foot-notes 848, 852
conclusion 1023, 1036, 1038, 1042
conclusion with third parties—previous consultation 1038
equality of the parties 1064
infringement or violation 1026, 1029, 1032, 1033, 1060, 1062, 1063, 1064,
provisions 1024, 1068
recognition of a custom or general principle by a treaty 1066
respect for treaty provisions 1033, 1065, 1068
rules of interpretation 1063
validity 1039, 1040, 1041
United States Supreme Court 1053, 1054
Uses of river waters:
Hydro-electric power
generation 1058, 1064, 1068
joint investigation of development schemes 1066
preliminary agreement—freedom of development 1066
Industrial uses
reconciliation of conflicting interests through mutual concessions 1066
Irrigation
canals 1023, 1044, 1046
construction of works 1044
division of waters 1036, 1044, 1046; foot-note 852
free use of waters 1046
interests of irrigation 1068
prohibition of interference 1035, 1036
water rights 1036, 1046

Uses of river waters: (continued)
Navigation
canals 1023
freedom of navigation 1047
innocent passage 1048
perpetual right of free navigation 1038
serious impairment 1041
special right of riparian inhabitants 1048
Utilization and use of river waters
allocation of water by treaty 1030, 1044, 1046
conflicting interests 1066
consultations 1057
control over diversions of water 1029, 1030
co-operation with a view to avoiding or settling disputes 1036
dispute 1035
division of water to meet irrigation requirements 1036, 1044
execution of works without preliminary agreement 1060, 1062
existing utilization 1036, 1044
freedom to undertake works 1065
free use 1046
good faith 1068
limitations in accordance with a previous arbitral award 1036
limitations or restrictions 1044, 1053, 1054, 1064
modification of water conditions 1033
mutual concessions 1066
previous authorizations 1064
prohibition of actions creating the possibility of violations of law 1064
prohibition against alienating water rights without the consent of the other party 1036
special right of riparian inhabitants 1048
treaty fixing the quantity of water to be taken 1024
unconditional and discretionary opposition 1065
use of means 1064
water rights 1036, 1044, 1046
within the area of its rights 1059
Water conditions
alteration 1058, 1064
alterations causing serious injury to the lower riparian State 1066
guarantee 1064
infringement 1064
waters common to two countries 1056
Water diversion or taking
construction of works 1024, 1029
control 1029, 1030
determination of the quantity of water taken 1024, 1029, 1030
offset by return from another basin 1058, 1064
position of intakes 1030
prohibition without prior consent 1064
régime governing diversions of water 1023
return above intakes 1058
treaty regulations 1029, 1030, 1031
Waters
fungible thing 1064
private domain 1063
public domain 1063
running waters 1063
still waters 1063
Water supply 1023, 1024, 1025, 1026, 1029, 1030, 1031, 1032, 1033, 1035, 1036

Part IV

General survey of studies made or being made by non-governmental organizations concerned with international law

Acquired rights
divestment by agreement, arbitration or judicial settlement 1081
forms of compensation in the event of divestment: payment for the value of investments, provision of water, provision of electric power 1081
in the use of waters 1081
just compensation in the event of divestment 1081
prohibition against disturbing and divesting 1081
Benefits
determination according to existing uses 1092
determination according to relative needs 1092
determination—weighing of injuries 1080
enjoyment 1074, 1075
from a use of waters 1080
from the use of the territory 1092
future benefits 1092
proportional benefits 1074, 1075
Canals
artificial channels 1081
construction 1081
inter-oceanic canals 1083
studies 1083
Commissions
ad hoc commissions 1084, 1088
appointment of members 1084
authority—decisions—recommendations—opinions 1070, 1071, 1072, 1084
competence 1070, 1071, 1072
conciliation commissions 1088
creation 1070, 1071, 1072
general commissions 1092
permanent joint commissions 1070, 1071, 1072
possibility of creating 1092
procedure 1084
regional commissions 1092
replacement of members 1084
to resolve differences 1084
see: Joint bodies
Construction, modification and upkeep of works and installations
artificial channels 1081
existing establishments 1070, 1071
freedom to undertake works 1074, 1075, 1076
limits 1081
material injury 1081
new establishments 1070, 1071
objection by another interested State 1074, 1075, 1076
previous notice 1074, 1075, 1080
prohibition of alterations which might seriously impair the right of utilization of another State 1075
prohibition of works which seriously affect the possibility of utilization by another State 1076
prohibition where there is danger of inundation 1071, 1072
refraining during negotiations from undertaking works which might aggravate the dispute or render agreement more difficult 1074, 1075, 1076
refraining from undertaking works 1074, 1075
right to undertake works for the improvement of facilities 1074, 1075
serious consequences for the other State 1070, 1071
without causing material injury to riparian States or their inhabitants 1081
Co-riparian States 1081, 1082, 1084
Damage and injury
adequate compensation 1074, 1075, 1076, 1088
as a result of acts or omissions of persons, authorities and agencies under the control of a State 1081
as a result of the construction of works 1081
as a result of pollution 1111, 1088
as a result of preventable pollution 1080
as a result of the use of waters 1081
as a result of works for the improvement of facilities 1074, 1075, 1076
compensation 1080
compensation—weighing of benefits 1080
future injury 1088
injury to a use of waters 1088
irreparable damage 1092
international responsibility 1080
material injury 1081
past injury 1088
prevention—reasonable diligence 1080
serious damage 1074, 1075, 1076

Damage and injury *(continued)*
substantial injuries 1080, 1088
suffered 1074, 1075, 1076
to riparian States 1080
to riparian States or their inhabitants 1081
to the possibility of utilization of the waters 1076
to the right of utilization of water 1074, 1075
to the territory 1070, 1071, 1072
Development of rivers
assurances to the other parties—damage, benefits 1074, 1075
creation of common organs for utilization and development 1076
damage 1074, 1075, 1076
freedom to undertake works if the other party refuses to have recourse to arbitration or judicial settlement 1074, 1075, 1076
objection of riparian or interested States 1074, 1075, 1076
obligations of the State that undertakes improvements 1074, 1075, 1076
previous notice 1074, 1075
rational exploitation 1076
refraining from undertaking works 1074, 1075
right to undertake works for the improvement of facilities 1074, 1075
Disagreements or disputes concerning development of rivers or use of waters
exchange of information to prevent disputes 1088
likely to endanger the maintenance of international peace and security 1074, 1088
negotiations with a view to reaching agreement within a reasonable time 1074, 1075, 1076, 1082, 1088
principle of good faith 1076
rights and duties of parties pending the solution of a dispute 1087
settlement in accordance with the pertinent circumstances 1076
settlement in accordance with the respective needs of States 1076
settlement on the basis of equity 1076
solution accepted by the States involved 1084
solutions ensuring the greatest advantage to all concerned 1074, 1075, 1076
see: Settlement of disputes
Diversion of water
by means of artificial channels 1081
from one river basin to another 1081
legal problems 1077
opposition to diversion 1105
prohibition of diversion 1081
prohibition of unilateral diversions 1105
Division of water
determination of the quantity of water constituting a reasonable and equitable share 1081
equitable division 1081
reasonable and equitable share 1081
Down-stream State 1071, 1072
Drainage
legal problems 1098
Equity 1076
Fisheries
reserved to nationals 1081
Floods
as a result of construction of new works in the State down-stream 1071, 1072
danger of flooding 1071, 1072
flood control 1081
flood control—priority as between uses 1081
studies 1092
Good faith 1076
Hydraulic factories 1070, 1071, 1072
Interest
common interest in the maximum utilization of natural resources 1076
common interest in the uses of waters 1081
in beneficial uses of waters 1081
in the fullest use of waters 1088
of riparian States 1081, 1088
Interested States 1071, 1072, 1074, 1075, 1076, 1080, 1084, 1088, 1092
International and national judicial precedents 1113
International lakes 1070, 1071, 1082
application of the rules relating to the utilization of international rivers to certain lakes situated in one State 1071, 1072
International law
agreed principles relating to the uses of waters 1082
conventional international law 1075, 1082
customary international law 1082
development of rules or principles with respect to non-navigational uses 1086
development of rules with respect to international rivers 1080
general international law 1074, 1075, 1080, 1092
general principles applicable to international rivers 1080, 1092
governing navigation of international rivers 1071, 1072
governing the use of international rivers for industry and agriculture 1071, 1072
inadequacy of rules relating to the uses of waters 1082
in force 1074, 1075
interpretation of rules relating to the uses of waters 1082
lacuna 1071, 1072
limits imposed by conventional international law 1075
limits imposed by general international law 1074, 1075
limits on the utilization of river waters 1074, 1075
norms relating to a territory 1092
principles applicable to neighbourly relations 1074, 1075
principles applicable to relations arising from different utilizations of waters 1074, 1075
recognition by international law 1074, 1075, 1082
regulations concerning any use of international rivers 1071, 1072
regulations concerning utilization of the power of international rivers 1071
rules and principles relating to the uses of the waters of international rivers 1077, 1079, 1080
rules concerning the uses of waters of a drainage basin 1082
rules in force on utilization of waters of international rivers 1074, 1075, 1076
rules of conventional international law relating to the uses of waters 1082
rules of customary international law relating to the uses of waters 1082
rules relating to the use of international waters 1094
International practice
accepted as law 1092
concerning the use of international practice 1092
studies 1092
systematization of international practice 1092
International responsibility
exception when acts would cause an unjust result to the responsible State 1088
for acts or omissions of persons, authorities and agencies under the control of a State 1081, 1082
for damage arising from preventable pollution 1080, 1088
for injuries arising from a change in the régime of a river 1080
International river
area of a basin within the territory of a State 1081
autonomy of each riparian State in the section under its sovereignty 1071, 1072
basin of international interest 1081
contiguous rivers—successive rivers 1070, 1071, 1072, 1074, 1075, 1092
definition of "international river" 1080
definition of "drainage basin" 1082
drainage basin 1081, 1082
drainage basin as an integrated whole 1082
essential character 1071, 1072
hydrographic basin 1076
interdependence of riparian States 1071, 1072
interdependence of all features of a drainage basin 1082
permanent physical dependence of riparian States 1071, 1072
recent arrangements and regulations concerning conflicts relating to the utilization of waters 1111, 1113
river basin 1074, 1075
river system 1088
utilizable character 1070, 1071, 1072
see: River basin and Hydrographic basin

International waterways, see: International rivers
Joint bodies
establishment 1076, 1082, 1088
for study—permanent and *ad hoc* agencies 1082
for utilization and development 1076, 1088
participation by interested non-riparian States 1088
recommendations to the States concerned 1088
reports to the appropriate authorities of the States concerned 1088
to prevent and settle disputes 1076
Law
principle of not causing unlawful harm to others 1074, 1075, 1076
recognized principles 1081
rule of law 1074, 1105
rules resulting from the interdependence of riparian States separated or crossed by a common river 1071, 1072
statement of principles 1094
Neighbourliness
basic principles 1074, 1075, 1076
neighbourly relations 1074, 1075, 1076
Non-riparian States 1081, 1088, 1092
Obligations
breach 1081
extent of obligations 1081, 1088
in relation to changes in population 1081
not to increase the level of pollution 1081
of co-riparians 1081, 1082
of interested non-riparians 1080, 1081, 1092
of riparians 1080, 1081, 1082
to abate pollution 1088
to compensate for injury—exceptions 1088
to exercise diligence to prevent violation of the right of others 1081
to make information available 1082
to prevent those for whose acts they are responsible from violating the rights of others 1082
to prevent water pollution 1082, 1088
to refrain from acts or omissions that adversely affect the rights of others 1082
to refrain from changing the régime of rivers—exceptions 1092
to refrain from conduct which would violate the rights of others 1081
to resolve differences by consultation 1082
to respect the rights of co-riparians 1082
to respect the rights of States having a part of the river under their jurisdiction 1092
to settle disputes by peaceful means 1088
to settle disputes by the means stipulated in treaties 1088
under the Charter of the United Nations 1088
when undertaking the improvement of rivers 1074, 1075, 1076
Organization of a general system for development and use of international rivers
functions 1077
methods of encouraging States to make agreements 1077
possibility of creating 1077
United Nations assistance 1077
Pollution
alterations injurious to the water 1071, 1072
alteration to the chemical composition of the water 1070
definition of "pollution" 1088
harmful to health, industry or agriculture 1083
injury 1088, 1111
international responsibility 1080, 1088
obligation of riparian States not to increase the level of pollution 1081
obligation of riparian States to abate pollution 1088
obligation of riparian States to prevent pollution 1082, 1088
obligation of riparian States to reduce uses which lead to pollution 1082
preventable pollution 1080
prohibition against emptying injurious matter into a river 1070, 1071, 1072
responsibility for damage 1080
setting up of commissions for the control and abatement of pollution 1084
studies 1082, 1083, 1087, 1091, 1092
Preliminary agreement
attempt to reach agreement within a reasonable time 1074, 1075, 1076
procedures for settlement in the absence of agreement—arbitration, peaceful means, judicial settlement 1074, 1075, 1076
utilization and use of waters 1074, 1075, 1076, 1080
Previous notice
utilization and use 1076, 1080
works 1074, 1075, 1076, 1080
Priority as between different uses of water 1071, 1072
according to agreement between States 1081
according to the characteristics of the river system 1092
according to the climate of the area 1081
according to the part of the river basin 1081
according to the river basin 1081
according to the seasons 1081
advice of technical experts 1081, 1082
in general 1081
studies 1092
Right
of dominion over 1092
to the use of 1092
Rights
enjoyment 1081
exercise 1080
extent 1081
in relation to changes in population 1081
in respect of water 1080, 1084
maintenance 1081
of co-riparians 1081, 1082
of interested non-riparians 1081, 1092
of riparians 1080, 1081, 1082, 1088
of utilization of waters 1074, 1075, 1076, 1080, 1081, 1092
principle of equality of rights 1074
to a reasonable use of waters 1080
to undertake works for improvement of facilities 1074, 1075
treaty rights 1081
usages having the force of law 1081
Riparian States 1071, 1072, 1074, 1075, 1076, 1080, 1081, 1082, 1088
Settlement of disputes, see: Disagreements or disputes concerning development of rivers or use of waters
ad hoc arbitral tribunal 1088
ad hoc commission 1084
ad hoc conciliation commission 1088
advisory technical commission 1080
apportionment of expenses of the arbitral tribunal 1084
arbitral award—execution—good faith 1084, 1088
arbitral award—form 1084
arbitral commission 1092
arbitral tribunal 1084
arbitral tribunal—membership procedure 1084
arbitration 1074, 1075, 1076, 1080
compensation of the arbitrators 1074
consultations 1082
creation of common organs to settle disputes 1076
effect of refusal to submit to arbitration or judicial settlement 1074, 1075, 1076
factors that should be considered 1080
good offices 1088
international court 1092
International Court of Justice 1074, 1075, 1076, 1084, 1088
judicial settlement 1074, 1075, 1076
judicial settlement at the request of one of the parties 1074, 1075
judicial settlement when agreement has not been reached within a reasonable time 1074, 1075, 1076
means indicated in Article 33 of the Charter of the United Nations 1074, 1075, 1082, 1105
means recommended by regional agencies or by international organizations 1088
means stipulated in binding treaties 1088
mediation 1088
model rules for the constitution of conciliation commissions 1088
model rules on arbitral procedure adopted by the International Law Commission 1088

Settlement of disputes *(continued)*
negotiation 1074, 1075, 1076, 1082, 1088
non-acceptance by parties of solutions recommended 1084
peaceful means 1074, 1075, 1084
permanent court of arbitration 1084
preliminary consultations 1080, 1084
President of the International Court of Justice 1084, 1088
principle of good faith 1076
procedural rules 1087, 1088
procedural techniques for settlement 1111
procedure—Hamburg Recommendations of the International Law Association 1083, 1084
prohibition against aggravating the dispute or rendering agreement more difficult during negotiations 1074, 1075, 1076
recommendations of technical agencies 1082
recourse to technical experts 1074, 1075, 1076
recourse to the appropriate organs constituted on the basis of parity or international organs 1074, 1075, 1076
rights and duties of parties pending the solution of a dispute 1087
Secretary-General of the United Nations 1084, 1088
tribunals 1092
Taking of water
authorizations 1070, 1071, 1072
criterion of actual utilization 1070, 1071
criterion of possible utilization in the quite near future 1070, 1071
quantity of water that the State up-stream is authorized to take 1070, 1071, 1072
Territorial sovereignty
exclusive legislative, judicial and administrative jurisdiction of a State over the part of an international basin that is within its territory 1081
exercise of jurisdiction over international rivers 1080, 1081
exercise of jurisdiction over territory 1081
limits derived from the recognized principles of law 1081
limits determined by treaty 1081
over international rivers 1071, 1072
over persons and things within the territory of a State 1081
over the waters of an international basin within the territory of a State 1081
Treaties
agreement concerning a river basin 1094
conclusion of agreements on the recommendation of technical agencies 1082
conclusion of treaties—factors that should be considered 1080
encouragement to make arrangements 1077
general convention 1077
limiting exclusive jurisdiction over territory 1081
recent treaties 1086
regional agreements 1082
setting up commissions 1084
United Nations
co-operation with riparian and co-riparian States 1081
legal information concerning river basins 1082
Secretary-General of the United Nations 1084, 1088
Up-stream State 1070, 1071, 1072
Uses of river waters:
Agricultural uses
lacunae in the law 1071
Domestic uses
priority 1081
Hydro-electric power
hydraulic factories 1070, 1071, 1072
legal problems 1097
priority 1081
prohibition of utilization modifying the character of the river down-stream 1070, 1071, 1072
utilization 1069
Industrial uses
lacunae in the law 1071
Irrigation
legal problems 1098
priority 1081
Navigation
limitations arising from traffic and transit rights 1081
Uses of river waters:
Navigation *(continued)*
limitations arising from treaty rights 1081
priority 1081
prohibition against violating the right of navigation 1071, 1072
regulation by international law 1071
reserved to nationals 1081
studies 1083, 1087
Non-navigational uses 1083, 1085, 1086
Timber-floating
studies 1083, 1087, 1091
Utilization and use of river waters
actual utilization 1070, 1071
adequate compensation for damage 1074, 1075, 1076
administrative and technical co-operation 1092
advantageous use 1092
application of modern technology 1076
assurance to States concerned of enjoyment of the advantages to which they are entitled 1076
authorizations to take water 1070, 1071, 1072
based on consultation 1076
based on mutual agreement 1074, 1075
change of use 1080
combined utilization of a river basin of interest to several States 1074
common interest in maximum utilization 1076
conflict of rights of utilization 1075
consistent with the rights of co-riparian and non-riparian States 1081
co-operation among riparian States 1080
creation of common organs 1076
damage 1074, 1075, 1076, 1081, 1088
dependence of each State upon utilization 1080
development of the question 1094
economic importance 1076
equitable apportionment 1081
exclusive enjoyment of particular benefits arising from the nature of the national territory 1092
freedom of uses which do not cause material injury to other riparian States 1081
full utilization 1080
full utilization from the viewpoint of the widest variety of uses 1080
future utilization 1088
gains accruing to riparian States and to the river community 1080
individual and exclusive utilization 1074, 1075
interdependence of riparian States 1071, 1072
interdependence of States crossed by a common river 1071, 1072
interest of riparian States in the beneficial uses of waters 1081
interest of riparian States in the fullest use of waters 1088
international documents regulating utilization 1113
legal problems 1091, 1097, 1098, 1099, 1102, 1105, 1107, 1110, 1111, 1112, 1113
limits imposed by international law 1074, 1075
limits imposed by neighbourly relations 1076
limits imposed by the right of utilization of other States 1076
more advantageous utilization 1074, 1075
more complete utilization 1074, 1075, 1081, 1088
most advantageous use 1092
new utilizations 1070, 1071
on the basis of each State's needs 1074, 1075
on the basis of equality of rights 1074
on the basis of joint plans and reciprocal concessions 1074, 1075, 1076
possible utilization 1070, 1071
preliminary agreement 1074, 1075, 1076, 1080
previously existing use 1080
principle of equality of rights 1092
principle of not causing unlawful harm to others 1074, 1075, 1076
prior consultation 1076, 1080
prior uses 1080, 1081
prior uses based on customary uses having the force of law 1081
prior uses under existing treaties 1081
prohibition against seriously affecting the possibility of utilization by another State 1076

Utilization and use of river waters *(continued)*
prohibition against seriously impairing another State's right of utilization 1074, 1075
prohibition against seriously impairing the right of utilization of another interested State 1075
prohibition against seriously interfering with utilization by another 1070, 1071, 1072
prohibition against unilaterally disturbing prior uses 1081
prohibition of acts constituting a threat to the peace 1092
prohibition of unlawful acts 1092
reasonable and equitable share of riparian States 1082
reasonable use 1080
reserved to nationals 1081
respect for the rights of co-riparians 1082
right of riparian States to the use of water 1080
right of utilization 1074, 1075, 1076
right of utilization of other States 1075
right of utilization to the maximum extent possible 1074
right to use limited by the equal right of other riparian States 1092
rules of law 1071, 1072
share in future benefits, according to relative needs 1092
share in the benefits from existing uses 1092
share of riparian States as determined in each particular case 1082
sharing of the costs of operation, maintenance and development 1092
Utilization and use of river waters *(continued)*
special and valid legal title 1070, 1071, 1072
status of existing uses 1092
subject to the right of utilization of other interested States 1074, 1075
taking of water 1070, 1071, 1072
United Nations co-operation 1081
weighing the benefits to and injuries done to the parties 1080
Water conditions 1112
authorized change 1092
change 1070, 1071, 1072, 1074, 1075, 1076, 1080
change as a result of a decision of an international court or arbitral commission 1092
change as a result of an agreement 1092
natural water conditions 1070, 1071
since time immemorial 1070, 1071
Waters
boundary waters 1091
international inland waters 1103, 1104, 1105
international waters 1103
river basin 1074, 1075
surface waters 1082
system of international waters 1081, 1092
underground waters 1082

ANNEX V

Index of the names of the international rivers mentioned in the text

Africa

Albert, Lake paras. 149–150
Atbara para. 128
Chad, Lake foot-notes 61, 92; annex II, section C
Congo para. 83; foot-note 359
Cross River foot-note 92
Gash paras. 92–95
Great Skarcies paras. 130–131
Hadou Wells para. 132
Komadugu para. 133
Kuene (Rua Cana Falls) paras. 96–99
Kwando paras. 134–135
Malka Murri (frontier waters at) para. 136
Meli paras. 137–138
Moa paras. 137–138
Muni paras. 139–140
M'pozo paras. 141–143
Niger para. 83; foot-notes 61 and 359; annex II, section C
Nile paras. 84, 100–113, 144, 1093, 1118; foot-notes 52, 75, 941; annex II, section B
Blue Nile para. 129
Equatorial Lakes paras. 120–123
Owen Falls paras. 114–119
Nyasa, Lake paras. 89–91, 145–146
Outamboni paras. 139–140
Ramla Well para. 147
Rovuma para. 148
Semliki paras. 149–150
Shiré paras. 89–90
Sobat paras. 111, 129
Tanoe paras. 124, 151
Tsana, Lake para. 129
Victoria, Lake para. 121
Zambesi para. 134

America

Acaray paras. 168–173
Albany para. 223
Arrow, Lake para. 189
Birch, Lake para. 154
Catatumbo para. 1054
Colorado paras. 24, 28–32, 184–185, 211–212, 214, 216; foot-notes 161, 188
Columbia paras. 164, 186–200, 1093, 1118
Fraser foot-note 151
Grande, Rio (Rio Bravo) paras. 34–41, 184–185, 201–213, 216; foot-notes 161, 173, 175, 180, 184, 187, 188; annex II, section B
Great Lakes paras. 217–223, 294; foot-notes 201, 261
Lake Erie paras. 166, 229
Lake Michigan para. 154; foot-note 142
Lake Ontario para. 230
Lake Superior para. 154
Güija, Lake foot-note 151
Kootenay paras. 188–189, 195
Kootenay, Lake para. 195
Lauca foot-note 2
Long-Lac-Ogoki para. 223; foot-note 201
Mahu para. 281
Maroni paras. 282–284
Mauri paras. 285–286
Memphremagog, Lake paras. 224–226
Milk paras. 154, 156, 164, 167
Mississippi para. 154; foot-note 348
Monday paras. 168–173
Niagara paras. 33, 156, 164, 166, 227, 233; foot-note 150
Black Rock Canal para. 229
Niagara Falls paras. 223, 227–228, 230, 233
Welland Canal para. 229
Paraná (Apipé Falls) paras. 234–238; foot-notes 206, 207
Pilcomayo paras. 152, 287–290
Plate para. 291
Hydrographic system of the River Plate, annex I, section B
Rainy, Lake paras. 164, 180, 239–240
International Falls para. 240
Kettle Falls para. 240
St. Clair para. 292; footnote 261
St. Clair, Lake para. 292
St. Francis, Lake paras. 241–243; foot-note 215

St. Lawrence paras. 22, 42–44, 221–223; 293–295; foot-notes 140, 142, 215, 262, 263
St. Mary paras. 154, 156, 164, 167; foot-note 261
San Juan paras. 1038–1041
Tacutú para. 281
Tijuana paras. 24, 211–212, 215–216; foot-note 161
Titicaca, Lake paras. 244–256, 296; foot-note 220
Uchusuma paras. 285–286
Uruguay paras. 296–300, 1086, 1111
  Salto Grande paras. 153, 257–267; foot-notes 228, 273
Woods, Lake of the paras. 154, 164, 174–183; foot-note 159
Zarumilla para. 301; foot-note 279
Zulia para. 1047

Asia

Amur paras. 318–320
Araxe (Araxes, Aras or Araks) paras. 317, 321–324; foot-note 292
  Ighdir Valley canals para. 323
Archinian (Archangan) paras. 325, 328, 338–340
Argun paras. 318–320
Arnawai Khwar paras. 406–407
Arpa-Chai para. 317
Atreck paras. 325, 336–340, 402
Babadjik Canal paras. 325, 330, 338–340
Barolan, Lake para. 415
Chaachaa paras. 325, 328, 338–340
Chandir (Chandor) paras. 325, 328, 338–340
Chorokh para. 317
Durungar paras. 325, 331, 338–340
Euphrates paras. 341–346, 409, 410
Firuza (Firuzinka) paras. 325, 333, 338–340
Gandak paras. 347–354
  Main Western Canal paras. 351–352
  Nepal Eastern Canal para. 350
  Nepal Western Canal para. 350
  Tribeni Canal para. 347
Gangir para. 411
Gunjan Cham para. 411
Helmand paras. 355, 1034–1037; foot-notes 839, 843
Hula, Lake foot-note 2
Indus paras. 356–361, 1086, 1111; foot-notes 306, 308–310
  Basantar para. 359 (*b*)
  Beas paras. 356–359, 361
  Bein para. 359 (*b*)
  Chenab paras. 356–358, 360–361; foot-note 309
  Fazilka Drain para. 361 (*e*)
  Hudiara Drain para. 361 (*e*)
  Jhelum paras. 356–358, 360–361; foot-note 309
  Kasur Nala para. 361 (*e*)
  Ravi paras. 356–359, 361; foot-note 309
  Salimshah Drain para. 361 (*e*)
  Sutlej paras. 356–359, 361
  Tarnah para. 359 (*b*)
  Ujh para. 359 (*b*)
Jordan para. 376; foot-note 2
Kabul para. 412
Karzan Chai (Zenginanlou) paras. 325, 329–330, 338–340
Kelat Chai (Nafte) paras. 325, 328, 338–340
Kelta-Chinar paras. 325, 332, 338–340
Kosi paras. 362–374
Kozlu para. 415
Kura para. 317
Kushka paras. 413, 1042–1046; foot-note 852
Kuveik paras. 409–410
Lain-Sou paras. 325, 328, 338–340
Landi Khana para. 412
Meana (Kara-Tikan) paras. 325, 328, 338–340
Mekong paras. 302–303; foot-notes 281–283
Murghab para. 414
Pakchan foot-note 315
Poskhov-Chai para. 317
Salep para. 415
Shatt-El-Arab paras. 304, 408
Soumbar paras. 325, 334–335, 338–340
  Daine-Sou para. 334
  Kouloun-Kalasi-Sou para. 334
Tedjen (Geri-Roud) paras. 325–327, 338–340
Tiberias, Lake para. 382; foot-note 2
Tigris paras. 341–346, 416
Yarmuk paras. 375–385
Yukari Yarim Kaya para. 415

Europe

Aa paras. 668, 957; foot-note 755
Aach para. 834
Ache foot-note 507
Adda paras. 849–850
Allensbach para. 834
Alsace, Grand Canal of para. 819; foot-notes 429, 624, 627
Alzette foot-note 487
Amstelbach foot-note 718
Anarjokka (Inarijoki) paras. 859–862, 958
Angoustrine and Llivia Canal paras. 960, 979, 984
Aravo para. 959
Arc foot-note 576
Arve paras. 607–616
Averserrhein paras. 792–795; foot-note 607
Basaviga para. 961
Beli Drim foot-note 445
Bidassoa paras. 617–626, 934; foot-note 726
Birse paras. 489, 820; foot-note 429
Blaserbach para. 627; foot-note 507
Bleyerheider Bach foot-note 718
Bocholter Aa (Aastrang) paras. 628–632
Bojana foot-note 445
Braakman foot-note 696
Breggia paras. 633–642
Brualer (Schloot) foot-note 718
Calonne para. 790
Carol paras. 1055–1063; foot-note 699
Cenischia foot-note 438
Constance, Lake paras. 420, 426–429, 457, 458–463, 469, 802–804, 810, 814; annex II, section D; foot-notes 381, 399, 636, 646
  Lower Lake paras. 834–841, 987–990
  Upper Lake and Lower Lake paras. 435–438
  Upper Lake, Überlingensee and Lower Lake paras. 430–434
Crateron foot-note 465
Crni Drim foot-note 445
Cuncos para. 943
Danube paras. 419, 421, 439–446, 470–473, 503, 536, 643–646, 945 (*h*), 963–964, 972; foot-notes 352, 353, 355, 358, 360, 370, 450, 469, 473, 477, 507, 688, 737
Deule para. 973 (*b*)
Diepoldsau paras. 811 (*b*), 812
Dinkel para. 647
Dintel foot-note 719
Dinxperlo foot-note 718
Dojran, Lake paras. 530, 653–667; foot-note 465
Dolimannbach para. 627; foot-note 507
Dollard paras. 668–671; foot-note 718
Dommel foot-note 567
Doubs paras. 607–616, 965–969
  Châtelot Falls paras. 672–678; foot-note 529
Douro paras. 679–692, 961; foot-note 536
Doveria paras. 633–642
Dragas foot-note 465
Drava paras. 693–699; foot-note 473
Dreilägerbach paras. 466, 882
Dunkirk Canal para. 970
Dürrach para. 627; foot-note 507
Eckelsche Beek foot-note 719
Elbe para. 421
Eljas para. 961
Emetbach foot-note 607
Emlichscheim Canal para. 651

Ems paras. 50–59, 668; foot-note 718
Canals on the left bank para. 649
Esche paras. 831–833
Espierre para. 425; foot-note 374
Espierres Canal para. 700; foot-notes 540, 542
Flanders (waters of) paras. 701–706
Fonte Fredda and Moncorona (Krombeck): supply of water to the commune of Gorizia paras. 422, 490, 492, 711–719; foot-notes 439, 553
Förstevannene, Lake paras. 707–710
Fri Graben paras. 830, 832–833
Fuglevatn paras. 707–710
Furnes Canal para. 970
Gammelaa foot-note 483
Gandvik paras. 707–710
Garsjöen, Lake paras. 707–710
Geneva, Lake of paras. 607–616; foot-note 651
Giona paras. 633–642
Guadiana paras. 943, 971
Haine Canal foot-note 374
Heesterkante foot-note 754
Hellegat foot-note 696
Hetforrás (Siebenbründel) para. 581 (*c*)
Horster Beek foot-note 719
Ijssel paras. 871–879
Ill paras. 810, 827–828; foot-note 643
Inari, Lake paras. 447–452, 720
Inn paras. 503, 972; foot-notes 507, 657
Isar para. 627; foot-note 507
Isonzo foot-note 434
Kallo paras. 707–710
Kesselbach para. 627; foot-note 507
Keupenbeek foot-note 719
Kjerringvatn, Lake paras. 707–710
Kleefsche Graef Canal foot-note 719
Kleine Leitha para. 581 (*d*)
Kleine-Vechte para. 957
Koblach Canal para. 811 (*b*) and (*c*)
Korinitza para. 481
Krusaa foot-note 483
Kutajoki foot-note 457
Laar'sche Bruch para. 650
Lanoux, Lake paras. 1055–1068; foot-notes 576, 699
Lausitzer Neisse paras. 910 (*b*), 911, 913
Leers Canal para. 700
Liechtenstein Canal paras. 827, 829, 832–833
Lieksa foot-note 457
Lingsforter (Zandhoeksche) foot-note 719
Ljumnica foot-note 465
Lugano, Lake paras. 633–642, 721–729
Lys para. 973; foot-note 785
Canal foot-note 374
Macon para. 790
Madrisenheim foot-note 607
Maggiore, Lake paras. 633–642
Main paras. 644–645
Maira paras. 633–642
Maritza-Ebros paras. 730–735
Markelfingen para. 834
Maros foot-note 473
Maura foot-note 473
Melezza paras. 633–642
Meuse paras. 50–59, 736–740, 975–978, 1022–1033; foot-notes 348, 564, 566
Miinalanjoki foot-note 457
Miño (Minho) paras. 741–747, 935, 961–962, 971
Mont Cenis, Lake of paras. 490–491, 748–751; foot-notes 438, 575, 576
Moorschloot foot-note 525
March (Morava) foot-note 688
Moselle paras. 474–480, 565 (*b*) and (*g*), 904; annex II, section D; foot-notes 394, 410, 412, 413
Mühlenbach foot-note 718
Muonio paras. 63, 752–763; foot-notes 63, 584, 586
Mura paras. 764–769
Näätämö (Nèiden) paras. 707–710
Niers paras. 770–771
Guelder Niers Canal paras. 770–771
Niemen para. 421
Nordhorn-Almelo Canal paras. 647, 652
Oder para. 421
Ohrid, Lake foot-note 445
Our paras. 565 (*b*), 772–781, 905
Ova Dal Gall paras. 849, 851 (*a*) and (*b*)
Pasvik (Paatsjoki) paras. 49, 448–452, 782–789, 947; foot-note 742
Piccardie-Coevorden Canal paras. 650–651
Pistojoki foot-note 457
Po foot-note 438
Pommeroeul Canal para. 790
Poschiavino paras. 633–642
Prespa, Lake para. 530; foot-notes 445, 465
Pruth para. 791
Puigcerdá Canal paras. 959, 979, 982, 984 (*e*), 1055, 1058; foot-note 797
Quieto foot-note 434
Raab para. 581 (*a*)
Radewijkerbeek foot-note 719
Radewyk para. 957
Raibl, Lake para. 481
Rammelbach foot-note 718
Ramsbeek foot-note 719
Raour paras. 902, 979–980; foot-note 704
Reno Di Lei paras. 792–795, 854; foot-note 607
Rhine paras. 50–59, 419–421, 426, 453–463, 482–487, 564, 644–645, 799–841, 890 (*d*), 985–990; foot-notes 348, 349, 351, 354, 358, 360, 383, 394, 397, 399, 417, 422, 425, 614, 615, 616, 620, 621, 624, 626, 627, 638, 646, 718
Kembs Fall paras. 488, 489, 808 (*c*), 818–827; foot-notes 429, 430, 431, 624, 639
Lower Rhine para. 889
Lower reaches of the Old Rhine paras. 796–798
Rhone paras. 607–616; foot-notes 650, 651
Pougny-Chancy Fall paras. 842–845
Risano foot-note 434
Rissbach para. 627; foot-note 507
Rodebach foot-notes 718, 719
Roggia Molinara paras. 846–848; foot-note 655
Rothenbach foot-note 718
Roubaix Canal para. 700; foot-note 540
Roya paras. 490–491; foot-notes 435, 436, 437
Ruderböl, Lake (Rudeböl) para. 1021; foot-note 483
Saalach (Saale) paras. 972, 991–995; foot-notes 507, 810
Saar paras. 996–1001; annex II, section D
Sakuleva foot-note 465
Salzach paras. 503, 972, 991–995; foot-notes 507, 810
Samina foot-note 643
Sauer (Sure) paras. 565 (*b*) and (*g*), 855–858; foot-notes 413, 487
Scheldt (Escaut) paras. 60, 707; foot-notes 348, 696
Escaut (Scheldt) Canal foot-note 374
Schlattgraben Canal para. 834
Schoonebeekdiep Canal foot-note 719
Semoy (Semois) para. 974
Sever para. 961
Skadar, Lake foot-note 445
Skelboek foot-note 483
Skiettsjamjokka paras. 859–862
Sloe foot-note 696
Sönderaa foot-note 483
Spiersgraben paras. 829, 832–833
Spöl paras. 633–642, 849–854; foot-note 657
Straelener Leitgraef foot-note 719
Sulina Channel (Danube) paras. 470, 472 (*b*)
Szamos foot-note 469
Tagus para. 961
Tana paras. 859–862; foot-note 665
Tartares paras. 979, 981
Terneuzen Canal paras. 493–497, 1009–1012; foot-note 546
Thaya paras. 1002–1008; foot-notes 688, 816, 817

Timok paras. 863–865; foot-notes 454, 669
Tisza paras. 536, 791, 866–870; foot-notes 469, 473
Tormes para. 680
Torne (Tornea, Tornio) paras. 63, 752–763; foot-notes 579, 584, 586
Tort paras. 979, 981
Tresa paras. 633–642, 721–729
Tuerto para. 961
Tulenmanjoki foot-note 457
Tuulijoki foot-note 457
Tuulomanjoki foot-note 457
Uzh paras. 1013–1019
Vanera paras. 979, 983, 984 (*d*)
Vardar para. 530; foot-notes 465, 468
Vechte paras. 648–652
Veldt foot-note 754
Verne de Bury para. 790
Vidaa para. 1021
Walchum (Schloot) foot-note 718
Wark foot-note 487
Weser paras. 466, 882, 1020
Wiesgraben (Retárok) para. 581 (*d*)
Willinkbeek foot-note 719
Wurm foot-note 718
Zwin foot-note 696

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Legal problems relating to the non-navigational uses of international watercourses

Supplementary report by the Secretary-General

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CONTENTS

		Page
Abbreviations		270
	Paragraphs	
Introduction	1–18	270
(*a*) Background to this supplementary report	1–10	270
(*b*) Purpose, scope and plan of the report	11–18	272
PART ONE		
Information provided by Member States regarding their legislation		
AUSTRALIA		
Note dated 26 April 1973 from the Permanent Mission to the United Nations	19	273
CANADA		
A. Canadian programmes to protect Great Lakes Water Quality	20–22	274
B. International River Improvements Act and Regulations, 1955	23	275
C. Canada Water Act, 1969–1970	24	275
D. Northern Inland Waters Act, 1969–1970	25	277
E. Fisheries Act, 1970	26	278
F. Act to amend the Fisheries Act, 1970	27	278
FINLAND		
A. Note dated 18 July 1973 from the Permanent Mission to the United Nations	28	279
B. Note dated 18 December 1973 from the Permanent Mission to the United Nations	29	280
FRANCE		
Act No. 64–1245 of 16 December 1964 on the administration and classification of waters and the control of water pollution	30	280
MEXICO		
A. Article 27 of the Constitution	31	282
B. Federal Water Act, 1972	32	282
NIGER		
Act No. 71–17 of 30 March 1971 issuing the Fisheries Regulations	33	286
NORWAY		
Note dated 23 January 1973 from the Permanent Mission to the United Nations	34	286
ROMANIA		
Act of 20 April 1973 concerning water management in the Socialist Republic of Romania	35	286
PART TWO		
Treaties and other international instruments		
CHAPTER I. MULTILATERAL AND BILATERAL TREATIES	36–321	289
A. Africa	36–59	289
Multilateral treaties	36–59	289

	Paragraphs	Page
Guinea–Mali–Mauritania–Senegal: Convention relating to the general development of the Senegal River basin, signed at Bamako on 26 July 1963	36–39	289
Cameroon–Chad–Dahomey–Ivory Coast–Guinea–Mali–Niger–Nigeria–Upper Volta: Act regarding navigation and economic co-operation between the States of the Niger basin, done at Niamey on 26 October 1963	40–44	289
Guinea–Mali–Mauritania–Senegal: Convention relating to the status of the Senegal River, signed at Dakar on 7 February 1964	45–50	289
Cameroon–Chad–Niger–Nigeria: Convention and Statutes relating to the development of the Chad Basin, signed at Fort-Lamy on 22 May 1964	51–56	290
Cameroon–Chad–Dahomey–Guinea–Ivory Coast–Mali–Niger–Nigeria–Upper Volta: Agreement concerning the Niger River Commission and the navigation and transport on the River Niger, done at Niamey on 25 November 1964	57–59	291
B. America	60–130	291
1. Multilateral Treaties	60–64	291
Argentina–Bolivia–Brazil–Paraguay–Uruguay: Treaty on the River Plate Basin, signed at Brasilia on 23 April 1969	60–64	291
2. Bilateral treaties	65–130	292
Argentina–Paraguay: Agreement concerning a study of the utilization of the water power of the Apipé Falls, signed at Buenos Aires on 23 January 1958	65–68	292
Guatemala–Mexico: Exchange of notes constituting an agreement concerning the establishment of the International Commission on Boundaries and Waters, Guatemala City, 9 November and 21 December 1961	69–71	292
Mexico–United States of America: Convention for the solution of the problem of the Chamizal, signed at Mexico on 29 August 1963	72–77	293
Canada–United States of America: Agreement concerning the establishment of an international arbitral tribunal to dispose of United States claims relating to Gut Dam, signed at Ottawa on 25 March 1965	78–82	294
Mexico–United States of America: Exchange of notes constituting an agreement concerning the loan of waters of the Colorado River for irrigation of lands in the Mexicali Valley, Mexico, 24 August 1966	83	294
Argentina–Uruguay: Protocol concerning the delimitation and marking of the Argentine–Uruguayan boundary line in the River Uruguay, signed at Buenos Aires on 16 October 1968	84–86	295
Argentina–Paraguay: Agreement for the regulation, channelling, dredging, bouyage and maintenance of the River Paraguay, signed at Asunción on 15 July 1969	87–91	295
Mexico–United States of America: Treaty to resolve pending boundary differences and maintain the Rio Grande and Colorado River as the international boundary, signed at Mexico City on 23 November 1970	92–99	295
Argentina–Paraguay: Agreement concerning a study of the utilization of the resources of the River Paraná, signed at Buenos Aires on 16 June 1971	100–105	296
Canada–United States of America: Agreement on the Great Lakes Water Quality, signed at Ottawa on 15 April 1972	106–114	297
Argentina–Uruguay: Treaty on the River Plate and its maritime outlet, done on 19 November 1973	115–130	298
C. Asia	131–133	300
Bilateral treaties	131–133	300
China–Pakistan: Boundary Agreement, signed at Peking on 2 March 1963	131–133	300
D. Europe	134–321	301
1. Multilateral treaties	134–148	301
France–Germany, Federal Republic of–Luxembourg: Protocol, signed at Paris on 20 December 1961	134–137	301
France–Germany, Federal Republic of Luxembourg–Netherlands–Switzerland: Agreement concerning the International Commission for the Protection of the Rhine against Pollution (with protocol of signature), signed at Berne on 29 April 1963	138–141	301
Austria–Germany, Federal Republic of–Switzerland: Agreement (with Final Protocol) regulating the withdrawal of water from Lake Constance, signed at Berne on 30 April 1966	142–146	301
Belgium–Denmark–France–Germany, Federal Republic of–Italy–Luxembourg–Netherlands Switzerland–United Kingdom of Great Britain and Northern Ireland: European Agreement on the restriction of the use of certain detergents in washing and cleaning products, done at Strasbourg, on 16 September 1968	147–148	302

	Paragraphs	Page
2. Bilateral treaties	149–321	302
Bulgaria–Romania: Agreement concerning the maintenance and improvement of the fairway in the Romanian–Bulgarian sector of the Danube, signed in Sofia on 29 November 1955	149–155	302
Romania–Union of Soviet Socialist Republics: Agreement extending the provisions of the Romanian–Soviet Convention of 25 December 1952, concerning measures to prevent floods and to regulate the water régime of the River Prut, to the Rivers Tisza, Suceava and Siret and their tributaries and to the irrigation and drainage canals forming or intersecting the Romanian–Soviet frontier, signed at Bucharest on 31 July 1957	156	303
Czechoslovakia–Poland: Agreement concerning the use of water resources in frontier waters, signed at Prague on 21 March 1958	157–163	303
Romania–Union of Soviet Socialist Republics: Agreement extending the Convention of 25 December 1952, concerning measures to prevent floods and to regulate the water régime of the River Prut, to the frontier sector of the River Danube, from the mouth of the River Prut to the Black Sea, signed at Bucharest on 15 October 1959	164	304
Germany, Federal Republic of–Netherlands: Treaty concerning arrangements for co-operation in the Ems Estuary (Ems-Dollard Treaty), signed at The Hague on 8 April 1960	165–176	304
Germany, Federal Republic of–Netherlands: Agreement to accept the compulsory jurisdiction of the International Court of Justice in disputes concerning the interpretation or application of the revised Convention on Rhine navigation, 1868 (Convention of Mannheim), signed at The Hague on 8 April 1960	177	305
Poland–Union of Soviet Socialist Republics: Treaty concerning the régime of the Soviet-Polish State frontier and co-operation and mutual assistance in frontier matters (with Protocol), signed at Moscow on 15 February 1961	178–193	306
France–Germany, Federal Republic of: Protocol concerning the establishment of an International Commission for the Protection of the Saar against Pollution, signed at Paris on 20 December 1961	194–197	307
Germany, Federal Republic of–Netherlands: Supplementary Agreement to the Treaty concerning arrangements for co-operation in the Ems Estuary (Ems–Dollard Treaty) (with Protocol and exchange of notes), signed at Bennekom on 14 May 1962	198–201	307
France–Switzerland: Convention concerning the protection of the waters of Lake Geneva against pollution, signed at Paris on 16 November 1962	202–205	308
Greece–Turkey: Protocol concerning the final elimination of differences concerning the execution of hydraulic operations for the improvement of the bed of the River Meriç–Evros carried out on both banks, signed at Ankara on 19 January 1963	206–210	308
Belgium–Netherlands: Treaty concerning the connexion between the Scheldt and the Rhine, signed at The Hague on 13 May 1963	211–215	309
Hungary–Romania: Treaty concerning the régime of the Hungarian–Romanian State frontier and co-operation in frontier matters, signed at Budapest on 13 June 1963	216–227	310
France–Switzerland: Convention on the Emosson hydroelectric project, signed at Sion on 23 August 1963	228–236	311
Romania–Yugoslavia: Final Act, Agreement and other Acts relating to the establishment and operation of the Iron Gates Water Power and Navigation System on the River Danube, all signed at Belgrade on 30 November 1963	237–255	312
Norway–Union of Soviet Socialist Republics: Protocol concerning the land in Norwegian and Soviet territory which is required for the operation and maintenance of the power stations at Boris Gleb and Skogfoss and which, in accordance with the Agreement of 18 December 1957 on the utilization of water-power on the Pasvik (Paatso) River, is made available free of charge by one Party for use by the other Party, signed at Oslo on 24 December 1963	256	314
Finland–Union of Soviet Socialist Republics: Agreement concerning frontier watercourses, signed at Helsinki on 24 April 1964	257–264	314
Finland–Norway: Agreement regarding fishing in the fishing area of the Näätämö (Neiden) watercourse (with related fishing regulations), signed at Oslo on 9 June 1964	265–268	315
Bulgaria–Greece: Agreement on co-operation in the utilization of the waters of the rivers crossing the two countries, signed at Athens on 9 July 1964	269–272	315
Poland–Union of Soviet Socialist Republics: Agreement concerning the use of water resources in frontier waters, signed at Warsaw on 17 July 1964	273–278	316
Austria–Yugoslavia: Treaty concerning the common State frontier, signed at Belgrade on 8 April 1965	279–281	316
Austria–Czechoslovakia: Treaty concerning the regulation of water management questions relating to frontier waters, signed at Vienna on 7 December 1967	282–296	316
Czechoslovakia–Hungary: Agreement concerning the establishment of a River Administration in the Rajka–Gönyü sector of the Danube, signed at Prague on 27 February 1968	297–304	318

	Paragraphs	Page
Greece–Yugoslavia: Agreement concerning the study of the over-all improvement of the Axios/Vardar basin, signed at Belgrade on 12 June 1970	305	319
Bulgaria–Greece: Agreement concerning the establishment of a Greek–Bulgarian Commission for co-operation between the two countries in questions relating to electric power and the utilization of the rivers crossing their territories, signed at Sofia on 12 July 1971	306	319
Finland–Sweden: The Frontier Rivers Agreement of 16 September 1971	307–321	319
CHAPTER II. OTHER INTERNATIONAL INSTRUMENTS	322–329	322
Argentina–Bolivia–Brazil–Paraguay–Uruguay: Act of Asunción on the use of international rivers, signed by the Ministers for Foreign Affairs of the States of the River Plate Basin at their Fourth Meeting held from 1 to 3 June 1971	322–326	322
Argentina–Chile: Act of Santiago concerning hydrologic basins, signed on 26 June 1971	327	324
Argentina–Uruguay: Declaration on water resources, signed at Buenos Aires on 9 July 1971	328	324
Argentina–Bolivia: Act of Buenos Aires on hydrologic basins, signed on 12 July 1971	329	325
PART THREE		
Survey of studies made or being made within intergovernmental organizations		
CHAPTER I. UNITED NATIONS	330–354	325
A. United Nations Conference on the Human Environment, 1972	330	325
B. Economic and Social Council and subsidiary bodies	331–347	326
1. Economic and Social Council	331–334	326
(*a*) The initial stages	332	326
(*b*) Study on "Abstraction and Use of Water: a comparison of legal régimes" submitted under resolution 1033 (XXXVII) of 14 August 1964	333	327
2. Committee on Natural Resources	334–336	328
3. Regional economic commissions	337–347	330
Economic Commission for Europe	337–347	330
(*a*) Recommendations concerning the hydroelectric development of international rivers	337–343	330
(i) Recommendation No. 2 submitted to Governments by the Committee on Electric Power with a view to facilitating the hydroelectric development of contiguous rivers and lakes (adopted by the Committee on 3 October 1957)	338–342	330
(ii) Recommendation No. 4 submitted to Governments by the Committee on Electric Power with a view to promoting the hydroelectric development of successive rivers in Europe (adopted by the Committee on 26 May 1954)	343	331
(*b*) Recommendations concerning the protection of international rivers	344–347	332
(i) Recommendation to ECE Governments concerning the protection of ground and surface waters against pollution by oil and oil products, approved by the Committee on Water Problems in 1970	345	332
(ii) Recommendation to ECE Governments concerning river basin management, approved by the Committee on Water Problems in 1971	346	333
(iii) Recommendations to the Governments of Southern European countries concerning selected water problems, approved by the Committee on Water Problems in 1972	347	333
C. Report of the Panel of Experts on the legal and institutional aspect of international water resources development	348–354	334
CHAPTER II. SPECIALIZED AGENCIES AND INTERNATIONAL ATOMIC ENERGY AGENCY	355–363	335
A. Food and Agriculture Organization of the United Nations	355–358	335
(*a*) The control of marine pollution and the protection of living resources of the sea: a comparative study of international controls and national legislation and administration	356–357	335
(*b*) Draft agreement on water utilization and conservation in the Lake Chad Basin, prepared by the FAO Legal Office	358	335
B. World Health Organization	359	337
C. World Meteorological Organization	360	337

	Paragraphs	Page
D. International Atomic Energy Agency	361–363	337
"Disposal of radioactive wastes into rivers, lakes and estuaries", report prepared by a Panel of experts in 1969	361–363	337
CHAPTER III. OTHER INTERGOVERNMENTAL ORGANIZATIONS	364–398	338
A. Regional Organizations	364–381	338
1. Asian-African Legal Consultative Committee	364–367	338
Draft propositions on the law of international rivers, formulated in 1973 by a Sub-Committee	364–367	338
2. Council of Europe	368–378	340
(*a*) Report on fresh water pollution control in Europe, submitted to the Consultative Assembly in 1965	368–371	340
(*b*) Recommendation 436 (1965) of the Consultative Assembly on Fresh Water Pollution Control in Europe	372	341
(*c*) European Water Charter, 1967	373	342
(*d*) Draft European convention on the protection of fresh water against pollution—(recommendation 555 (1969) of the Consultative Assembly)	374–375	343
(*e*) Draft European convention for the protection of international watercourses against pollution	376–377	346
(*f*) Recommendation 629 (1971) of the Consultative Assembly on the pollution of the Rhine valley water-table	378	349
3. Organization of American States	379–381	349
(*a*) Draft convention on the industrial and agricultural use of international rivers and lakes, prepared by the Inter-American Judicial Committee in 1965	379	349
(*b*) Resolution on control and economic utilization of hydrographic basins and streams in Latin America adopted by the Inter-American Economic and Social Council in 1966	380	351
(*c*) Proposed special conference on international rivers and lakes	381	351
B. Multipartite and Bipartite Commissions established for specific watercourses	382–398	351
1. Danube Commission	382–387	351
(*a*) Decision concerning measures by the Danubian countries to protect the waters of the Danube against pollution, adopted by the Danube Commission on 27 January 1960	382	351
(*b*) Decision concerning the draft provisions on the control of water pollution in the Danube caused by wastes of oil products discharged from vessels, adopted by the Danube Commission on 27 January 1961	383	351
(*c*) Recommendations concerning the unification of the regulations governing the protection of fauna and flora in the Danube	384	352
(*d*) Recommendations concerning the unification of the health regulations relating to the Danube, adopted by the Danube Commission on 2 February 1962	385	352
(*e*) Fundamental Provisions concerning Navigation on the Danube, adopted by the Danube Commission on 9 June 1967	386	352
(*f*) Inventory prepared by the Danube Commission secretariat in 1971 of places and facilities provided in ports in the Danubian countries for dumping wastes and residues of oil products and oil-contaminated water	387	352
2. Intergovernmental Co-ordinating Committee of the River Plate Basin	388	352
Recommendations of the Group of Experts on Water Resources, approved by the Intergovernmental Co-ordinating Committee of the River Plate Basin on 20 April 1972	388	352
3. International Commission for the Protection of the Moselle against pollution	389	353
4. Lake Chad Basin Commission	390	353
5. International Joint Commission, Canada and the United States of America	391–398	353
PART FOUR		
Survey of studies made or being made by international non-governmental organizations concerned with international law		
A. Institute of International Law	399	356
B. Inter-American Bar Association	400–403	356
C. International Law Association	404–409	357
1. The Helsinki Rules on the Uses of the Waters of International Rivers, adopted by the International Law Association at its fifty-second Conference held at Helsinki in 1966	404–405	357

	Paragraphs	Page
2. Programme of work of the Committee on International Water Resources Law	406–408	359
3. Draft articles on flood control, approved by the International Law Association at its fifty-fifth Conference held in New York in 1972	409	361

ANNEXES

Bibliography and documentation

1. Bibliography . . . 362
2. Selected documents issued under the auspices of the United Nations . . . 365

ABBREVIATIONS

ECAFE	Economic Commission for Asia and the Far East
ECE	Economic Commission for Europe
ECLA	Economic Commission for Latin America
FAO	Food and Agriculture Organization of the United Nations
IAEA	International Atomic Energy Agency
ICJ	International Court of Justice
OAS	Organization of American States
OAU	Organization of African Unity
UNDP	United Nations Development Programme
UNITAR	United Nations Institute for Training and Research
WHO	World Health Organization
WMO	World Meteorological Organization

Introduction

(a) *Background to this supplementary report*

1. At the fourteenth session of the General Assembly, in 1959, a proposal concerning the question of the codification of the rules relating to the utilization and use of international rivers was submitted by the representative of Bolivia to the Sixth Committee during the consideration of the report of the International Law Commission on the work of its eleventh session. In submitting his proposal, the representative of Bolivia pointed out that half the world's arable land remained unworked for lack of water, and that, with the population increasing daily, the problem demanded urgent solution; the utilization of inland waters was not governed by any international statute and the law applied was purely customary, ill-defined and lacking in uniformity; there was accordingly a pressing need to undertake a study of the question of the codification of current laws on the utilization and exploitation of international waterways.[1] On 21 November 1959, the General Assembly, on the recommendation of the Sixth Committee,[2] adopted resolution 1401 (XIV), which reads as follows:

The General Assembly,

Considering that it is desirable to initiate preliminary studies on the legal problems relating to the utilization and use of international rivers with a view to determining whether the subject is appropriate for codification,

Requests the Secretary-General to prepare and circulate to Member States a report containing:

(*a*) Information provided by Member States regarding their laws and legislation in force in the matter and, when necessary, a summary of such information;

(*b*) A summary of existing bilateral and multilateral treaties;

(*c*) A summary of decisions of international tribunals, including arbitral awards;

(*d*) A survey of studies made or being made by non-governmental organizations concerned with international law.

2. The report on "Legal problems relating to the utilization and use of international rivers" (A/5409),[3] prepared by the Secretary-General pursuant to resolution 1401 (XIV), was published in 1963 and distributed that year to Member States in accordance with the resolution. The national legislative texts and treaty provisions referred to in the Secretary-General's report were assembled and published *in extenso* in a volume of the United Nations Legislative Series.[4]

3. By a note verbale of 24 April 1970,[5] the Government of Finland requested the inclusion of an item entitled "Progressive development and codification of the rules of international law relating to international watercourses" on the agenda of the twenty-fifth session of the General Assembly.

[1] See *Official Records of the General Assembly, Fourteenth Session, Annexes*, agenda item 55, document A/4253, paras. 40–41.

[2] For a summary of the debate on the question, see the report of the Sixth Committee (*ibid.*, paras. 40–52).

[3] See p. 49 above.

[4] *Legislative texts and treaty provisions concerning the utilization of international rivers for other purposes than navigation* (United Nations publication, Sales No. 63.V.4).

[5] *Official Records of the General Assembly, Twenty-fifth Session, Annexes*, agenda item 91, document A/7991.

On 18 September 1970, the General Assembly included the item on the agenda of the session in question, and referred it to the Sixth Committee for its consideration and report. In the explanatory memorandum attached to the note verbale, the Government of Finland stated that the United Nations should further the progressive development and codification of the rules of international law relating to international watercourses, including international drainage basins, and that the General Assembly should take the preliminary action necessary for the attainment of that goal. The explanatory memorandum also contained a number of proposals concerning the approach to be adopted. In the course of the Sixth Committee's deliberations, the question arose whether the draft resolution which would be recommended for adoption by the General Assembly should refer to studies recently undertaken by intergovernmental or non-governmental bodies. Some representatives felt that specific mention should be made of the "Helsinki Rules" adopted by the International Law Association at its fifty-second conference held at Helsinki in 1966.[6] Others expressed the view that reference should also be made to the resolution entitled "Utilization of Non-Maritime International Waters (except for navigation)", adopted at Salzburg on 11 September 1961 by the Institute of International Law.[7] Contrary views having been expressed on the subject, the Sixth Committee finally decided to include the following passage in its report to the General Assembly:

It was agreed in the Sixth Committee that intergovernmental and non-governmental studies on the subject, especially those which are of a recent date, should be taken into account by the International Law Commission in its consideration of the topic.[8]

4. On 8 December 1970, the General Assembly, on the recommendation of the Sixth Committee,[9] adopted resolution 2669 (XXV), entitled "Progressive development and codification of the rules of international law relating to international water courses", which reads as follows:

The General Assembly,

Recalling its resolution 1401 (XIV) of 21 November 1959, by which it considered that it was desirable to initiate preliminary studies on the legal problems relating to the utilization and use of international rivers, and as a result of which useful legal material was collected in the report submitted by the Secretary-General on 15 April 1963,

Considering that water, owing to the growth of population and the increasing and multiplying needs and demands of mankind, is of growing concern to humanity, that the available fresh water resources of the world are limited and that the preservation and protection of those resources are of great importance to all nations,

Conscious of the importance of legal problems relating to the use of international watercourses, *inter alia* with regard to international water resources development,

Recalling that despite the great number of bilateral treaties and other regional regulations, as well as the Convention on the Régime of Navigable Waterways of International Concern, signed at Barcelona on 20 April 1921, and the Convention relating to the Development of Hydraulic Power affecting more than one State, signed at Geneva on 9 December 1923, the use of international rivers and lakes is still based in part on general principles and rules of customary law,

Noting that measures have been taken and valuable work carried out by several international organs, both governmental and non-governmental, in order to further the development and codification of the law of international watercourses,

Convinced of the necessity to promote, in accordance with Article 13 of the Charter of the United Nations, the work on the progressive development and codification of the law of international watercourses and to concentrate this work within the framework of the United Nations,

1. *Recommends* that the International Law Commission should, as a first step, take up the study of the law of the non-navigational uses of international watercourses with a view to its progressive development and codification and, in the light of its scheduled programme of work, should consider the practicability of taking the necessary action as soon as the Commission deems it appropriate;

2. *Requests* the Secretary-General:

(*a*) To continue the study initiated by the General Assembly in resolution 1401 (XIV) in order to prepare a supplementary report on the legal problems relating to the utilization and use of international watercourses, taking into account the recent application in State practice and international adjudication of the law of international watercourses and also intergovernmental and non-governmental studies of this matter;

(*b*) To forward to the International Law Commission the records of the discussion on the item at the twenty-fifth session of the General Assembly the report prepared by the Secretary-General pursuant to resolution 1401 (XIV), as well as the text of the present resolution and all other documentation necessary for the Commission's work.

5. In accordance with the recommendation in paragraph 1 of this resolution, the International Law Commission, at its twenty-third session, in 1971, decided to include the question entitled "Non-navigational uses of international watercourses" in its general programme of work without prejudging the priority to be given in the future to its study. It considered that, for undertaking the substantive study of the rules of international law relating to non-navigational uses of international watercourses with a view to its progressive development and codification on a world-wide basis, all relevant materials on States' practice should be appropriately analysed and compiled.[10]

6. Pursuant to this decision by the International Law Commission, the General Assembly, in resolution 2780 (XXVI), adopted on 3 December 1971 on the recommendation of the Sixth Committee,[11] recommended that the International Law Commission, "in the light of its scheduled programme of work, decide upon the priority to be given to the topic of the law of the non-navigational uses of international watercourses".

7. At its twenty-fourth session, in 1972, the International Law Commission announced its intention to take up the recommendation in general when it discussed its long-term programme of work. In addition, it reached the conclusion that the problem of pollution of international waterways was of both substantial urgency and complexity. Accordingly, it requested the Secretariat to continue compiling the material relating to the topic with specific reference

[6] International Law Association, *Helsinki Rules on the Uses of the Waters of International Rivers* (London, 1967). An extract from the text of the Rules is reproduced in para. 405 below.

[7] See *Annuaire de l'Institut de droit international, 1961* (Basle, 1961), vol. 49, tome II, p. 381. The text of the resolution is reproduced in document A/5409, para. 1076 (see p. 202 above).

[8] *Official Records of the General Assembly, Twenty-fifth Session, Annexes*, agenda item 91, document A/8202, para. 17.

[9] *Ibid.*, para. 18.

[10] *Yearbook . . . 1971*, vol. II (Part One) p. 350 document A/8410/Rev.1, paras. 119–122.

[11] For a summary of the debate on the question, see *Official Records of the General Assembly, Twenty-sixth Session, Annexes*, agenda item 88, document A/8537, paras. 142–144.

to the problems of the pollution of international watercourses.[12]

8. On the basis of the foregoing, the General Assembly, in resolution 2926 (XXVII), adopted on 28 November 1972 on the recommendation of the Sixth Committee,[13] requested the Secretary-General to submit, as soon as possible the supplementary report on the legal problems relating to the non-navigational uses of international watercourses requested by the General Assembly in resolution 2669 (XXV), and to present to the International Law Commission at its twenty-fifth session appropriate advance information concerning the supplementary report. The Secretary-General submitted the required information to the International Law Commission at its twenty-fifth session, in 1973.[14]

9. At that session, the Commission considered the question of the priority to be given to the topic of the law of the non-navigational uses of international watercourses in conjunction with the review of its long-term programme of work. As indicated in its report on the work of the session, the Commission gave special attention to the question of the priority to be given to the consideration of the law of the non-navigational uses of international watercourses, in accordance with General Assembly resolution 2780 (XXVI).[15] In the discussions regarding this topic, most members supported the view that it was desirable to proceed promptly with its consideration. A number emphasized the urgency of taking up the legal aspects of the problem of pollution of international watercourses and proposed that this should be the first problem to be studied The Commission nevertheless considered that a formal decision on the commencement of work on the topic should be taken after members had had an opportunity to review the supplementary report which the Secretary-General had been requested to prepare under General Assembly resolution 2669 (XXV).

10. Having considered the observations of the Commission, the General Assembly, in resolution 3071 (XXVIII), adopted on 30 November 1973 on the recommendation of the Sixth Committee,[16] recommended that the International Law Commission should at its twenty-sixth session in 1974 commence its work on the law of non-navigational uses of international watercourses by, *inter alia*, adopting preliminary measures provided for under article 16 of its statute. It also requested the Secretary-General to complete the supplementary report on the legal problems relating to the non-navigational uses of international watercourses, requested by the General Assembly in resolution 2669 (XXV), in time to submit it to the International Law Commission before the beginning of its twenty-sixth session.

(b) *Purpose, scope and plan of the report*

11. Taking into account the developments referred to above, the Secretary-General submits the present report, which is intended to supplement and bring up to date the initial report published in 1963 in accordance with General Assembly resolution 1401 (XIV). To facilitate the preparation of the supplementary report, the Secretary-General addressed to the Governments of Member States a note dated 22 November 1971, in which he requested them to provide him, not later than 1 October 1972, with additional materials regarding legislative texts and treaty provisions, as well as any other relevant information which may be useful as evidence of their practice. In a further note dated 22 September 1972, after referring to his first note, he requested them to provide him, not later than 1 July 1973, with the relevant materials and information, with specific reference to the question of the pollution of international waterways. A similar letter dated 27 December 1972 was sent to a number of intergovernmental organizations which might be interested in the topic, including bodies established pursuant to multilateral treaties on the utilization and protection of international watercourses.

12. The present report was prepared on the basis of the information provided by Member States and intergovernmental organizations as well as on the basis of the relevant research work undertaken by the Secretariat. It is divided into four parts.

13. *Part one* contains information provided by Member States regarding their laws and legislation in force in the matter. The communications received sometimes consist of an account of the current state of legislation on the subject, sometimes reproduce the text or extracts of the provisions in force, and sometimes combine the two approaches Some of the texts cited apply to waters in general, whether international or not; others deal with specific international watercourses; still others, although general in scope, single out international waters as a separate category. The idea that water is a natural resource which should be utilized for the common good, and the quality of which should be safeguarded, emerges from many of the texts reproduced. Accordingly, several provide for the establishment of public bodies responsible for sharing existing resources among the various categories of users, and ensuring that the quality of the waters does not fall below a certain level. In that connexion, it should be noted that a concern to combat pollution is reflected in almost all the texts reproduced.

14. *Part two* deals with treaties and other relevant international instruments. It consists of two chapters: the first containing a summary of multilateral or bilateral treaties concluded on the subject and the second reproducing the text of various multilateral or bilateral acts, resolutions and declarations of States relating to international watercourses. The material included in chapter I is arranged by continent; in theory, it should comprise only treaties which are or have been in force,[17] but treaties whose status was

[12] *Yearbook ... 1972*, vol. II, p. 324, document A/8710/Rev.1, para. 77.

[13] For a summary of the debate on the question, see *Official Records of the General Assembly, Twenty-seventh Session, Annexes*, agenda item 85, document A/8892, para. 193.

[14] *Yearbook ... 1973*, vol. II, p. 95, document A/CN.4/270.

[15] *Ibid.*, p. 231, document A/9010/Rev.1, para. 175.

[16] For a summary of the debate on this question, see *Official Records of the General Assembly, Twenty-eighth Session, Annexes*, agenda item 89, document A/9334, paras. 113–116.

[17] The inclusion of these treaties in the present report deos not imply any judgement as to their status on the part of the United Nations Secretariat.

unknown at the time when the report was completed have also been included because of their interest. The great majority of the international instruments considered in the second part concern a river or a specific watercourse; some, however, relate to a group of specific rivers; others deal with waters in general, without referring to any specific watercourse. Among the international instruments considered, some have a single purpose of a specific nature (delimitation of a boundary, control of pollution, regulation of the rights of riparian States with regard to water abstraction, construction and installation of hydroelectric works, maintenance of the river bed and shores, protection of fish, etc.); a larger number combine two or more of these specific aims, and some of them, by the variety of questions with which they deal, in fact regulate all the rights and obligations of the States concerned in all matters relating to the utilization and maintenance of the watercourse concerned; finally, others have a still wider scope, in that they do not refer to specific objectives but aim at establishing co-operation between the parties with a view to the integrated development and optimum utilization of the resources of a given river basin. For the purpose of attaining their objectives, a number of the instruments considered provide for the establishment of inter-State bodies and define their composition and functions.

15. *Part three*, unlike parts one, two and four, has no counterpart in the original report (A/5409). It relates to a type of documentation which, although not mentioned in resolution 1401 (XIV), was specifically referred to in resolution 2669 (XXV), namely, "intergovernmental... studies of this matter". Chapters I and II of part three contain information on the relevant work carried out within the framework of the United Nations and related organizations. They show that the United Nations has been more concerned with water as a natural resource than with international watercourses as such: water is viewed primarily as an element which is indispensable to life, a source of wealth and a factor of economic development, and which should as such be utilized as rationally as possible and preserved from pollution; the other organizations within the United Nations system naturally approach the problem from the point of view of their respective fields of competence; nevertheless, the need to combat pollution is a matter of common concern. Chapter III covers the work of various other intergovernmental organizations, three of which are regional, while the others are bodies established pursuant to treaties relating to particular international watercourses; the desire to combat pollution is once again the foremost consideration.

16. *Part four* is devoted to the relevant work carried out by international non-governmental bodies concerned with international law.

17. The report contains no information on international adjudication, no relevant judicial decision or arbitral award having been reported by Member States or discovered in the course of the research done by the Secretariat.

18. The present report includes an annex providing a list of relevant documents published under United Nations auspices and a bibliography designed to update the information in this regard contained in the initial report.

Part One

Information provided by Member States regarding their legislation

AUSTRALIA

Note dated 26 April 1973 from the Permanent Mission to the United Nations

19. The note from the Permanent Mission states the following:

There are no international watercourses in Australia. In Papua New Guinea, on the other hand, there are rivers which intersect the border with Indonesia. One, the Fly River, for a part of its length, forms the boundary. Accordingly, the Permanent Mission has the honour to inform the Secretariat of the following.

There is no legislation of Papua New Guinea which has *specific* reference to the pollution of an international, as opposed to an intranational, watercourse. In the former case, the ordinary domestic legislation of Papua New Guinea would apply.

The *Water Resources Ordinance* 1962–1970 prohibits interference with and pollution of a watercourse (defined to include a river or spring) and provides, by Section 8—

"(1) Subject to this Ordinance a person shall not take, use or divert water from, or obstruct, interfere with or knowingly pollute—

"(*a*) a water course or lake; or

"(*b*) underground water in an underground water control area.

"...

"(2) The last preceding sub-section does not apply to or in relation to any act or omission that is authorised by—

"(*a*) any customary rights to the use of water by natives;

"(*b*) a right that has, before the commencement of this Ordinance, been alienated under any other Ordinance or subordinate enactment;

"(*c*) a right that has been granted under this Ordinance; or

"(*d*) a right that is endorsed on, or evidenced by, a certificate of title issued under an Ordinance or subordinate enactment relating to real property."

Further prohibitions against the pollution or interference with watercourses where rights have been granted under the Water Resources Ordinance are provided under Regulations made under that Ordinance. The particular Regulations are:

"6. A person shall not cause trees, branches or debris of any kind to fall into a water source in a water control district.

"...

"8. Wherever a person has constructed or constructs a drain leading to a water source, that person or his successors shall take all reasonable precautions to prevent damage to that water source either by erosion, pollution, deposit of silt or other waste matter proceeding from that drain.

"...

"9. (1) Where the body of a dead animal lies upon a bank of, or in a water source, or in the waters of any water work to which the

Ordinance extends, the owner of that animal shall forthwith, upon the fact becoming known to him, remove the body of the animal and forthwith dispose of the body in such a manner as to prevent the pollution or the danger of pollution of that water source.

"(2) The Director of Water Resources may serve notice upon the owner of a body referred to in the sub-regulation (1) of this Regulation to remove and dispose of that body, and the owner shall comply with the notice forthwith.

"..."

CANADA

A. Canadian programme to protect Great Lakes water quality

20. *Water quality problems in the Great Lakes.* Canadian programmes to protect water quality are being accelerated and strengthened to meet the commitments under the Agreement between Canada and the United States of America on Great Lakes Water Quality.[18] The International Joint Commission, in its 1970 report, concluded that the pollution problems of the Great Lakes, with their adverse effects on the environment and on the millions of people who live on or near the shorelines, would become more critical unless there was vigorous and concerted implementation of remedial measures in both countries. Recognizing that further studies in several areas were required, the Commission recommended comprehensive studies of pollution problems arising from agricultural, forestry and other land-use activities, and of pollution problems in the Upper Great Lakes. The Canadian Government and the Ontario Government concluded in August 1971 an agreement which provided a basis for carrying out the major portion of Canada's anticipated obligations under the international Agreement with the United States. This agreement calls for an accelerated $250 million programme to provide needed improvements to sewage treatment plants and trunk sewers in the Lower Great Lakes area during the five-year period ending 31 December 1975. The Canadian Government will provide a total of $167 million in loans for these improvements. In Canada, the Federal Government makes loans available under the National Housing Act to finance two thirds of the cost of municipal sewage treatment projects and trunk sewers. In addition, the agreement provides for a $6 million joint research programme towards better and less costly methods of nutrient removal.

21. *Canadian abatement and control programmes.* The Federal Government carries a major responsibility for the protection of water quality throughout Canada and has a special concern for the protection of the quality of boundary waters. Reflecting the high priority given by the Canadian Government to safeguard the environment, Environment Canada was formed in June 1971 to draw together all elements within the Federal Government working in the area of the environment and renewable resources. In support of its mandate for the protection of the quality of Canada's water, Environment Canada, among other programmes, is developing national regulations for the control of industrial pollution, and also carries out an extensive programme of research, surveillance and monitoring. Environment Canada, in association with other Government departments, has developed a Federal Contingency Plan to deal with spills of oil and other hazardous polluting substances in Canada's waters. This provides the basis for the Federal Government's participation, along with Ontario and the United States, in a Joint Contingency Plan which has been established to ensure an effective international response to any major spills on the Great Lakes. During the past several years, federal environmental legislation has been strengthened and enlarged in many areas:

(*a*) The *Fisheries Act*, strengthened in 1970, provides for the direct control of pollution in waters frequented by fish, and is being used to set national effluent standards for industries. The Act is the basis for federal controls over losses of mercury from the chloralkali industry, for regulating effluents from pulp and paper mills, and for future regulation of effluent from other industries.

(*b*) The *Canada Water Act of 1970* provides a basis for co-operation with provincial governments for comprehensive water basin planning across Canada and for the management of water quality in major river basins. The Act includes provisions to limit nutrients in laundry detergents and was the basis for the regulations introduced in 1970 limiting the phosphorus content of detergents across Canada. This Act provides the basis for the Government's participation with Ontario in the joint research activities that are a part of the Canada-Ontario Agreement.

(*c*) The *Canada Shipping Act*, strengthened in 1971, provides a basis for measures to abate and control pollution from shipping sources, as well as for regulations to reduce the risk of spills of oil and other hazardous polluting substances from vessels.

(*d*) The *National Housing Act* provides long-term, low interest loans through Central Mortgage and Housing Corporation to help finance the construction of municipal sewage treatment projects.

(*e*) The *Pest Control Products Act* provides the main federal controls on herbicides and pesticides.

(*f*) The *Income Tax Act and the Excise Tax Act* have recently been amended in order to encourage greater use by industries of water and air pollution control equipment.

22. *Ontario Water Quality Control and Pollution Abatement Programmes.* The Ontario Government carries major responsibilities for the management and protection of water quality, and has developed programmes and regulatory measures under a range of provincial legislation. The planning of water quality management programmes and related pollution controls in the drainage basin of Ontario includes studies of environment response to waste inputs; the monitoring of inland streams, the near shore waters of the Great Lakes and their connecting channels; investigations of environmental systems; and studies of proposals for dredging. The new Ontario Ministry of the Environment is continuing with the development of standards for water quality and of effluent requirements for municipalities and industries in each of the drainage basins of the province, including the Great Lakes watershed. A key element in Ontario's programmes is con-

[18] See below part two, chap. I, sect. B, sub-section 2.

cerned with the construction and effective operation of municipal sewage treatment facilities. In support of Canada–United States Agreement, Ontario has joined with the Government of Canada in pledging financial support for construction and improvements in municipal sewage works, including phosphorus removal in the Lower Lakes Basin by 1975. This is expected to involve provision of financial assistance by the province amounting to an estimated $85–95 million over the period ending in 1975. Programmes, regulations and other measures to control pollution from industrial sources are administered largely by the province. These include surveillance at all sources of waste; measures to prevent accidental discharges; the development by industries of required contingency plans; industrial waste surveys; approval of design of waste treatment facilities to ensure that they will meet provincial effluent requirements; and financial assistance for the construction of waste treatment facilities. Ontario has regulations and programmes which serve to limit water pollution from agricultural, forestry and other land use activities. Further studies are under way on more effective measures to control pollution from these sources. Finally Ontario has an extensive monitoring programme that provides information on water quality throughout the province; aerial and visual surveillance activities are being maintained to direct discharges of spills of oil and other hazardous polluting substances.

B. International River Improvements Act and Regulations, 1955[19]

23. The Act contains the following provisions:

INTERPRETATION

2. In this Act,

"international river" means water flowing from any place in Canada to any place outside Canada;

...

"international river improvement" means a dam, obstruction, canal, reservoir or other work the purpose or effect of which is

(*a*) to increase, decrease or alter the natural flow of an international river, and

(*b*) to interfere with, alter or affect the actual or potential use of the international river outside Canada.

...

REGULATIONS

3. The Governor in Council may, for the purpose of developing and utilizing the water resources of Canada in the national interest, make regulations

(*a*) respecting the construction, operation and maintenance of international river improvements;

(*b*) respecting the issue, cancellation and suspension of licences for the construction, operation and maintenance of international river improvements;

(*c*) prescribing fees for licences issued under this Act; and

(*d*) excepting any international river improvements from the operation of this Act.

LICENCES

4. No person shall construct, operate or maintain an international river improvement unless he holds a valid licence therefor issued under this Act.

...

GENERAL

7. This Act does not apply in respect of an international river improvement

(*a*) constructed under the authority of an Act of the Parliament of Canada,

(*b*) situated within boundary waters as defined in the treaty relating to boundary waters and questions arising between Canada and the United States signed at Washington on the 11th day of January, 1909[20] or

(*c*) constructed, operated or maintained solely for domestic, sanitary or irrigation purposes or other similar consumptive uses.

...

9. Notwithstanding anything in this Act an international river improvement is subject to the same laws to which it would be subject if it were a river improvement within the legislative jurisdiction of the legislature of the province in which it is situated except in so far as such provincial laws are repugnant to this Act or the regulations.

C. Canada Water Act, 1969–1970[21]

24. Reproduced below are some provisions of this Act:

2. (1) In this Act

...

"boundary waters" means the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and Canada passes, including all bays, arms and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers and waterways, or waters flowing from such lakes, rivers and waterways, or the waters of rivers flowing across the boundary;

...

"federal waters" means waters under the exclusive legislative jurisdiction of the Parliament of Canada;

...

"inter-jurisdictional waters" means any waters, whether international boundary or otherwise, that, whether wholly situated in a province or not, significantly affect the quantity or quality of waters outside such province;

"international waters" means water of rivers that flow across the international boundary between the United States and Canada;

"Minister" means the Minister of Energy, Mines and Resources;

...

"waste" means any substance that, if added to any waters, would degrade or alter or form part of a process of degradation or alteration of the quality of those waters to an extent that is detrimental to their use by man or by any animal, fish or plant that is useful to man, and includes any water that contains a substance in such a quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any waters, degrade or alter or form part of a process of degradation or alteration of the quality of those waters to an extent that is detrimental to their use by man or by any animal, fish or plant that is useful to man;

"water quality management" means any aspect of water resource management that relates to restoring, maintaining or improving the quality of water;

"water resource management" means the conservation, development and utilization of water resources, and includes, with respect

[19] See *Revised Statutes of Canada, 1970* (Ottawa, Queen's Printer for Canada, 1970), vol. IV, chap. 1–22; and SOR/56-9, *Canada Gazette*, Part II, vol. 90, No. 1, 11 January 1956, p. 14.

[20] See p. 72 above, document A/5409, paras. 154–167.

[21] *Revised Statutes of Canada, 1970 (op. cit.)*, 1st Supplement, chap. 5.

thereto, research, data collection and the maintaining of inventories, planning and the implementation of plans, and the control and regulation of water quantity and quality.

...

PART I

COMPREHENSIVE WATER RESOURCE MANAGEMENT

Federal-Provincial Arrangements

3. For the purpose of facilitating the formulation of policies and programs with respect to the water resources of Canada and to ensure the optimum use of those resources for the benefit of all Canadians, having regard to the distinctive geography of Canada and the character of water as a natural resource, the Minister may, with the approval of the Governor in Council, enter into an arrangement with one or more provincial governments to establish, on a national, provincial, regional or lake or river-basin basis, intergovernmental committees or other bodies

(*a*) to maintain continuing consultation on water resource matters and to advise on priorities for research, planning, conservation, development and utilization relating thereto;

(*b*) to advise on the formulation of water policies and programs; and

(*c*) to facilitate the coordination and implementation of water policies and programs.

Comprehensive Water Resource Management Programs

4. Subject to this Act, the Minister may, with the approval of the Governor in Council, with respect to any waters where there is a significant national interest in the water resource management thereof, from time to time enter into agreements with one or more provincial governments having an interest in the water resource management of those waters,
providing for programs to

(*a*) establish and maintain an inventory of those waters,

(*b*) collect, process and provide data on the quality, quantity, distribution and use of those waters,

(*c*) conduct research in connection with any aspect of those waters or provide for the conduct of any such research by or in cooperation with any government, institution or person,

(*d*) formulate comprehensive water resource management plans, including detailed estimates of the cost of implementation of those plans and of revenues and other benefits likely to be realized from the implementation thereof, based upon an examination of the full range of reasonable alternatives and taking into account views expressed at public hearings and otherwise by persons likely to be affected by implementation of the plans,

(*e*) design projects for the efficient conservation, development and utilization of those waters, and

(*f*) implement any plans or projects referred to in paragraphs (*d*) and (*e*), and establishing or naming joint commissions, boards or other bodies empowered to direct, supervise and coordinate such programs.

5. (1) Subject to subsection (2), the Minister shall, with the approval of the Governor in Council, undertake directly,

(*a*) with respect to any federal waters, any program described in any of paragraphs 4 (*a*) to (*e*) and the implementation of any program described in paragraph 4 (*d*) or (*e*);

(*b*) with respect to any inter-jurisdictional waters where there is a significant national interest in the water resource management thereof, any program described in paragraph 4 (*d*) or (*e*); and

(*c*) with respect to any international or boundary waters where there is a significant national interest in the water resource management thereof, any program described in paragraph 4 (*d*) or (*e*) and the implementation of any such program.

(2) The Governor in Council shall not approve the undertaking by the Minister of any program pursuant to paragraph 1 (*b*) or (*c*) unless he is satisfied that all reasonable efforts have been made by the Minister to reach an agreement under section 4 with the one or more provincial governments having an interest in the water resource management of the waters in question, and that those efforts have failed.

...

PART II

WATER QUALITY MANAGEMENT

Pollution of Waters

8. Except in quantities and under conditions prescribed with respect to waste disposal in the water quality management area in question, including the payment of any effluent discharge fee prescribed therefor, no person shall deposit or permit the deposit of waste of any type in any waters comprising a water quality management area designated pursuant to section 9 or 11, or in any place under any conditions where such waste or any other waste that results from the deposit of such waste may enter any such waters.

Federal-Provincial Water Quality Management

9. In the case of

(*a*) any waters, other than federal waters, the water quality management of which has become a matter of urgent national concern, or

(*b*) any federal waters,

the Minister may, with the approval of the Governor in Council, from time to time enter into agreements with one or more provincial governments having an interest in the water quality management thereof, designating those waters as a water quality management area, providing for water quality management programs in respect thereof and authorizing the Minister, jointly with such one or more provincial governments, to procure the incorporation of a corporation without share capital, or to name an existing corporation that is an agent of Her Majesty in right of Canada or a province or that performs any function or duty on behalf of the Government of Canada or the government of a province, as a water quality management agency to plan, initiate and carry out, in conjunction with the Minister and such provincial government or governments, programs described in section 13 in respect of those waters.

...

Federal Water Quality Management

11. (1) Where, in the case of any inter-jurisdictional waters, the water quality management of those waters has become a matter of urgent national concern, and either

(*a*) the Governor in Council is satisfied that all reasonable efforts have been made by the Minister to reach an agreement under section 9 with the one or more provincial governments having an interest in the water quality management thereof, and that those efforts have failed, or

(*b*) although an agreement was reached under section 9 in respect thereof and an agency was incorporated or named thereunder, the Minister and the appropriate minister of each provincial government that was a party to the agreement disagreed with the recommendations of the agency with respect to water quality standards for those inter-jurisdictional waters and were unable to agree on a joint recommendation with respect thereto and as a result thereof the agreement under section 9 was terminated,

the Governor in Council may, on the recommendation of the Minister, designate such waters as a water quality management area and authorize the Minister to procure the incorporation of a corporation without share capital under Part II of the *Canada Corporations Act*, or to name an existing corporation that is an agent of Her Majesty in right of Canada or that performs any function or duty on behalf of the Government of Canada, as a water quality management agency to plan, initiate and carry out programs described in section 13 in respect of those waters.

(2) The Governor in Council may, on the recommendation of the Minister, designate any federal waters as a water quality management area and authorize the Minister to procure the incorporation of a corporation without share capital under Part II of the *Canada Corporations Act*, or to name an existing corporation that is an agent of Her Majesty in right of Canada or that performs any function or duty on behalf of the Government of Canada, as a water quality management agency to plan, initiate and carry out programs described in section 13 in respect of those waters.

...

Water Quality Management Agencies

13. (1) The objects of each water quality management agency shall be to plan, initiate and carry out programs to restore, preserve and enhance the water quality level in the water quality management area for which the agency is incorporated or named and in carrying out those objects, subject to any agreement under section 9 relating to such water quality management area or to any direction of the Minister to a federal agency, the agency may, after taking into account views expressed to it, at public hearings and otherwise, by persons likely to have an interest therein, in respect of the waters comprising the water quality management area for which it is incorporated or named,

(*a*) ascertain the nature and quantity of waste present therein and the water quality level;

(*b*) undertake studies that enable forecasts to be made of the amounts and kinds of waste that are likely to be added to those waters in the future;

(*c*) develop and recommend to the Minister and, in the case of an agency other than a federal agency, to the appropriate minister of each provincial government that is a party to the agreement relating to the water quality management area, a water quality management plan. . . .

. . .

(3) Where a water quality management plan recommended by an agency in respect of the waters comprising the water quality management area for which it is incorporated or named has been approved by the Minister and, in the case of an agency other than a federal agency, by the appropriate minister of each provincial government that is a party to the agreement relating to those waters, the agency may, in order to implement the water quality management plan,

(*a*) design, construct, operate and maintain waste treatment facilities and undertake the treatment of waste delivered to such facilities;

(*b*) undertake the collection of any charges prescribed for waste treatment at any waste treatment facility that is operated and maintained by it and for waste sample analysis carried out by it;

(*c*) undertake the collection of effluent discharge fees prescribed to be payable by any person for the deposit of waste in those waters;

(*d*) monitor, on a regular basis, water quality levels;

(*e*) provide facilities for the analysis of samples of waste and collect and provide data respecting the quantity and quality of waste and the effects thereof on those waters;

(*f*) regularly inspect any waste treatment facilities within the water quality management area for which it is incorporated or named, whether publicly or privately owned;

(*g*) publish or otherwise distribute such information as may be required under this Act; and

(*h*) do such other things as are necessary to achieve effective water quality management of those waters.

PART III

NUTRIENTS

Interpretation

17. In this Part and Part IV,

"cleaning agent" means any laundry detergent, dishwashing compound, household cleaner, metal cleaner, degreasing compound, commercial cleaner, industrial cleaner, phosphate compound or other substance intended to be used for cleaning purposes;

"nutrient" means any substance or combination of substances that, if added to any waters in sufficient quantities, provides nourishment that promotes the growth of aquatic vegetation in those waters to such densities as to

(*a*) interfere with their use by man or by any animal, fish or plant that is useful to man, or

(*b*) degrade or alter or form part of a process of degradation or alteration of the quality of those waters to an extent that is detrimental to their use by man or by any animal, fish or plant that is useful to man;

"water conditioner" means any water softening chemical, anti-scale chemical, corrosion inhibiter or other substance intended to be used to treat water.

Use of Nutrients

18. No person shall manufacture for use or sale in Canada or import into Canada any cleaning agent or water conditioner that contains a prescribed nutrient in a concentration that is greater than the prescribed maximum permissible concentration of that nutrient in that cleaning agent or water conditioner.

. . .

D. Northern Inland Waters Act, 1969–1970[22]

25. This Act contains the following provisions:

2. (1) In this Act

. . .

"waste" means

(*a*) any substance that, if added to any waters, would degrade or alter or form part of a process of degradation or alteration of the quality of those waters to an extent that is detrimental to their use by man or by any animal, fish or plant that is useful to man, and

(*b*) any water that contains a substance in such a quantity or concentration, or that has been so treated, processed or changed by heat or other means, from a natural state that it would, if added to any waters, degrade or alter or form part of a process of degradation or alteration of the quality of those waters to an extent that is detrimental to their use by man or by any animal, fish or plant that is useful to man,

and without limiting the generality of the foregoing, includes anything that, for the purposes of the *Canada Water Act*,[23] is deemed to be waste;

"water management area" means a river basin or other appropriate geographical area established as a water management area by the Governor in Council pursuant to paragraph 26 (*d*);

"waters" means waters in any river, stream, lake or other body of inland water on the surface or underground in the Yukon Territory and the Northwest Territories.

(2) For the purposes of this Act, diversion of waters from a water course, whether the water course is seasonal or otherwise, and obstruction of any such water course shall be deemed to constitute uses of waters.

. . .

WATERS VESTED IN CROWN

3. (1) Subject to any rights, powers or privileges granted pursuant to the *Dominion Water Power Act* or preserved under that Act and to section 4 of this Act, the property in and the right to the use and flow of all waters are for all purposes vested in Her Majesty in right of Canada.

(2) Except as authorized pursuant to the *Dominion Water Power Act* or subsection 39 (2) of this Act, and subject to section 4 of this Act, no person shall alter or divert the flow or storage of waters within a water management area or otherwise use waters within any such area except pursuant to a licence held by him or except as authorized by regulations made pursuant to paragraph 26 (*g*).

(3) Except as specifically provided in this or any other Act, neither any provision of this Act or the regulations nor any licence issued pursuant to this Act authorizes the alteration or diversion of the flow or storage of waters within a water management area or any other use of waters within any such area in contravention of any provision of any other Act or any regulation made pursuant to any other Act.

4. This Act does not apply to the use of any waters

(*a*) for domestic purposes by a person owning or occupying lands adjacent to such waters; or

(*b*) for the purpose of extinguishing a fire or, on an emergency basis, controlling or preventing a flood;

but where waters are diverted for a purpose described in paragraph (*b*), the diversion shall be discontinued and, in so far as possible, the

[22] *Ibid.*, chap. 28.

[23] See section C above.

original channel conditions restored when the requirement for the diversion has ceased.

5. With the approval of the Governor in Council and subject to any agreement entered into pursuant to section 4 or 9 of the *Canada Water Act*, the Minister may, on behalf of the Government of Canada, enter into an agreement with any one or more provincial governments providing for the management, on a co-operative basis, of any waters situated partially within the Yukon Territory or the Northwest Territories and partially within the province or provinces or flowing between the Territory or Territories and the province or provinces.

DEPOSIT OF WASTE IN WATERS

6. (1) Except in accordance with the conditions of a licence or as authorized by the regulations, no person shall deposit or permit the deposit of waste of any type in any waters or in any place under any conditions where such waste or any other waste that results from the deposit of such waste may enter any waters.

(2) Subsection (1) does not apply to the deposit of waste in waters that form part of a water quality management area designated pursuant to the *Canada Water Act* if the waste so deposited is of a type and quantity and is deposited under conditions authorized by regulations made by the Governor in Council under paragraph 16 (2) (*a*) of that Act with respect to that water quality management area.

BOARDS ESTABLISHED

7. (1) There shall be two boards to be known as the Yukon Territory Water Board and the Northwest Territories Water Board, each consisting of not less than three and not more than nine members appointed by the Minister.

. . .

OBJECTS AND POWERS

9. The objects of the boards are to provide for the conservation, development and utilization of the water resources of the Yukon Territory and Northwest Territories in a manner that will provide the optimum benefit therefrom for all Canadians and for the residents of the Yukon Territory and the Northwest Territories in particular.

. . .

E. Fisheries Act, 1970[24]

26. This Act contains the following provisions:

INTERPRETATION

2. In this Act

. . .

"Minister" means the Minister of Fisheries and Forestry.

. . .

CONSTRUCTION OF FISHWAYS

20. (1) Every slide, dam or other obstruction across or in any stream where the Minister determines it to be necessary for the public interest that a fish-pass should exist, shall be provided by the owner or occupier with a durable and efficient fishway, or canal around the slide, dam or other obstruction. . . .

. . .

(2) The place, form and capacity of the fishway or canal to be constructed must be approved by the Minister before construction thereof is begun; and immediately after the fishway is completed and in operation the owner or occupier of any dam or obstruction shall make such changes and adjustments at his own cost as will in the opinion of the Minister be necessary for its efficient operation under actual working conditions, if such are found to be needed.

. . .

(6) Where unused slides, dams, obstructions, or anything detrimental to fish exist, and the owner or occupier thereof does not after notice given by the Minister remove the same, or if the owner is not resident in Canada, or his exact place of residence is unknown to the Minister, the Minister may, without being liable to damages, or in any way to indemnify the said owner or occupier, cause such slide, dam, obstruction, or thing detrimental to fish life to be removed or destroyed and in cases where notice has been given to the owner or occupier, may recover from said owner or occupier the expense of so removing or destroying the same.

(7) The Minister may require the owner or occupier of any slide, dam or other obstruction to install and maintain such fish stops or diverters, both above and below any dam or obstruction as will in his opinion be adequate to prevent the destruction of fish or to assist in providing for their ascent.

(8) At every slide, dam or other obstruction, where the Minister determines it to be necessary the owner or occupier thereof shall, when required by the Minister, provide a sufficient flow of water over the spillway or crest, with connecting sluices into the river below to permit the safe and unimpeded descent of fish.

(9) The owner or occupier of any slide, dam or other obstruction shall make such provision as the Minister determines to be necessary for the free passage of both ascending and descending migratory fish, during the period of construction thereof.

(10) The owner or occupier of any slide, dam or other obstruction shall permit to escape into the river bed below the said slide, dam or other obstruction, such quantity of water, at all times, as will, in the opinion of the minister, be sufficient for the safety of fish and for the flooding of the spawning grounds to such depth as will, in the opinion of the Minister, be necessary for the safety of the ova deposited thereon.

. . .

INJURY TO FISHING GROUNDS AND POLLUTION OF WATERS

33. (1) No one shall throw overboard ballast, coal ashes, stones, or other prejudicial or deleterious substances in any river, harbour or roadstead, or in any water where fishing is carried on, or leave or deposit or cause to be thrown, left or deposited, upon the shore, beach or bank of any water or upon the beach between high and low water mark, remains or offal of fish, or of marine animals, or leave decayed or decaying fish in any net or other fishing apparatus; such remains or offal may be buried ashore, above high water mark.

. . .

(3) No person engaging in logging, lumbering, land clearing or other operations, shall put or knowlingly permit to be put, any slash, stumps or other debris into any water frequented by fish or that flows into such water, or on the ice over either such water, or at a place from which it is likely to be carried into either such water.

. . .

F. Act to amend the Fisheries Act, 1970[25]

27. Section 3 of this Act contains the following provisions:

3. (1) Subsection (2) of section 33 of the said Act is repealed and the following substituted therefor:

"(2) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water."

(2) Subsections (4) and (5) of section 33 of the said Act are repealed and the following substituted therefor:

"(4) Subsection (2) does not apply

"(*a*) to the deposit of waste of a type, in a quantity and under conditions authorized by regulations made by the Governor in Council under any other Act in any waters with respect to which those regulations are applicable, or in any place under any conditions where such waste or any other waste that results from the deposit of such waste may enter any such waters; or

[24] *Revised Statutes of Canada, 1970 (op. cit.)*, vol. III, chap. F-14.

[25] *Ibid.*, 1st Supplement, chap. 17.

(*b*) to the deposit of a deleterious substance of a type, in a quantity and under conditions authorized by any regulations made by the Governor in Council under this Act for the purposes of this subsection in any water with respect to which those regulations are applicable, or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water."

. . .

FINLAND

A. Note dated 18 July 1973 from the Permanent Mission to the United Nations

28. The note from the Permanent Mission refers to "the development and co-ordination of the provisions of international law concerning international waterways", and contains the following passages:

General observations. The main provisions on water pollution are contained in the Finnish Act on Watercourses according to which the following practices are regarded as causing pollution: discharge of dirt, waste, liquid, gas, bark or any other substance into the watercourse in such a way that they either directly or indirectly cause harmful shallowing of the watercourse, detrimental changes in the quality of water, evident damage to the fish, considerable reduction of amenities, health hazards or any other comparable infringement on public or private interests. Contamination and eutrophication can also be regarded as different stages of pollution depending on whether health, nutrient level or other aspect of the watercourse is emphasized. The main cause of pollution of the Finnish watercourses is the waste load discharge into them. The problem is more acute because of the small volume of the watercourses, their naturally high humus content and the fact that the lakes are covered by ice nearly six months of the year. . . . Research relating to water and particularly its protection is carried out by the Water Research Institute and the water districts under the National Water Board. The number of analyses is constantly increasing. In 1971, for example, more than 250,000 various analyses of water samples were made. For the monitoring of marine areas the Water Board has worked in collaboration with the Marine Research Institute. The purpose of the co-operation is to collect information on the quality of the water in the marine areas surrounding Finland and to give an account of possible changes.

Present situation in Finland. The largest and most polluted waters in Finland are found near forest product plants. Domestic sewage causes the most extensive eutrophication in the proximity of Helsinki and Turku on the coast and in the watercourses south of the city of Tempere in the inland waters. There is an extensive area of mildly polluted rivers between the coast and the lake district of Central Finland. There are several polluted stretches of 10–20 km in the coastal waters the total area of which is 600–1,000 km^2. As sewage spreads under the ice cover without effectively mixing into the mass of water underneath, the pollution of the coastal waters reaches its peak in the winter. About 80% of the population of coastal communities live by polluted waters. Also so-called oil spills have occurred in the Finnish coastal areas, but generally speaking the consequences have been of minor importance. Only a few specific cases have caused shore pollution and damage to bird life. The relatively high DDT and PCB content of the organisms in the Baltic Sea is due to the wide use of these chemicals mainly on the south coast of the Baltic Sea. Only a few years ago the Finnish forest products industry used mercury-containing biocides in its processing, so that some watercourses may still be contaminated by mercury. Now these chemicals are no longer used in such a way that considerable amounts would be discharged into the watercourses.

Goals of Finnish water pollution control in the 1970s. For the purpose of intensifying water pollution control in Finland during the next few years the following measures have been planned:

(*a*) domestic load of waterways will be reduced to half of the present level, despite the fact that the consumption of water during this period is going to double;

(*b*) the amount of suspended solids from the forest products industry will be reduced to one fifth and the amount of organic substances will be reduced to half of the amount in 1970;

(*c*) load from other industries will be reduced to half as compared to 1970.

To achieve these goals the construction of new sewage treatment plants must be speeded up, especially for the removal of nutrients and organic substances. For this purpose chemical precipitation of nutrients or both chemical and biological treatment are appropriate. In the forest products industry the capability for mechanical treatment will be increased and the process of production improved so as to minimize the waste. Mechanical treatment plants will be constructed in such a way that the change over to more effective chemical treatment can easily take place. Earlier the discharging of sewage into the sea aimed at protecting the principal inland waterways. Discharge into the sea or the inland waters after effective treatment is today considered a better solution.

Finnish legislation on water pollution. The following regulations have been issued to prevent the pollution of watercourses:

(a) *The Watercourses Act.* This Act regulates the uses of water. It contains two principles directly related to the protection of waters, namely the prohibition to change the régime of watercourses and the prohibition to pollute. Under the Act, as explained above, the discharge of dirt, waste, liquid or other such substances into the watercourses in such a way that it either directly or indirectly causes harmful lowering of the water level, changes in the quality of water, evident damage to the fish or other comparable infringements on private or public interests are considered to be polluting activities. The Watercourses Act covers all watercourses within Finnish territory including marine areas.

(b) *The Prevention of Water Pollution Act.* This Act also contains a clause on the prevention of water pollution in international waters; no waste or other substance which could directly or indirectly pollute the open sea or the territorial waters of another country is to be discharged from a Finnish vessel or from Finnish territory. Separate laws govern the dumping of radioactive waste into the sea.

(c) *The Act on Measures to Be Taken to Prevent Oil Damage.* The act prohibits the dumping of oil or oil-containing substances into Finnish territorial waters. The prohibition also covers certain Finnish vessels in areas outside the Finnish territorial waters, which have been classified as prohibited areas in the appropriate amendments to the International Convention [for the Prevention of Pollution of the Sea by Oil, 1954].[26]

Water administration in Finland. The National Water Board, as a central office subordinated to the Ministry of Forestry and Agriculture, is responsible for the water administration in Finland. Its tasks comprise *inter alia* promoting the use, care and research of watercourses and marine areas, supervising the waters and their use and preventing damage. For district administration, the country has been divided into water districts.

Procedure in matters concerning water. There are three Water Courts in Finland acting as special lowest courts in water cases. The Water Courts may grant an exceptional permit overriding the above water pollution prohibition. An unconditional prerequisite to granting the permit is that the activity for which it is applied will not imply health hazards or considerable and extensive harmful changes in the natural conditions of the environment or greatly lower local residential or industrial conditions. Another prerequisite is that the damage caused by the activity in question be relatively small as compared to the advantages obtained, and that eliminating the water-polluting substance or avoiding its discharge into the watercourses prove possible at a reasonable cost. The Water Courts may, when granting a permit, require that the applicant take the necessary measures to minimize the damages. The decision of the Water Court shall also include clauses relative to compensation. A decree stipulates further that no industrial or other plant specified by it, such as an atomic reactor, a refinery for waste oil or a serobacteriological plant, whether or not it entails the results stated in chapter 1, paras. 19–21 of the Watercourses Act may be constructed without due measures to prevent water pollution. As regards other factories and plants specified by the Act, prior noti-

[26] United Nations, *Treaty Series*, vol. 327, p. 3, and vol. 600, p. 332.

fication must be made to the water administration authorities which may order measures to be taken.

Government support for prevention of water pollution. Subsidies or low-interest loans may be granted from the State funds for the building of such equipment or constructions which are necessary for the treatment of water. Water protection work may also be carried out by the State for the purpose of preventing the pollution of waters, maintaining or improving the self-purification capacity of watercourses or restoring the state of watercourses.

B. Note dated 18 December 1973 from the Permanent Mission to the United Nations

29. The note contains additional information as follows:

Finland has found it important to settle matters pertaining to frontier watercourses with all neighbouring countries. Agreements previously made, rather narrow in their scope, have been replaced by new ones with a wider sphere of application. In 1964 Finland entered into an Agreement with the Soviet Union concerning frontier watercourses[27] and in 1971 it concluded an Agreement with Sweden concerning the frontier rivers between Finland and Sweden.[28] In both Agreements the principles expressed in the so-called Helsinki Rules of the International Law Association[29] were applied. In 1972, the Agreement between Finland and Norway on Fishing Regulations on the Tenojoki River and its Annexes were renewed. To supplement the above Agreements some new agreements are in preparation.

The 1964 Agreement between Finland and the Union of Soviet Socialist Republics concerning frontier watercourses. To deal with matters mentioned in the Agreement, a Finnish-Soviet Commission on the Utilization of Frontier Watercourses was set up. Its tasks comprise *inter alia* the monitoring of the frontier watercourses. A 1966 resolution provides detailed instructions on the subject in the form of Regulations concerning the Monitoring of the Quality of the Frontier Watercourses. These have later been revised according to need. The taking and examining of water samples as well as the determination of the flow in waters designated by the Commission are carried out on the initiative and at the expense of both parties which act simultaneously according to a procedure jointly agreed upon. Each party has appointed an Inspector for the Quality of Water who directs the research and to whom the results obtained have to be presented within two months. The Inspectors consider the information and prepare a joint report to be presented to the Commission. When the monitoring of the frontier watercourses between Finland and the USSR started in 1966, there were in all nine watercourses to be monitored, each having one observation spot on either side of the border. In 1973 this figure had been reduced to four. The number of diagnoses made from water samples taken from the observation spot at a fixed date has varied between 18 and 21. According to the records of the Commission the monitoring has run very smoothly and served its purpose. The authority in charge of the research required for the above activities is the National Water Board.

The 1971 Frontier Rivers Agreement between Finland and Sweden. The purpose of this Agreement was to ensure that the frontier watercourses, i.e., the parts of the Könkämä, Muonio and Torne Rivers and their tributaries forming the border between the two countries should be preserved and used in such a manner as to promote as effectively as possible the interests of both States. For the purpose of applying the Agreement the two States have set up a joint permanent commission (The Finnish-Swedish Frontier Rivers Commission). Under the Frontier Rivers Agreement, which constitutes a detailed regional chart on waters, the Frontier Rivers Commission, together with the appropriate authorities of both States, is responsible for monitoring and watching the condition and use of the watercourses within its jurisdiction. Water monitoring comparable to that which exists between Finland and the USSR has not yet been established between Finland and Sweden, although the Agreement allows for it to a large extent, especially as the legislative systems of the two countries are fairly similar. It is worth noting, however, that on the initiative of the Finnish water authorities, the condition and quality of the watercourses have been under continuous observation since 1962.

Support given by Finland to the work done by non-governmental organizations concerned with international law. The Government of Finland has also been trying to support the work of non-governmental bodies in developing international water law, i.e. by paying the expenses of the International Law Association Committee on International Water Resources Law since 1967. As the International Law Commission of the United Nations, according to a resolution of the General Assembly, is to take into consideration preliminary proposals by non-governmental bodies, the work of the said Committee serves the goals of the United Nations.

[27] See paras. 257–264 below.

[28] See paras. 307–321 below.

[29] See foot-note 6 above.

FRANCE

Act No. 64-1245 of 16 December 1964 on the administration and classification of waters and the control of water pollution[30, 31]

30. This Act contains the following provisions:

PART I

CONTROL OF WATER POLLUTION AND RESTORATION OF THE PURITY OF WATERS

Article 1. The purpose of the provisions of this part is to control water pollution and to restore the purity of waters with a view to satisfying and reconciling the requirements of the following:

Public drinking water supply and public health:

Agriculture, industry, transport and all other human activities of value to society;

The flora and fauna (particularly fish) in deposit areas, the use of water for recreational purposes and water sports, and the protection of sites of natural beauty;

The conservation and the outflow of water.

The provisions of this part shall apply to direct and indirect discharge, drainage, disposal and deposit of waste matter of any kind, and more generally to anything liable to cause or increase a deterioration in the quality of waters, including surface waters, groundwaters, and maritime territorial waters, by changing their physical, chemical, biological or bacteriological characteristics.

Article 2. The immersion and discharge of matter of any kind into the sea shall be prohibited; this shall apply in particular to industrial and nuclear waste liable to be harmful to public health and underwater fauna and flora or to endanger the economic and tourist development of coastal regions. The Prefect shall determine the period after which this prohibition shall apply to existing discharges.

The Prefect shall, however, be empowered, after a public inquiry, to authorize and regulate the discharge and immersion mentioned in the preceding paragraph, in cases where these may be effected under conditions such that their harmlessness, and the absence of any sanitary nuisance resulting from them, can be guaranteed.

Article 3. Within two years from the date of promulgation of this Act, an inventory shall be made of all surface waters, including watercourses, canals, lakes, and ponds, whether under public ownership or not, establishing their degree of pollution.

...

The following shall also be laid down by decree: firstly, the technical specifications and physical, chemical, biological and bacteriological criteria which shall be satisfied by watercourses, reaches of watercourses, canals, lakes or ponds, in particular when used as sources

[30] France, *Journal officiel de la République française, Lois et décrets* (Paris), 18 December 1964, 96th year, No. 295, p. 11258.

[31] In its note of 12 February 1973, the Permanent Mission of France to the United Nations states that "in general, French legislation on the protection of fresh water against pollution (Act of 16 December 1964) extends to international watercourses".

of public water supply; and, secondly, the period within which the quality of each deposit area shall be improved so as to satisfy or reconcile the interests listed in article 1.

Article 4. The owners of outlets for discharges which were in existence before the publication of the decree, provided for in the [last] paragraph of article 3, prescribing the improvement of the quality of any body of surface water, shall be obliged to take all the measures necessary, within the period laid down in the said decree, to satisfy the requirements to be met by the effluents which they discharge, under article 6, in order that the deposit areas may possess the prescribed characteristics when this period had expired. Such measures shall be without prejudice to the obligations devolving upon the said owners under existing legislation.

Outlets for discharges installed after the publication of the decree requiring the improvement of water quality shall, from the time when they are put into service, discharge effluents in the manner laid down in article 6.

Article 5. Drawing off of water and discharges from installations constructed after the publication of the decree on the general inventory, shall be subject to the following:

prior approval by the Prefect of the technical plans for the purification plants concerned;

an authorization by the Prefect to put purification plants into operation after their construction in the manner laid down in the approved technical plans.

Article 6. The following shall be determined by decree of the Council of State:

(1) The conditions for regulating or prohibiting, in the light of articles 2, 3 and 4 above, direct and indirect discharges, drainage, disposal and deposit of water or matter and, in general, of anything capable of impairing the quality of surface water, groundwater or maritime territorial seawater within limits;

(2) The conditions for regulating the offer for sale and distribution of certain products capable of causing discharges prohibited or regulated under subparagraph (1) above, or of increasing the harmfulness or sanitary nuisance of such discharges;

(3) The conditions for testing the physical, chemical, biological and bacteriological characteristics of deposit areas and discharges and in particular the conditions for taking and analysing samples;

(4) The events and circumstances in which the administration shall be empowered to take immediate steps to remedy any situation which may be a danger to public safety or health.

Decrees shall be issued as required establishing for every watercourse, reaches of watercourses, canals, lakes or ponds, groundwaters and maritime territorial waters, the particular conditions in which the provisions laid down above shall apply, as well as the time-limits within which these provisions shall be obeyed, with respect to existing plants.

In no circumstances shall the rights of third parties with respect to the persons responsible for pollution be prejudiced.

Article 7. Article L. 20 of the Public Health Code shall be replaced by the following provisions:

"*Article L. 20.* In order to ensure the protection of water quality, the notice declaring works for the catchment of water intended for public water supply to be in the public interest shall provide for the establishment round the source of water of: a primary protection zone in which the land shall be bought outright; a secondary protection zone within which all activities and all storage facilities or plants capable of reducing, whether directly or indirectly, the quality of the water may be prohibited or regulated; and, if necessary, an outer protection zone, within which the activities, plants and storage facilities mentioned above may be regulated."

". . ."

Article 15. A National Water Committee is hereby established; it shall be responsible to the Prime Minister and shall be made up equally of:

(1) Representatives of the various classes of users;

(2) Representatives of the departmental and municipal councils;

(3) Representatives of the State.

This Committe shall have the following duties:

(1) Giving advice on the regions to be included in the river basins or groups of river basins, for which the committees referred to in article 13 are to be responsible;

(2) Giving advice on all national plans for the development of water resources and water distribution, and on all major regional plans of this kind;

(3) Giving advice on all problems common to two or more river basin committees or agencies;

(4) In general, assembling the necessary information and giving advice on all matters dealt with in this Act.

. . .

PART II

ADMINISTRATION AND CLASSIFICATION OF WATERS

Chapter I

WATERCOURSES

Section 1—Privately owned watercourses

Article 24. Article 104 of the Rural Code is hereby replaced by the following provisions:

"*Article 104.* The general provisions governing privately owned watercourses shall, when necessary, be laid down in such a manner as to reconcile the interests of the various classes of users with the respect due to property and other existing rights and uses; this shall be done after public inquiry by order of the Minister responsible for the watercourse or section thereof."

Article 25. Traffic of powered craft on any privately owned watercourse or section thereof may be prohibited or regulated by prefectural order on the advice of the service responsible for maintaining law and order on that watercourse, for reasons of either safety or health, or at the request of the riparian owner, when such traffic seriously disturbs him in the enjoyment of his rights.

Article 26. An article 97-1 is hereby added to the Rural Code, reading as follows:

"*Article 97-1.* When improvement works other than those allowed or authorized under the Act of 16 October 1919 affect a river basin or watercourse, and their purpose and consequence is to regularize the flow of the privately owned watercourse or to increase its flow at periods of low water level, the notice declaring such works to be in the public interest may allocate a part of the flow of the said watercourse for certain uses throughout the year.

"For this purpose, the said notice shall establish:

"(*a*) A minimum flow called the 'reserve flow', to be maintained on the river downstream from the improvement works for each of the different periods of the year, to safeguard the general interests and satisfy the needs of the beneficiaries of authorized diversions and also the interests of persons holding property along the river or watercourse.

"Persons controlling the flow shall be required to ensure that the 'reserve flow' shall be sent on downstream and this may not exceed the natural flow of the watercourse upstream of the improvement works, for each of the periods considered;

"(*b*) An additional flow called the 'allocated flow' established in relation to the amounts of water available in the reservoirs of the works at the same periods.

"Notwithstanding the provisions of article 644 of the Civil Code, the right to use of the allocated flow shall be reserved to the State.

"A decree issued by the Council of State shall lay down the conditions for the application of this article and in particular the conditions for the transfer of the rights hereby granted to the State."

. . .

Chapter II

GROUND WATER, AND EASEMENTS FOR THE PIPING OF WATER ACROSS LAND BELONGING TO OTHER PERSONS (SERVITUDE DE PASSAGE DES EAUX UTILES)

Article 40. Any plant for drawing off ground waters other than for domestic purposes shall be brought to the attention of the administration, which shall be responsible for its supervision, in such manner as

shall be laid down by decree of the Council of State. The decree shall determine the flow rate at and above which these provisions shall apply. All discharge or introduction of effluents or wastes of any kind into disused wells, bore-holes or catchment tunnels shall be prohibited. Notification shall be given of disused wells, bore-holes and catchment tunnels and these shall, without prejudice to the rights of third parties, be subject to supervision by the administration.

...

Article 45. I. Article 123 of the Rural Code is hereby replaced by the following:

"123. Any physical or legal person who wishes to use water, of which he has the right to dispose, for drinking water supply, irrigation or more generally for his farm, may obtain permission to have such water distributed by the underground pipe underneath intermediary properties in the most rational manner that will not cause damage to the present or future working of the properties concerned, and this against preliminary and fair compensation.

"Houses shall in all cases be free from this easement.

"Courtyards and gardens adjacent to houses shall also be excepted."

II. Article 124 of the Rural Code is hereby supplemented as follows:

"Used waters from houses and farms supplied in application of article 123 of the Rural Code may be discharged by underground drains to sewage disposal plants in the same conditions and with the same reservations as set forth in article 123 dealing with the supply of water."

Chapter III

SPECIAL WATER PLANNING ZONES

Article 46. Special water planning zones shall be established by decree of the Council of State after a public inquiry has been held; these decrees shall draw up, and declare to be in the public interest, plans for the distribution of the water resources of the zone concerned, according to the character and location of the requirements to be satisfied, and shall designate the watercourses, springs, bodies of groundwater, lakes or ponds, included in the zone, to which the provisions of articles 47 to 50 shall be applicable.

...

Article 47. Any diversion, catchment or sinking of wells in connection with the waters shown in any decrees issued under article 46 and, in general, any works liable to change the characteristics or flow of such waters shall be subject, after the entry into force of these decrees, to administrative authorization.

...

Article 48. Within a special water planning zone, all owners or operators of diversion, catchment and withdrawal plants, or in general of any plant capable of changing the condition or flow characteristics of the waters of a lake, pond, spring or body of groundwater, shall be required to report their plants.

...

MEXICO

A. Article 27 of the Constitution

31. The article reads as follows:

Article 27. Ownership of the lands and waters within the boundaries of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting private property.

...

In the Nation is likewise vested the ownership of the waters of the territorial seas, within the limits and terms fixed by international law, inland marine waters; those of lagoons and estuaries permanently or intermittently connected with the sea; those of natural, inland lakes which are directly connected with streams having a constant flow; those of rivers and their direct or indirect tributaries from the point in their course where the first permanent, intermittent, or torrential waters begin, to their mouth in the sea, or a lake, lagoon, or estuary forming a part of the public domain; those of constant or intermittent streams and their direct or indirect tributaries, whenever the bed of the stream, throughout the whole or a part of its length, serves as a boundary of the national territory or of two federal divisions, or if it flows from one federal division to another or crosses the boundary lines of the Republic; those of lakes, lagoons or estuaries whose basins, zones, or shores are crossed by the boundary lines of two or more divisions or by the boundary line of the Republic and a neighbouring country or when the shoreline serves as the boundary between two federal divisions or of the Republic and a neighbouring country; those of springs that issue from beaches, maritime areas, the beds, basins, or shores of lakes, lagoons, or estuaries in the national domain; and waters extracted from mines and the channels, beds, or shores of interior lakes and streams to the extent fixed by law. Ground water may be freely brought to the surface by artificial means and utilized by the surface owner, but if the public interest so requires or utilization for other purposes is affected, the Federal Executive may regulate its extraction and utilization, and even establish prohibited areas, as may be done with other waters in the public domain. Any other waters not included in the foregoing enumeration shall be considered an integral part of the property through which they flow or in which they are deposited, but if they are located in two or more properties, their utilization shall be deemed a matter of public use, and shall be subject to laws enacted by the States.[32]

B. Federal Water Act, 1972

32. This Act contains the following provisions:

TITLE I

GENERAL PROVISIONS

Chapter I

PURPOSE OF THE ACT

Article 1. With a view to ensuring the equitable distribution and the conservation of water resources, this Act shall give effect to the provisions, with regard to water, of the fifth and sixth paragraphs of article 27 of the Political Constitution of the United Mexican States, and its purpose shall be to regulate the development, use and utilization of nationally-owned waters, including groundwater freely brought to the surface by artificial means, in order that the extraction and utilizsation thereof and temporary restrictions thereon shall be regulated in a manner consistent with the public interest.

Article 2. The following are declared to be of public utility:

I. Establishment and the maintenance on a current basis of an inventory of the country's water resources;

II. Surveys and works projects required for the formulation of plans for hydraulic works;

III. Irrigation, drainage, reclamation and torrent-control works and works for the protection of population centres and farm land against flooding;

IV. Infiltration works to conserve and replenish aquifers;

V. Diversion of water from one watershed or hydrographic basin to another;

VI. Works and installations for the provision of drinking water, and sewage systems;

VII. Use of nationally-owned waters to generate electric power for public services;

VIII. Regulation of the distribution of nationally-owned waters, including limitations on and close periods for the extraction of ground water;

---

[32] The above paragraph (para. V of article 27), is the result of two successive amendments, by decrees dated respectively 15 January 1945 (United Mexican States, *Diario Oficial*, vol. CXLIX, No. 45 (21 April 1945), p. 1) and 6 January 1960 (*ibid.*, vol. CCXXXVIII, No. 16 (20 January 1960), p. 2).

IX. Protection, improvement and conservation of watersheds, beds of watercourses, basins and aquifers;

X. Development, use of utilization of the waters of nationally-owned reservoirs and other nationally-owned bodies of standing water, however formed;

XI. Water-related works for the preservation and improvement of the ecological conditions conducive ot the development of aquatic fauna and flora in streams, lakes, lagoons, basins and estuaries;

XII. Establishment of irrigation districts, irrigation units for rural development, drainage and flood-control districts and aquaculture districts;

XIII. Consolidation of public, communal and privately-owned land in irrigation districts to ensure the more efficient and equitable use of water;

XIV. Hydraulic works that will foster the formation, conservation and improvement in quality of soil for agricultural use;

XV. Establishment, review, modification and operation of registers of users;

XVI. Acquisition of land and other immovable property required to establish irrigation, drainage or protection zones;

XVII. Establishment of villages and the execution of works to provide them with public services in cases where population centres are affected by hydraulic works;

XVIII. Utilization of quarries, standing waters and deposits of materials for hydraulic and ancillary works;

XIX. Acquisition of privately-owned hydraulic works when it is necessary to incorporate them into an existing or future general water system;

XX. Installation of desalination plants for the treatment of sea-water and inland brackish waters;

XXI. Prevention and control of water pollution, irrespective of the applicable legal régime, in accordance with the Federal Act for the Prevention and Control of Environmental Pollution and other relevant legislation; and

XXII. Acquisition of property required for the construction, rehabilitation, improvement, operation, conservation and development of the hydraulic works and ancillary installations referred to in this Act, and the construction of access roads required for the development and use thereof.

. . .

Article 4. For the purposes of this Act:

I. The term "Ministry" means the Ministry of Water Resources;

. . .

Chapter II

THE LEGAL REGIME GOVERNING THE RESOURCES COVERED BY THIS ACT

Article 5. The following waters are deemed to be the property of the Nations:

I. The waters of the territorial sea within the scope and terms of international law;

II. Inland maritime waters;

III. The waters of lagoons and estuaries communicating permanently or at intervals with the sea;

IV. The waters of inland natural lakes directly linked with permanent watercourses;

V. The waters of rivers and their direct or indirect tributaries, from the point in the bed where the first perennial, intermittent or torrential stream begins to its outlet into the sea of a nationally-owned lake, lagoon or estuary;

VI. The waters of perennial or intermittent streams and their direct or indirect tributaries, when the bed of such a stream serves in whole or in part as the national frontier or a boundary between two federal subdivisions, or when it passes from one federal subdivision to another or crosses the boundary line of the Republic;

VII. The waters of lakes, lagoons or estuaries whose basins, zones or shores are crossed by the boundary line between two or more subdivisions or between the Republic and a neighbouring country, or whose shoreline serves as a boundary between two federal subdivisions or between the Republic and a neighbouring country;

VIII. The waters of springs which rise along the sea-shore, in maritime zones, in the beds of nationally-owned streams or in the basins or on the shores of nationally-owned lakes, lagoons or estuaries;

IX. Water extracted from mines;

X. Waters belonging to the Nation by virtue of international treaties; and

XI. Gound water.

Article 6. The following are also deemed to be the property of the Nation:

I. The sea-shore and terrestrial maritime zones;

II. Land occupied by the basins of nationally-owned lakes, lagoons or estuaries or of nationally-owned impounded or standing waters;

III. The beds of nationally-owned streams;

IV. The federal zones contiguous to the beds of nationally-owned streams or to nationally-owned basins or standing waters and consisting of a strip of land 10 metres wide, or 5 metres when the width of the bed is five metres or less;

V. Land reclaimed from the sea or nationally-owned estuaries, by natural causes or by man-made works;

VI. Land underlying the beds of nationally-owned streams or the basins of nationally-owned lakes, lagoons or estuaries which is exposed by natural causes or man-made works;

VII. Islands which exist or are formed in the territorial sea, in the basins of nationally-owned lakes, lagoons, estuaries or bodies of impounded or standing waters, or on the beds of nationally-owned streams, except those which are formed when a stream isolates private, public or communally-owned land;

VIII. Dams, dikes and the basins of their captive waters, canals, drains, levees, ditches and other water-related works for the development, use, utilization and management of national waters, together with the relevant protection zones to the extent determined in each case by the Ministry; and

IX. Aquatic flora and fauna, substances and other matter contained in nationally-owned waters.

Article 7. Control over the extraction and use of groundwater, including that freely brought to the surface, is declared to be in the public interest in conformity with the regulations to that effect made by the Federal Executive.

Article 8. Residual waters resulting from use of the waters referred to in article 5 of this Act shall be nationally owned.

Article 9. The nation's ownership of the resources referred to in articles 5, 6, 7 and 8 shall be inalienable and imprescriptible.

Article 10. The system of national ownership of the waters referred to in articles 5 and 8 shall subsist even where, by reason of the construction of works, such waters are diverted from the original bed or basin for the purposes of their exploitation, use or appropriation, or if the affluents of the said waters are impeded, or the said waters are subject to treatment.

Article 11. Where, owing to natural causes, a definitive change takes place in the course of a nationally-owned stream, the ownership of the new bed and of its federal zone shall, *ipso facto* pass to the Nation, and, if the abandoned bed is not needed for agricultural purposes, the riparian owners may acquire up to half of the said bed adjacent to the frontage of their property, or, if there is no riparian owner on the other side having an interest, therein the entire bed.

Article 12. Where, owing to natural causes, a nationally-owned lake, lagoon or estuary definitively changes level and invades the land, the land affected, the federal zone and the terrestrial maritime zone concerned shall be transferred to the public domain of the Federation. If the change causes land to be exposed, such land shall, by decree, be transferred from the public to the private domain of the Federation.

Article 13. Where, owing to natural causes, a nationally-owned lake, lagoon, estuary or stream tends to change its basin or bed, the owners of the bordering land shall have the right to build the necessary protective works. In the case of a lasting change, they shall have the right to build corrective works within one year from the date on which the change took place.

In both cases, for the works to be constructed, the plans and projects must have the prior approval of the Ministry and, where appropriate, of the Ministry of Marine.

Article 14. Land reclaimed through man-made works, by channelling a stream or by partially or totally limiting or draining a nationally-owned basin, shall, by a decree, be transferred from the public to the private domain of the Federation. The channelling or limitation works shall be regarded as an integral part of the beds and basins concerned and, as such, subject to the public domain of the Federation.

Article 15. In the public interest, the Federal Executive, through the Ministry, may, by means of a declaration, reduce or eliminate the federal zone of nationally-owned streams, lakes and lagoons, only in the parts falling within the boundaries of population centres.

The land which constituted the federal zones shall be transferred to the private domain of the Federation.

...

TITLE II

EXPLOITATION, USE OR APPROPRIATION OF WATERS

Chapter I

GENERAL PROVISIONS

Article 19. The use and utilization of nationally-owned waters by manual methods for domestic and livestock-watering purposes shall be free, provided that water is not diverted from its channel.

Article 20. The Ministry may conclude agreements with the States, the Federal District, federal territories, municipalities and public, communal or private landholders with a view to the construction of works for the development, use or utilization of waters, regardless of the legal régime applicable to them. In cases concerning the use and utilization of waters for navigation or works or services relating to navigation, such agreements shall be concluded by the Ministry of the Marine, and in cases where the utilization of fisheries resources is concerned, the Ministry shall co-ordinate its activities with the Ministry of Industry and Trade.

Article 21. Decentralized agencies, mixed enterprises, other institutions in the public sector, the Federal District, federal territories, states and municipalities may develop, use or utilize nationally-owned waters, subject to their prior allocation by the Federal Executive acting through the Ministry, which shall also have power to review and approve projects and the construction of works, as well as the distribution of water.

Article 22. Individuals and companies established under Mexican law may develop, use or utilize nationally-owned waters by virtue of concessions or permits granted to them in conformity with this Act and any other applicable legal provisions, subject to the limitations established in article 27 of the Constitution.

Article 23. With regard to the development, use or utilization of ground water in prohibited zones, an allocation or a concession shall be required, subject to the prior granting of a permit for the ground-water-lifting facilities, in accordance with the provisions of article 7.

Article 24. For the purpose of determining the existence of free waters that are affected by water-supply rights, replenishment or water-access rights, the Ministry and the Department of Agrarian Affairs and Settlement shall co-ordinate their activities in accordance with the Federal Land Reform Act.

Article 25. In the granting of authorization for the establishment of industries which depend upon the development, use or utilization of nationally-owned waters, the competent authorities shall require the interested parties to have the corresponding permit, concession or allocation.

Article 26. Where water is used to provide various services by means of a single system or works, the Ministry may construct the same either directly or in conjunction with other branches of the Federal Executive or by virtue of agreements with agencies in the public sector or with local or municipal authorities.

Article 27. In the development, use or utilization or nationally-owned waters which include underground waters, the Ministry shall observe the following order of priority:

I. Domestic uses;

II. Urban public services;

III. Watering of livestock;

IV. Irrigation of:

(*a*) Public or common land;

(*b*) Privately owned land.

V. Industries:

(*a*) Generation of electric power for public services;

(*b*) Other industries;

VI. Agriculture;

VII. Generation of electric power for private consumption;

VIII. Washing of land and dressing with silt;

IX. Other purposes.

The Federal Executive may alter this order of priority when the public interest so requires, except with regard to domestic uses, which shall always have preference.

Chapter II

DRINKING-WATER SUPPLY AND SEWAGE WORKS

Article 28. Where the use or utilization of national waters is required in order to meet the water needs of urban areas, the state and territorial governments and municipal councils shall request the corresponding allocation from the Ministry, subject to the provisions of this Act and the regulations made thereunder.

Article 29. The Ministry shall supervise the use and distribution of nationally-owned waters which have been allocated, with a view to conserving the aquifer reserves.

Article 30. The Ministry shall allocate the water supply necessary for the use of population centres once the requirements of the health regulations and of the Federal Act for the Prevention and Control of Environmental Pollution and the regulations made under that Act have been met.

...

Chapter III

IRRIGATION DISTRICTS

Section 1—Establishment and composition

Article 42. The development or utilization of water in the various irrigation districts shall be regulated in accordance with the terms and conditions imposed by this Act.

Article 43. The irrigation districts shall be composed of:

I. The areas contained within their boundaries;

II. Surface water and ground water intended for irrigation;

III. Reservoirs;

IV. Operational units;

V. Storage or diversion dams;

VI. Surface-water and ground-water pumping systems;

VII. Control and protection works;

VIII. Conduits, drains, service roads; and

IX. The other works and installations necessary for the operation and functioning of the districts.

...

Article 49. The Ministry shall be empowered to utilize surface water, groundwater and residual water as sources of supply for the irrigation districts.

...

Section 3—Management, operation, conservation and development

...

Article 59. Water shall be distributed according to crop cycles and in such a way as to supply users with the quantity needed to meet their irrigation requirements, taking into consideration:

I. The category and number of the crops approved by the management committee;

II. The availability of water for the relevant cycle;

III. The extent of entitlement to the irrigation service according to the register of users; and

IV. The provisions of the operational regulations put into effect in each district by the Ministry.

Article 60. Where, for reasons of *force majeure*, water resources are inadequate to meet demand in the irrigation district in any crop cycle, the available water resources shall be distributed equitably among small landholders, settlers and the owners of public or communal land (the latter two categories being understood to comprise the number of users who are recorded in the census of the local population as owners of public or communal land) in the following manner:

I. The quantity of water available shall be divided by the number of users in order to determine, on the basis of the average irrigation coefficient established by the Ministry, the area which may be planted by each user; and

II. Where the area which can be planted by a user is less than that entered in the register of users, the surplus water shall be redistributed among the other users.

. . .

Article 62. Owners or holders of land who have independent means of irrigation shall be entitled to be supplied only with such additional quantities of water as do not exceed the maximum authorized for other users.

In the event of a shortage of water, users having independent means of irrigation shall, once their requirements in respect of the area authorized by virtue of the register are met, deliver to the district such quantities of water as the Ministry may determine. The district shall defray the resulting costs.

. . .

Article 66. Users shall be obliged to use the irrigation service efficiently and for the purposes specified in the annual agricultural programmes. Failure to do so shall entail suspension or forfeiture of their right to use the irrigation service, as provided in this Act and the applicable agrarian regulations.

. . .

Chapter IV

Irrigation units for rural development

Article 73. At the discretion of the Ministry, irrigation units for rural development may be established for the purpose of providing rural communities with water services, for domestic, irrigation, stock-watering, fish-breeding, recreational or industrial uses through the construction and rehabilitation of water-related works.

The units may be integrated with works under the jurisdiction of the Federal Government, state governments, municipal councils, and bodies and enterprises in the public sector and those under public, community or private control.

. . .

Chapter V

Drainage and flood control districts

Article 84. The Ministry may construct torrent-control, flood-control, drainage or land-reclamation works and such additional works as may be needed to ensure the optimum use of land for agricultural purposes.

Where the Federal Executive sees fit, it may establish in conjunction with these works, a drainage and flood-control district, and, if conditions permit, may also make provision for irrigation services.

. . .

Chapter VI

Aquiculture districts

Article 87. Aquiculture districts shall be established by decree of the Federal Executive, and such decree shall set out the sources of supply and the supply requirements, the boundaries of the district, the units which the district comprises, and any prohibitions which may be necessary in respect of national waters, whether surface waters or ground water.

Article 88. The purpose of the aquiculture districts shall be the preservation and improvement of the natural conditions of nationally-owned waters, the development and exploitation of aquatic animal and plant species and the exploitation of mineral salts.

Article 89. The aquiculture districts shall comprise:

I. The coastal and inland streams, lakes and lagoons, the estuaries and the corresponding portions of the territorial sea, the relevant federal zones and terrestrial maritime zones and the portions of the continental shelf which are included within its boundaries;

II. The ground water intended for the district's services;

III. Storage or diversion dams, systems for the pumping of nationally-owned surface waters and of ground water in prohibited zones and for control and protection, drains, canals, service roads and other necessary works and installations.

. . .

Chapter VII

Water for the generation of electric power for public services

Article 100. The exploitation, use or appropriation of water for the generation of electric power for public services shall be reserved exclusively to the Nation,

. . .

Article 102. The Federal Executive, on the basis of the studies and plans referred to in the previous article, shall prescribe, on behalf of the Federal Electricity Commission, the allocation of the quantities of water intended for the generation of electric power and plant refrigeration.

In the case of each nationally-owned stream, basin, lake, lagoon or body of standing water, the Ministry shall carry out periodic programming of the necessary extraction and distribution, so as to regulate the appropriation of water, by the Federal Electricity Commission, in relation to the other uses of water on the basis of the priorities established by this Act.

. . .

Article 104. The Federal Executive may decree the reservation of nationally-owned waters for the generation of electric power. Ground water in the form of steam or at a temperature higher than 80 degrees centigrade shall be permanently reserved for that purpose.

Article 105. While not in use, the reserved water may be appropriated by individuals by virtue of concessions granted by an express decision of the Ministry after consultation with the Federal Electricity Commission.

Article 106. The Federal Electricity Commission shall be required to pay assessments, the amount, payment period and manner of payment of which shall be determined in each case by the Federal Executive.

Chapter VIII

Ground water

Article 107. The Ministry shall keep a permanent national register, by zones or regions, of ground water-lifting facilities and points at which ground water emerges, in order to have information about the behaviour of aquifers and to regulate their development use or utilization.

For that purpose, ground water users shall be obliged to notify the Ministry of existing drilling and extraction facilities and of those which are being provided or are to be provided. The Ministry shall, for its part, request such information from owners in non-prohibited zones.

. . .

Article 109. Ground water users in prohibited zones shall be obliged to:

I. Install in the facilities, meters and other equipment by which discharge rates, volumes and levels can be determined;

II. Permit the inspection of drilling installations and extraction facilities and the reading and checking of the meters, in order to verify the behaviour of the aquifer.

Article 110. The regulations for each prohibited zone shall specify the authorized extraction volumes and shall include such special provisions as may be required.

. . .

TITLE IV

THE DISTRIBUTION OF FLOWING AND STANDING WATERS

Chapter I

REGULATION

...

Article 159. The Ministry may regulate the distribution of water from a nationally-owned stream or body of standing water in order to co-ordinate the exercise of the rights of the users, avoid waste, ascertain the existence of surpluses and obtain a higher yield.

In the event of problems due to a shortage, the Ministry shall regulate the distribution of water, having due regard, as appropriate, to the quantities available to irrigation districts.

Article 160. In regulating the distribution of water, the Ministry shall take into consideration:

I. The surveys, reports and plans available to it;

II. The annual volume of stream flow;

III. In consultation with the Department of Agrarian Affairs and Settlement, the water-supply rights or water-access rights granted to population centres;

IV. The legal status of each case of development, use or utilization and the length of time it has been in existence;

V. The manner in which the beneficiaries have been utilizing the waters;

I. The nature and the condition of the works;

VII. The regulations in force concerning fishing;

VIII. Materials extracted from river beds and basins; and

IX. The needs to be met.

...

Article 162. In regulating the distribution of water, the Ministry shall proceed as follows:

I. It shall reduce or terminate *de facto* development, use or utilization where this has existed for less than five years and, subsequently where it has existed for a longer period; and

II. It shall modify the previously authorized volumes of water, except those for agricultural purposes, which must be studied by the Department of Agrarian Affairs and Settlement so that the appropriate Presidential decision may be issued.

...

Article 166. Any new development, use or utilization in respect of streams or standing waters which are already regulated may affect only surplus waters or waters recovered through expropriation, extinction, expiry or revocation.

...

Chapter II

WATER BOARDS

Article 168. The Water Boards shall be in the nature of auxiliary organs of the Ministry and shall be governed by their own regulations, which shall be approved by the Ministry.

Article 169. The Water Boards shall be responsible for applying the orders regulating water distribution.

NIGER

Act No. 71-17 of 30 March 1971 issuing the Fisheries Regulations[33, 34]

33. Articles 1 to 5 of this Act read as follows:

TITLE I

FISHING RIGHTS

Article 1. Fishing rights shall be vested in the State in publicly owned waters, irrespective of whether they are navigable or floatable; namely, large and small rivers, lakes, ponds, pools and storage dams and auxiliary works.

Article 2. The State may grant fishing rights to its nationals or to aliens against payment of a fee or without charge.

The terms and restrictions governing the granting of permits shall be established in regulations.

Article 3. Fishing rights exercised in accordance with local custom on the date of the promulgation of this Act by individuals or groups of individuals who are nationals of the Niger shall be recognized and confirmed.

Such rights shall be recorded and established in regulations.

TITLE II

PROTECTION OF FISH

Article 4. The execution of works of any kind in publicly owned waters shall require an administrative permit.

Article 5. All measures relating to close periods and restrictions on fishing, which may vary according to the species and the region concerned, shall be established by decree of the Council of Ministers. Close periods may not exceed one year unless exceptional circumstances exist.

Fisheries projects situated in waters serving agricultural or industrial purposes, as well as the processing, packaging, transport and sanitary inspection of fish intended for sale, shall be organized and regulated in the same manner.

NORWAY

Note dated 23 January 1973 from the Permanent Mission to the United Nations

34. The note from the Permanent Mission states the following:

The Norwegian border-rivers with the Soviet Union called "Pasvikelven" and "Grense Jacobselv" and with Finland called "Tana" and "Neiden" and the Norwegian border-rivers towards Sweden called "Trysil/Klaraelv" and "Hallerødelven" are polluted to an unusually low degree. As these rivers run through areas where the population is gradually decreasing, it is not unlikely that in the future the pollution of the rivers mentioned might be further reduced without particular cleansing efforts being undertaken. The Norwegian Ministry of Environmental Affairs is, however, making preparations for tests of the water quality. The Norwegian authorities expect the Council of Europe to complete its work relating to a European Convention for the protection of border-watercourses against pollution before the end of 1973. Within the Nordic Council, work is being done at a preparatory stage for the preparation of a convention to protect environment. This convention will also include the protection of border-rivers.

ROMANIA

Act of 20 April 1973 concerning water management in the Socialist Republic of Romania

35. With a view to the conservation of the water resources of the country, their rational management, the preservation of water quality and the protection of the population and property against the destructive action of water, the Grand National Assembly of the Socialist Republic of Romania adopted the above act, which contains the following provisions:

[33] *Journal officiel de la République du Niger*, 15 April 1971, 38th year, No. 8. p. 246.

[34] By a note dated 11 December 1971, the Ministry of Foreign Affairs of the Republic of the Niger indicated that a French Act on fishing in territorial waters dated 1 March 1888 had applied in the Niger until 30 March 1971, the date on which Act No. 71-17 issuing the Fisheries Regulations was promulgated.

Chapter I

GENERAL PROVISIONS

Article 1. In the Socialist Republic of Romania water management constitutes a State problem.

The Ministry of Agriculture, of the Food Industry and of Water Resources, acting through the National Water Council, shall implement Party and State policy with regard to rational water management and the provision of water supplies to meet the needs of the population and the national economy and shall co-ordinate, guide and supervise the use and protection of water resources.

The conservation, management and development of water resources, the protection of their quality against pollution, the rational use and economization of water, prevention of and protection against activities harmful or destructive to water shall be tasks requiring the participation of all State organs and organizations, co-operative organizations, other public organizations and all inhabitants of the country.

Article 2. The provisions of this Act shall apply to:

(*a*) Surface waters: natural and artificial watercourses, natural and artificial lakes and swamps;

(*b*) Ground water, phreatic and deep, including springs;

(*c*) Internal waters;

(*d*) The territorial sea.

The beds of watercourses, the drainage basins of lakes, banks, cliffs, sea beaches, the bed of internal waters and the territorial sea, the continental shelf and works constructed on waters or connected with waters which, directly or indirectly, result in definitive or temporary changes in the water flow régime or in water quality, shall likewise be subject to the provisions of this Act.

The waters which form or intersect the State frontier shall be subject to the provisions of this Act, save where international conventions to which the Socialist Republic of Romania is Party provide otherwise.

Article 3. For the purposes of this Act, the term "water management" shall be understood to mean all measures, works, constructions, and installations designed to secure in a uniform manner the water régime which best serves the common interest for the purpose of preventing and controlling the destructive action of water, ensuring its rational use to meet socio-economic needs and safeguarding it against depletion and pollution.

Article 4. With a view to the co-ordination of water management activities for the multi-purpose management and optimal development of water resources, for their protection against pollution and for the prevention of the destructive action of water, the National Water Council shall be responsible for drawing up, in co-operation with the ministries, the other central authorities and the executive committees of the people's councils of the counties and of the municipality of Bucharest, the hydrographic basin management plans and the general water resources management plan of the Socialist Republic of Romania, which shall be submitted for approval to the Council of Ministers.

The management plans shall describe the quantitative and qualitative situation with regard to water resources, by hydrographic basin, indicate any surplus or shortage of water in relation to socio-economic development needs and outline the most appropriate approach from the technical and economic point of view, to the solution of water management problems, by stages, in the context of long-term hydrographic basin management.

The management plans or, where appropriate, only the hydraulic engineering schemes for multi-purpose management shall be brought up to date periodically as the national economy develops.

. . .

Article 6. Water resources, water management works, constructions and installations shall, wherever necessary and feasible, be used in a multi-purpose fashion in order to meet the greatest possible number of needs with the same amount of water and the same works and in order to co-ordinate water use with measures to control the harmful or destructive action of water and measures to protect water resources against depletion and pollution.

Chapter II

PREVENTION AND CONTROL OF THE DESTRUCTIVE ACTION OF WATER

Section I—General measures relating to protection against the destructive action of water

Article 7. With a view to the prevention and control of the destructive action of water the necessary means shall be made available—through the State plan and budget and through contributions in money and in labour to the execution of certain works of public interest—for the construction of the main works for the regulation of watercourses, such as storage, banks protection works, embankments, torrent regulation works, drainage works, reclamation works and afforestation of degraded land in hydrographic basins, the prevention and control of soil erosion and land subsidence, and also for activities relating to hydro-meteorological forecasting and flood warnings.

With respect to watercourses in areas subject to the destructive action of water, socialist organizations, other juridical persons and natural persons shall be required to take the measures and execute the works necessary to protect the property which they own, directly administer or use.

The placing of constructions of any kind in the main beds of watercourses or in flood zones shall be permitted only with the approval of the water management authorities and on condition that the necessary steps are taken to avoid danger of flooding.

Section II—Water flow

Article 8. In unregulated areas waters must be allowed to flow along the natural course. Persons holding down-stream lands shall be obliged, in withdrawing water, to take that which flows naturally from up-stream lands.

Works for damming off or crossing over watercourses, such as dikes, bridges, roads, railways, water intake structures, and any other works which may obstruct the natural flow shall be so executed and operated as to minimize any unfavourable changes in water flow conditions.

Article 9. Works or any other measures by which the water flow régime is altered may be carried out only with the approval of the water management authorities, granted on the basis of the technical documentation, in accordance with the provisions of the law. In respect of works and measures which alter the fairway in waters used for navigation or the clearance for ships, the approval of the Ministry of Transport and Telecommunications must also be obtained.

Article 10. Any persons who alter the water flow régime without the approval of the water management authorities and thereby cause or create a risk of damage shall be obliged, upon the order of the water management authorities, to restore the previous state of affairs by removing the works executed without approval or to execute supplementary works to avoid the occurrence of damage.

. . .

Section IV—Organization of protective measures against floods and ice

Article 24. Protection against floods and ice shall constitute a permanent task for all State organs and organizations and the other socialist organizations, and a duty for all inhabitants of the country.

. . .

Chapter III

WATER USE

Article 32. Water resources shall be managed in such a way as to ensure their rational use to meet the immediate and long-term water needs of the population and of the economy.

Article 33. New needs for water shall be met from available water resources according to the socio-economic importance of the use as established in this Act or other normative acts.

The satisfaction of the population's water needs shall take precedence over any other use.

Water supply to units performing public services and to the animal husbandry sector shall also be accorded priority.

In situations where, in a particular area, there are no water resources available and there are justified needs for water which have priority from the socio-economic point of view, such needs may be met from water resources previously allocated to other uses.

...

Article 34. Ground water, including springs, shall be used primarily for supplying drinking water to the population and may be used for no other purpose except fire-fighting, save in cases where the water supply needs of the population are unaffected.

Article 35. Drinking water from the water supply system of population centres shall also be used to meet the needs of socio-economic activities which cannot be carried on without water of potable quality.

Drinking water may be used for other purposes as well only if satisfaction of the needs referred to in the foregoing paragraph has been ensured and only on condition that the new uses may be limited or discontinued in the event that new needs for the supply of water to the population arise.

...

Article 38. The use of surface and ground water for drinking and industrial water supply, irrigation, the generation of electric power, pisciculture, reed cultivation, rafting of logs, floating of timber, recreation or any other purposes, . . . shall be permitted only on the basis of and under the conditions prescribed in the authorization granted by the county water management authorities.

Article 39. If, on account of natural or other objective causes, water resources diminish to the extent that authorized supplies cannot be produced fully to cover all uses, temporary restrictions may be imposed on water consumption . . .

Article 40. Navigation, fishing, the use of mineral and thermal waters, and the cultivation of reeds in the Danube Delta shall be governed by special rules. Works executed for the foregoing purposes and affecting the flow régime or water quality shall be subject to the provisions of this Act.

Navigation, rafting of logs, floating of timber and fishing shall be carried on in such a way as not to impair the condition of banks or stream-beds, structures or installations in stream-beds or of natural monuments, and not to infringe on the rights of other water users.

Article 41. Management of deep ground water shall be effected on the basis of assessment of the ground-water reserves available for use.

...

Chapter IV

PROTECTION OF WATER QUALITY

Article 43. All pollution of surface or ground water shall be prohibited.

The term "water pollution" shall be understood to mean alteration of the physical, chemical or biological properties of water, caused directly or indirectly by human activities, whereby the water becomes unfit for normal use for the purposes for which such use was possible before the alteration took place.

Article 44. The Ministries, other central authorities, local organs of State administration, socialist organizations, other juridical persons and all inhabitants of the country shall have the obligation to protect waters from pollution so that they may be used to meet the needs of the population and the economy and for the conservation of aquatic life.

Article 45. The discharge of waste water and the dumping or injection, in any manner, of materials which could cause pollution of surface or ground water shall be permitted only on the basis of and under the conditions prescribed in the authorization granted by the county water management authorities.

The discharge or injection of waste water or other materials into deep aquifers shall also require the approval of the Department of Geology of the Ministry of Mines, Petroleum and Geology, in accordance with the laws in force.

Article 46. For the purposes of this Act, the term "waste water" shall be understood to mean waters which are discharged after use, such as waters used in human settlements, hospitals, sanatoria, factories, plants, thermal power stations, mines, oil fields, stock-breeding farms, warehouses, discharges from ships and boats, run-off from precipitation which has been contaminated with foreign substances derived from the aforementioned uses or flows from other sources similarly contaminated, as well as water whose temperature has changed as a result of use.

Waters which, as a result of use, have become radio-active or increased their level of natural radiation shall also be considered waste water.

Article 47. The use, transport, handling and storage of materials or other substances on or over water, in areas adjacent to waters or in any other place from which such materials or substances could reach surface or ground water shall be carried out under conditions such as to ensure that no water pollution results therefrom.

Article 48. Waste water from sewerage systems of population centres shall be discharged into watercourses only after it has been adequately purified. The executive committees of the people's councils shall arrange for the construction of purification stations in population centres with sewerage systems.

...

Article 52. In the event of serious water pollution or of a risk of serious pollution threatening public health or likely to cause substantial damage to the economy, the National Water Council may order the suspension of operations of units or installations causing water pollution until the causes thereof are removed, having first notified the central authority or the executive committee of the people's council to which the offending unit is subordinate.

Article 53. In order to ensure the quality of drinking water, the Ministry of Health shall prescribe standards for drinking water, and the health measures which must be taken at water supply installations and points of consumption and shall exercise supervision over the latter.

...

Article 54. The water management authorities shall be responsible for the organization of the collection of data, quality of water resources, systematically surveying the latter. They shall draw up water quality management plans for rivers and hydrographic basins and shall make available to the socialist organization, at their request, the results of studies and research undertaken as well as data concerning conditions regarding the discharge of waste water into surface or ground water. All organizations which make analyses relating to water shall contribute to the establishment of the data bank on water quality, under conditions to be established by a decision of the Council of Ministers.

Article 55. The water management authorities shall exercise, in accordance with the law, systematic supervision over the application of measures to protect water quality, co-operating with the health, piscicultural and hunting authorities, the tourist authorities and other State and public organizations.

Water quality supervisory commissions shall be established to deal with watercourses where the maintenance of adequate water quality requires special measures to co-ordinate protection efforts. These commissions shall function under the guidance of the National Water Council and shall be composed of representatives of the executive committees of the people's councils concerned, of the county water management authorities, of the county health inspectorates, of the units which use the watercourse as a source of supply, and also of the units which may cause pollution of the watercourse.

NOTE. Chapter V of this Act deals with questions concerning the planning, execution, maintenance and operation of works constructed on or connected with bodies of water. With a view to ensuring the rational and multipurpose use of water resources, the preservation of water-quality and the avoidance of damages caused by the destructive action of water, article 59 makes it mandatory to submit the technical documentation relating to such works to the water management authority for approval. Chapter VI contains provisions concerning measures to be taken for the protection and conservation of agricultural lands in connexion with the execution of works constructed on or connected with waters. Chapter VII deals with organization and supervision in the field of water management.

Part Two

Treaties and other international instruments

Chapter I

MULTILATERAL AND BILATERAL TREATIES

A. Africa

MULTILATERAL TREATIES

Guinea–Mali–Mauritania–Senegal

Convention relating to the general development of the Senegal River basin, signed at Bamako on 26 July 1963[35, 36, 37]

36. *Establishment of an Inter-State Committee. Composition. Functions. Sessions.* An Inter-State Committee shall be established to promote and co-ordinate research and works relating to the development of the Senegal River basin (art. 1). The Committee shall consist of four Ministers in the proportion of one for each riparian State. The Ministers may be assisted by any experts of their choosing (art. 2). The Committee shall meet once a year in a regular session convened by its Chairman and in special sessions at the request of one of the member States. It shall have a permanent general secretariat (art. 6).

37. *Activities of the Inter-State Committee.* Development programmes affecting a riparian State must be approved by the Committee, which shall assess their impact on the River basin works as a whole (art. 8). Requests for bilateral or multilateral assistance in connexion with the various development works in the River basin shall be made by the riparian States, either jointly or separately. In the latter case, the Committee shall be consulted in advance (art. 9).

38. *International character of the Senegal River.* The Senegal River—including its tributaries—is declared by the riparian States to be an "international river", under a statute prepared and ratified by the four riparian States (art. 13).

39. *Settlement of disputes.* Any dispute that may arise between the riparian States regarding the interpretation or application of the Convention shall be settled amicably or, if necessary, by arbitration (art. 17).

Cameroon–Chad–Dahomey–Ivory Coast–Guinea–Mali–Niger–Nigeria–Upper Volta

Act regarding navigation and economic co-operation between the States of the Niger basin. Done at Niamey on 26 October 1963[38, 39]

40. *Abrogation of treaties concerning the River Niger.* The General Act of Berlin of 26 February 1885, the General Act and Declaration of Brussels of 2 July 1890, and the Convention of Saint-Germain-en-Laye of 10 September 1919 are and remain abrogated as far as they concern the River Niger, its tributaries and sub-tributaries (art. 1).

41. *Utilization of the River Niger.* The utilization of the River Niger, its tributaries and sub-tributaries, is open to each riparian State in respect of the portion of the River Niger basin lying in its territory and without prejudice to its sovereign rights in accordance with the principles defined in the Act and in the manner that may be set forth in subsequent special agreements. The utilization of the River, its tributaries and sub-tributaries, shall be taken in a wide sense, to refer in particular to navigation, agricultural and industrial uses, and collection of the products of its fauna and flora (art. 2).

42. *Co-operation in matters concerning the régime of the River Niger.* The riparian States undertake to establish close co-operation with regard to the study and the execution of any project likely to have an appreciable effect on certain features of the régime of the River, its tributaries and sub-tributaries, their conditions of navigability, agricultural and industrial exploitation, the sanitary conditions of their waters, and the biological characteristics of their fauna and flora (art. 4).

43. *Undertaking of the Parties to establish the Inter-Governmental Organisation of the River Niger. Close relations with other international organizations.* In order to further their co-operation, the riparian States undertake to establish an Inter-Governmental Organisation which will be entrusted with the task of encouraging, promoting and co-ordinating the studies and programmes concerning the exploitation of the resources of the River Niger basin. The Inter-Governmental Organisation, the composition and functions of which shall be the subject of a subsequent agreement,[40] shall establish appropriate close relations with the competent specialized agencies of OAU and shall also maintain useful relations with the United Nations Organization, its specialized agencies, and other international organizations (arts. 5 and 6).

44. *Settlement of disputes.* Any dispute that may arise between the riparian States regarding the interpretation or application of the Act shall be amicably settled by direct agreement between them or through the Inter-Governmental Organisation. Failing such settlement, the dispute shall be decided by arbitration, in particular by the Commission of Mediation, Conciliation and Arbitration of OAU, or by judicial settlement by the International Court of Justice (art. 7).

Guinea–Mali–Mauritania–Senegal

Convention relating to the status of the Senegal River, signed at Dakar on 7 February 1964[41, 42]

45. *Establishment of co-operation between the Parties.* The

[35] No information is available regarding the entry into force of this Convention.

[36] *Revue juridique et politique* (Paris), XIXth year, No. 2 (April–June 1965), p. 299.

[37] See also paras. 45–50 below. Convention relating to the status of the Senegal River.

[38] Adopted at the Conference of the Riparian States of the River Niger, its tributaries and sub-tributaries, held at Niamey from 24 to 26 October 1963. Came into force on 1 February 1966.

[39] United Nations, *Treaty Series*, vol. 587, p. 9.

[40] Agreement concerning the Niger River Commission and the navigation and transport on the River Niger. See paras. 57–59 below.

[41] No information available regarding the entry into force of this Convention.

[42] *Revue juridique et politique (op. cit.)*, p. 302.

Parties express their desire to develop close co-operation in order to promote the rational utilization of the resources of the Senegal River basin and to ensure freedom of navigation and equality of treatment of its users (art. 1).

46. *Utilization of the Senegal River.* The utilization of the Senegal River is open to each riparian State in respect of the portion of the River lying in its territory and within its sovereignty, in accordance with the procedures defined in the Convention and in subsequent instruments (art. 2).

47. *Obligation of the Parties to submit to the Inter-State Committee*[43] *projects likely to alter certain features of the régime of the Senegal River.* The riparian States undertake to submit to the Inter-State Committee, as from their initial stage, projects whose execution is likely appreciably to alter certain features of the régime of the River, its conditions of navigability, agricultural or industrial exploitation, the sanitary conditions of its waters, and the biological characteristics of its fauna and flora (art. 3).

48. *Functions of the Inter-State Committee.* In addition to the functions stipulated in the Convention of 26 July 1963 relating to the general development of the Senegal River basin, the Inter-State Committee shall be responsible, *inter alia*, for: (*a*) preparing joint rules permitting the complete application of the principles affirmed by the Convention; (*b*) ensuring that the said rules are observed; (*c*) assembling basic data relating to the River basin as a whole and preparing and submitting to the Governments of the riparian States co-ordinated research programmes and works for the development and rational utilization of the resources of the Senegal River; (*d*) examining projects prepared by the States for the development of the River; (*e*) where necessary, at the request of one or more riparian States, studying and executing River development projects; (*f*) informing the riparian States of all projects or problems concerning the development of the River basin, promoting harmonious contacts between the States in this field and contributing to the solution of disputes; and (*g*) where necessary, preparing on behalf of the riparian States requests for bilateral or multilateral financial and technical assistance for research and works for the development of the River (art. 11).

49. *Status of the decisions of the Inter-State Committee.* Following their approval by the States concerned, the joint rules as well as other decisions adopted by the Committee shall be binding in relations between the States and vis-à-vis their domestic legislation (art. 11 (*a*)).

50. *Settlement of disputes.* Without prejudice to the provisions of the statute of the Inter-State Committee, and failing direct agreement between the States, any dispute that may arise between them regarding the interpretation or application of the Convention shall be brought before an arbitrator agreed upon by the Parties. Failing an agreement, and as a last resort, the Parties must refer their dispute to the International Court of Justice (art. 16).

[43] Established by the Convention relating to the general development of the Senegal River basin (see para. 36 above).

Cameroon–Chad–Niger–Nigeria

Convention and Statutes relating to the development of the Chad Basin, signed at Fort-Lamy on 22 May 1964[44, 45]

51. *Establishment of the Chad Basin Commission. Composition. Functions. Sessions. Decisions.* The Parties, considering that the projects formulated by them for the utilization of the Chad Basin waters are capable of modifying its system and in consequence its exploitation by other States members of OAU, deem it desirable to set up a Commission for the purposes of preparing general regulations, co-ordinating research activities of member States, examining the schemes prepared by the latter, making recommendations and in general maintaining contacts between the member States (Preamble and art. 1). The Commission shall consist of eight members in the proportion of two per member State (Statutes, art. 8, para. 1). It shall have, *inter alia*, the following terms of reference: preparing joint rules permitting the complete application of the principles affirmed by the Convention and the appended Statutes; assembling, examining and diffusing information on the projects prepared by member States and recommending the planning of joint works and research programmes within the Chad Basin; maintaining liaison between the member States with a view to the most efficient utilization of the waters of the Basin; following up the execution of works and studies in the Chad Basin falling within the ambit of the Convention; examining complaints and assisting in settling disputes; and supervising the implementation of the provisions of the Convention and the appended Statutes (Statutes, art. 9). The Commission shall meet at least once a year. It shall meet exceptionally at the request of two member States (Statutes, art. 8, paras. 2 and 3). Decisions of the Commission shall be adopted unanimously (Statutes, art. 10). The joint regulations and recommendations of the Commission shall be transmitted to the Governments of member States for their decision (Statutes, art. 11).

52. *Legal status of the Commission.* The Commission shall, in all respects, enjoy the status of an international body. The Members and the Executive Secretary shall enjoy the diplomatic privileges and immunities granted by the member States. The personnel of the Commission shall enjoy the privileges and immunities normally accorded to the officials of equivalent status of OAU (Statutes, art. 17).

53. *Co-operation for the development of the Chad Basin.* The member States solemnly affirm their determination to intensify their co-operation and efforts towards the development of the Chad Basin (Statutes, art. 1).

54. *Exploitation of the Chad Basin.* The Chad Basin shall be open to the exploitation of all the Parties to the Convention, in full respect of the sovereign rights of each of them and in accordance with the terms and conditions of the Statutes, subsequent revisions or regulations or special

[44] No information is available regarding the entry into force of this Convention.

[45] For the English and French texts, see: *Journal officiel de la République fédérale du Cameroun* (Yaoundé), 15 September 1964, 4th year, No. 18, p. 1003.

agreements (Statutes, art. 3). The exploitation of the Basin and especially the utilization of surface and underground waters has the widest meaning and refers in particular to the needs of domestic and industrial and agricultural development and the collecting of its fauna and flora products (Statutes, art. 4).

55. *Obligation of the Parties to refer to the Commission any measures and schemes likely to have a marked influence on the Basin.* The member States undertake to refrain from adopting, without prior reference to the Commission, any measures likely to exert a marked influence either upon the extent of water losses, or upon the form of the annual hydrograph and limnograph and certain other characteristics of the Lake, upon the conditions of their exploitation by other bordering States, upon the sanitary condition of the water resources or upon the biological characteristics of the fauna and the flora of the Basin (Statutes, art. 5, para. 1). With a view to obtaining the closest possible co-operation on matters relating to the Chad Basin, the member States agree to inform the Commission of any studies and schemes which they propose to undertake, as from their initial stage (Statutes, art. 6).

56. *Settlement of disputes.* Any dispute concerning the interpretation or implementation of the Convention, which has not been determined by the Commission, shall be submitted to the Commission of Mediation, Conciliation and Arbitration of OAU for the purposes of decision (art. 7 of the Convention).

Cameroon–Chad–Dahomey–Guinea–Ivory Coast–Mali–Niger–Nigeria–Upper Volta

Agreement concerning the Niger River Commission and the navigation and transport on the River Niger, done at Niamey on 25 November 1964[46, 47]

57. *Establishment of the River Niger Commission. Composition. Functions. Sessions. Decisions.* There shall be established an Inter-Governmental Organization called River Niger Commission (art. 1). The Commission shall consist of nine Commissioners one for each riparian State and shall have an Administrative Secretary appointed from among the candidates proposed by the riparian States (arts. 3 and 6). It shall have, *inter alia*, the following functions: to prepare General Regulations which will permit the full application of the principles set forth in the Act of Niamey, and to ensure their effective application; to maintain liaison between the riparian States in order to ensure the most effective use of the waters and resources of the River Niger basin; to collect, evaluate and disseminate basic data on the whole of the basin, to examine the projects prepared by the riparian States, and to recommend to the Governments of the riparian States plans for common studies and works for the judicious utilization and development of the resources of the basin; to follow the progress of the execution of studies and works in the basin and to keep the riparian States informed thereon; to examine complaints and to promote the settlement of disputes and the resolution of differences; and, generally, to supervise the implementation of the provisions of the Act of Niamey and the Agreement (art. 2). The Commission shall meet in ordinary session once a year. It may meet in extraordinary session at the joint request of any three riparian States (art. 5). The decisions of the Commission shall be taken by a majority of two thirds of the Commissioners present and voting. The General Regulations and the other decisions of the Commission shall, after approval by the riparian States and after a time-limit fixed by the Commission, have binding force as regards relations among the States as well as their internal regulation (arts. 4 and 2).

58. *Legal status of the Commission.* The Commission shall have for all purposes the status of an international organization. The Commissioners and the Administrative Secretary shall be accorded diplomatic privileges and immunities by the riparian States. The other staff of the Commission shall be accorded such privileges and immunities as are accorded to officials of OAU of equivalent status (art. 11).

59. *Obligation of the riparian States to inform the Commission of the studies and works upon which they propose to embark.* In order to achieve maximum co-operation in connexion with matters concerning the River Niger, the riparian States undertake to inform the Commission, at the earliest stage, of all studies and works upon which they propose to embark, and to abstain from carrying out on the portion of the River, its tributaries and sub-tributaries subject to their jurisdiction any works likely to pollute the waters, or any modification likely to affect biological characteristics of its fauna and flora, without adequate notice to, and prior consultation with, the Commission (art. 12).

B. America

1. Multilateral treaties

Argentina–Bolivia–Brazil–Paraguay–Uruguay

Treaty on the River Plate Basin, signed at Brasilia on 23 April 1969[48, 49]

60. This Treaty, known as the River Plate Basin Treaty, was adopted at the First Extraordinary Meeting of Foreign Ministers of the River Plate Basin States, convened in Brasilia on 22 and 23 April 1969.[50]

61. *Combined efforts for the harmonious development and*

[46] Came into force on 12 April 1966. The Agreement, which forms an integral part of the Act of Niamey (see paras. 40–44 above), was concluded for the purpose of giving effect to the provisions of that Act by which the Parties had undertaken to establish an Inter-Governmental Organization entrusted with the fostering, the promotion and the co-ordination of studies and programmes relating to the utilization and development of the resources of the River Niger basin.

[47] United Nations, *Treaty Series*, vol. 587, p. 19.

[48] Came into force on 14 August 1970.

[49] To be printed in United Nations, *Treaty Series*, vol. 875, as No. 12550.

[50] To give practical and effective form to the action undertaken with a view to the full utilization of the resources of the River Plate Basin, as described in the relevant provisions of this Treaty, the Parties adopted, at the Fourth Meeting of their Foreign Ministers held from 1 to 3 June 1971, the Act of Asunción, the text of which is reproduced in chapter II below. That chapter also reproduces the texts of bilateral Acts and Declarations done between States of the River Plate Basin, and between one of those States and another neighbouring State. The provisions of these instruments have been influenced by the principles set forth in the River Plate Basin Treaty.

physical integration of the River Plate Basin. The Parties agree to combine their efforts for the purpose of promoting the harmonious development and physical integration of the River Plate Basin, and of its areas of influence which are immediate and identifiable. To this end, they shall promote, within the scope of the Basin, the identification of areas of common interest and the undertaking of surveys, programmes and works, as well as the drafting of operating agreements and legal instruments they deem necessary, and which shall tend toward, *inter alia*: reasonable utilization of water resources, particularly through regulation of watercourses and their multiple and equitable uses; conservation and development of animal and vegetable life; economic co-operation in frontier areas (art. I).

62. *Meetings and decisions of the Foreign Ministers of the River Plate Basin States.* The Ministers shall meet once a year, on a date to be proposed by the Intergovernmental Co-ordinating Committee,[51] for the purpose of drafting basic directives of common policy aimed at attaining the objectives established by the Treaty. They may meet in extraordinary sessions at the request of at least three of the Parties. Any decisions adopted at meetings of the Ministers shall require the unanimous vote of the five States (art. II).

63. *The Intergovernmental Co-ordinating Committee, as a permanent River Basin organ.* For the purposes of the Treaty, the Intergovernmental Co-ordinating Committee is recognized to be the permanent River Basin organ, entrusted with, *inter alia*, promoting, co-ordinating and following the progress of the multinational activities undertaken toward the objective of the integrated development of the River Plate Basin. The Intergovernmental Co-ordinating Committee shall be governed by its Statute, as approved at the Second Meeting of the Foreign Ministers of the River Plate Basin States, held in Santa Cruz de la Sierra, on 18 to 20 May 1968 (art. III).

64. *Safeguarding clauses: freedom of action left to the Parties under the Treaty.* Concerted action among the Parties shall be undertaken without prejudice to those projects and enterprises they may decide to execute within their respective territories, with due respect to international law, and in accord with acceptable practice between neighbouring and friendly nations (art. V). The stipulations of the Treaty shall not inhibit the Parties from entering into specific or partial agreements, bilateral or multilateral, tending towards the attainment of the general objectives of the Basin Development (art. VI).

2. Bilateral treaties

Argentina–Paraguay

Agreement concerning a study of the utilization of the water-power of the Apipé Falls, signed at Buenos Aires on 23 January 1958[52, 53]

65. *Establishment of a Joint Argentine–Paraguayan Technical Commission. Composition. Functions.* The Parties, considering the possibility of obtaining hydro-electric energy from the rapids in the River Paraná at the islands of Yacyretá and Apipé, decided to establish a Joint Argentine–Paraguayan Technical Commission to undertake a study concerning the utilization of the water-power of the River Paraná at the islands of Yacyretá and Apipé, and the improvement of the navigability of the said River. Surveys shall also cover other advantageous uses of the waters of the Paraná and possibly the improvement of the communications between the two countries through the works to be carried out. The Joint Technical Commission shall be composed of two representatives, one from each Party, and such advisers as may be considered necessary for the accomplishment of their task (arts. I and II).

66. *Surveys to be made by the Commission.* The surveys to be made shall consist principally of: exploration and inspection of the region defined in the Agreement, determining all the technical characteristics of the waters which are relevant to hydraulic utilization; a hydrographic and hydrological survey of the River Paraná and a geological and hydrological survey of the region concerned; a plan of the works needed for hydraulic utilization, including cost estimates; a survey of the possibilities for financing the proposed projects; and a survey of the possible consumption of electric power in the region and of the possible costs (art. II).

67. *Facilities granted to the Commission.* The representatives and advisers and the technical personnel employed by the Commission who are engaged in some work or survey shall have the right to travel freely in the region concerned and enter the territory of the other Party. They shall also enjoy facilities for the accomplishment of their task (art. IV).

68. *Specific period for the completion of the surveys.* A period of two years is fixed for the completion of all the surveys mentioned in the Agreement and for the submission by the Joint Technical Commission to both Governments of its final report, giving a general description of the works, the advantages acruing therefrom, and the methods of carrying out any projects recommended, the execution of the work and the financing plan to be adopted (art. V). It should be noted that the Parties, by exchanges of notes dated 23 January 1967[54] and 20 July 1967,[55] extended the Commission until 31 December 1969 to enable it to complete its work.

Guatemala–Mexico

Exchange of notes constituting an agreement concerning the establishment of the International Commission on Boundaries and Waters, Guatemala City, 9 November and 21 December 1961[56, 57]

69. *Establishment of an International Commission on Boundaries and Waters between the United Mexican States and the Republic of Guatemala. Composition. Functions.* The Parties agree to establish an "International Commission on Boundaries and Waters between the United Mexican

[51] See para. 323 below.

[52] Came into force on 16 June 1958.

[53] United Nations, *Treaty Series*, vol. 649, p. 174.

[54] *Ibid.*, p. 186.

[55] *Ibid.*, p. 190.

[56] Came into force on 21 December 1961.

[57] Text provided by the Mexican Government.

States and the Republic of Guatemala". The Commission shall comprise two sections, one for Mexico and the other for Guatemala, each headed by a Engineer Commissioner having diplomatic status, who shall be assisted by such technical, legal and administrative staff as may be deemed necessary. The Commission shall be responsible for: (*a*) Demarcating and maintaining the land boundary lines established by the Boundaries Treaty of 1882; (*b*) Studying cases which arise as a result of changes in the course of border rivers and recommending appropriate solutions; (*c*) Studying international watercourses in order to prepare plans for the equitable use and harnessing of their waters, for the benefit of the two countries, and studying matters relating to flood control; (*d*) Giving advice concerning works to be constructed on any part of the land boundary line or in international river beds and supervising their construction in order to guarantee that the rights of the two countries are not impaired. Questions and problems relating to flood control works and the use and utilization of international waters will be dealt with on the basis of, and in accordance with, the norms and principles recognized under international law and advocated by international organizations, and which are compatible with the best interests of the peoples of both riparian countries.

70. *Responsibilities of the Commission with regard to problems relating to the River Suchiate.* The Commission shall deal with problems relating to the River Suchiate and, for that purpose, it shall: (*a*) determine, as soon as possible, the points and reaches where the River Suchiate diverges from its course and complete the necessary work to prevent such changes in the course of the river as well as floods and erosion which are harmful to the riparian lands of both countries; (*b*) study and plan works which are necessary to establish permanent flood channels in places where the river diverges from its course; (*c*) study the entire River Suchiate basin in order to determine available hydraulic resources and draw up plans for the equitable use and harnessing of the waters for the benefit of both countries; (*d*) make studies and prepare plans for the construction of a permanent bridge across the River Suchiate, between Tecún Umán, Guatemala, and Ciudad Hidalgo, Mexico. The Commission shall also submit a draft agreement on the construction and operation of the bridge over the River Suchiate containing the basic provisions specified in the exchange of notes.

71. *Legal character of the decisions of the Commission.* The function of the Commission shall be to counsel and advise the Governments of the two countries on border problems, with powers of investigation and study, and to carry out works previously approved by the Governments, but it shall have no decision-making or other powers which might imply commitments by the respective Governments.

Mexico–United States of America

Convention for the solution of the problem of the Chamizal, signed at Mexico on 29 August 1963[58, 59]

72. The Parties, convinced of the need for continuing the programme of rectification and stabilization of the Rio Grande, carried out under the terms of the Convention of 1 February 1933,[60] decided to conclude this Convention for the purpose of arriving at a complete solution of the problem concerning El Chamizal.

73. *Relocation of the Rio Grande in the El Paso–Ciudad Juarez sector.* In the El Paso–Ciudad Juarez sector, the Rio Grande shall be relocated into a new channel in accordance with the engineering plan recommended by the International Boundary and Water Commission, United States and Mexico (art. 1).

74. *Relocation of the international boundary. Transfer of portions of territory.* The centre line of the new river channel shall be the international boundary. The lands that, as a result of the relocation of the river channel, shall be to the north of the centre line of the new channel shall be the territory of the United States and the lands that shall be to the south of the centre line of the new channel shall be the territory of Mexico (art. 3). The relocation of the international boundary and the transfer of portions of territory resulting therefrom shall not affect in any way: the legal status, with respect to citizenship laws, of those persons who are present or former residents of the portions of territory transferred; the jurisdiction over legal proceedings of either a civil or criminal character which are pending at the time of, or which were decided prior to, such relocation; the jurisdiction over acts or omissions occurring within or with respect to the said portions of territory prior to their transfer; the law or laws applicable to such acts or omissions (art. 11). No payments will be made, as between the two Governments, for the value of the lands that pass from one country to the other as a result of the relocation of the international boundary. The lands that, upon relocation of the international boundary, pass from one country to the other shall pass to the respective Governments in absolute ownership, free of any private titles or encumbrances of any kind (art. 4).

75. *Apportionment of the costs of constructing the new river channel.* The costs of constructing the new river channel shall be borne in equal parts by the two Governments. However, each Government shall bear the costs of compensation for the value of the structures or improvements which must be destroyed, within the territory under its jurisdiction prior to the relocation of the international boundary, in the process of constructing the new channel (art. 8).

76. *Jurisdiction and responsibilities of the International Boundary and Water Commission.*[61] The International Boundary and Water Commission is charged with the relocation of the river channel, the construction of the bridges provided for in the Convention and the maintenance, preservation and improvement of the new channel. The Commission's jurisdiction and responsibilities, set forth in the 1933 Convention for the maintenance and preservation of the Rio Grande Rectification Project, are extended upstream from that part of the river included in the Project to the point where the Rio Grande meets the land boundary between the two countries (art. 9).

[58] Came into force on 14 January 1964.
[59] United Nations, *Treaty Series*, vol. 505, p. 185.
[60] See p. 79 above, document A/5409, paras. 206–210.
[61] See p. 76 above, document A/5409, paras. 184–185.

77. *Replacement of existing bridges. Costs.* The existing bridges shall, as a part of the relocation of the river channel, be replaced by new bridges. The cost of constructing the new bridges shall be borne in equal parts by the two Governments (art. 10).

Canada–United States of America

Agreement concerning the establishment of an international arbitral tribunal to dispose of United States claims relating to Gut Dam, signed at Ottawa on 25 March 1965[62, 63]

78. Nationals of the United States of America alleged that, as a result of the construction and maintenance of a dam in the international section of the St. Lawrence River (known as Gut Dam), their property in the United States had suffered damage or detriment, and claimed compensation for such damage or detriment from the Government of Canada. The Parties considered that the need arose to establish an international arbitral tribunal to dispose of the claims in a final fashion.

79. *Lake Ontario Claims Tribunal United States and Canada. Composition. Functions.* The Agreement establishes this Tribunal for the purpose of hearing and finally disposing of claims presented to it by nationals of the United States including juridical persons. The Tribunal shall consist of the Chairman, to be jointly designated by the two Governments, and of two national members (art. I).

80. *Jurisdiction of the Tribunal.* Each decision of the Tribunal shall be based on its determination of any or more of the following questions (art. II, para. 1):

(*a*) Was the construction and maintenance of Gut Dam the proximate cause of damage or detriment to the property that is the subject of such claim?

(*b*) If the construction and maintenance of Gut Dam was the proximate cause of damage or detriment to such property, what was the nature and extent of damage caused?

(*c*) Does there exist any legal liability to pay compensation for any damage or detriment caused by the construction and maintenance of Gut Dam to such property?

(*d*) If there exists a legal liability to pay compensation for any damage or detriment caused by the construction and maintenance of Gut Dam to such property, what is the nature and extent of such damage and what amount of compensation in terms of United States dollars should be paid therefor and by whom?

81. *Legal liability. Law applicable.* The Tribunal shall determine any legal liability issue arising under this Agreement in accordance with the following provisions: (*a*) The Tribunal shall apply the substantive law in force in Canada and in the United States of America (exclusive, however, of any laws limiting the time within which any legal suit with respect to any claim is required to be instituted) to all the facts and circumstances surrounding the construction and maintenance of Gut Dam including all the documents passing between Governments concerning the construction of the dam and other relevant documents; (*b*) The law in force in Canada and the United States of America respectively includes international law; (*c*) No claim shall be disallowed or rejected by the Tribunal through the application of the general principle of international law that legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim. In the event that in the opinion of the Tribunal there exists such a divergence between the relevant substantive law in force in Canada and in the United States of America that it is not possible to make a final decision with regard to any particular claim as provided by this Agreement, the Tribunal shall apply such of the legal principles set forth above as it considers appropriate, having regard to the desire of the Parties thereto to reach a solution just to all interests concerned (art. II, paras. 2 and 3).

82. *Binding character of the decisions of the Tribunal.* The decisions of the majority of the members of the Tribunal shall be the decisions of the Tribunal and shall be accepted as final and binding by the two Governments (art. XII).

NOTE. As a result of negotiations between Canada and the United States, the claims were settled by agreement without the necessity of a ruling by the Tribunal. This agreement, which was reached without prejudice to the legal and factual positions maintained by the parties and without precedential effect, was notified to the Tribunal, whose Chairman took note of it. ("Arbitration of Lake Ontario (Gut Dam) Claims", Canada, *External Affairs* (Ottawa), vol. XX, No. 12 (December, 1968), pp. 507–509. See also: "Report of the agent of the United States before the Lake Ontario Claims Tribunal", in *American Society of International Law, International Legal Materials*, vol. VIII *(op. cit.)*, p. 118; and "The Gut Dam Arbitration", *Netherlands International Law Review* (Leiden), vol. XVI, No. 2 (1969), p. 161.)

Mexico–United States of America

Exchange of notes constituting an agreement concerning the loan of waters of the Colorado River for irrigation of lands in the Mexicali Valley, Mexico, 24 August 1966[64, 65]

83. By this exchange of notes, the United States agreed to release to Mexico, during the months of September and December 1966, in addition to the waters of the Colorado River allocated to Mexico annually under article 10 of the Water Treaty signed in Washington on 3 February 1944,[66] a specified quantity of water of the said river to relieve the critical shortage of water available for irrigation of lands in the Mexicali Valley. The same quantity of water was to be retained by the United States—either in 1967 or, depending on factors specified in the notes exchanged, over a period of three years including 1967—from its annual scheduled deliveries to Mexico under the 1944 Water Treaty. Mexico agreed to reimburse the United States at market value for any actual decrease in power generation at either Hoover or Glen Canyon Power Plant, caused by the loss of power head resulting from the release of the said quantity of water. This

[62] Came into force on 11 October 1966.

[63] Canada, *Treaty Series*, 1966, No. 22.

[64] Came into force on 24 August 1966.

[65] United Nations, *Treaty Series*, vol. 606, p. 251.

[66] See p. 80 above, document A/5409, paras. 211 and 214.

Agreement was not to be regarded as a precedent for deliveries of water in the future in addition to the waters of the Colorado River allotted to Mexico annually under article 10 of the 1944 Treaty.

Argentina–Uruguay

Protocol concerning the delimitation and marking of the Argentine–Uruguayan boundary line in the River Uruguay, signed at Buenos Aires on 16 October 1968[67, 68]

84. *Delimitation of the boundary line.* Pursuant to the Treaty on Boundaries, signed on 7 April 1961,[69] the Mixed Boundary Commission, composed of technical representatives of both Parties and established on 12 July 1968, shall be responsible for delimiting and marking the boundary line and islands in the River Uruguay (art. 1). The common costs shall be defrayed in equal proportions by the two Governments (art. 4).

85. *Settlement of disputes.* If a dispute arises concerning the delimitation and marking of the boundary line and islands in the Rivery Uruguay, the Mixed Boundary Commission shall leave the action to be taken to the decision of the Parties' Ministries of Foreign Affairs. If they fail to agree, the case shall be submitted to an expert from a third country, who shall be designated by agreement between the Governments of both Parties (art. 7).

86. *Facilities granted to the Mixed Boundary Commission.* The Parties agree to grant transport facilities and absolute freedom of entry and transit to the members and auxiliary personnel of the Commission and to exempt from customs duty all items required by the Commission (art. 8).

Argentina–Paraguay

Agreement for the regulation, channelling, dredging, buoyage and maintenance of the River Paraguay, signed at Asunción on 15 July 1969[70, 71]

87. *Establishment of a Mixed Executive Technical Commission. Composition. Functions.* The purpose of the Agreement is to establish a Mixed Executive Technical Commission for the "regulation, channelling, dredging, buoyage and maintenance of the River Paraguay". The Commission shall be composed of representatives of each country. It shall plan and execute the works to which the Agreement relates. In particular, as an immediate step, it shall maintain a minimum determined depth at the baseline in the section of the river from Confluencia to Asunción. It shall initiate immediately the necessary technical studies for achieving greater depths in the future (arts. I, II, IV, VII).

88. *Facilities granted to the Commission and its personnel.* Materials, equipment, machinery and instruments for the execution of the works to which the Agreement relates shall not be subject to taxes or customs duties and shall be exempt from any other levy. Personnel of the Commission shall enjoy migratory facilities and free passage (art. VI).

89. *Studies and surveys to be carried out.* With a view to carrying out the studies and works referred to in the Agreement, appropriate topohydrographic and hydrological surveys, surveys of the river-bed and of the amounts of sediment and matter in suspension and surveys relating to pollution and climatology, etc. shall be made (art. IX).

90. *Apportionment of costs.* The Agreement determines the apportionment of the costs entailed by the works pertaining to regulation, channel-correction, dredging, deepening and maintenance of the river (art. VIII).

91. *Rights of sovereignty of the Parties.* The works pertaining to regulation, channel-correction, dredging, deepening of the river, and so forth, shall in every case be carried out along the channel which is in the circumstances most efficient and convenient for navigation, even though this may necessitate the abandonment of the normal channel; the foregoing shall in no way whatsoever affect the rights of sovereignty of each Party (art. XIII).

Mexico–United States of America

Treaty to resolve pending boundary differences and maintain the Rio Grande and Colorado River as the international boundary, signed at Mexico City on 23 November 1970[72, 73]

92. *Restoration of the Rio Grande as an international boundary.* In order to resolve pending boundary cases and to restore to the Rio Grande its character of international boundary, the Parties agree to modify the position of this river in certain reaches, in accordance with the terms of the Treaty (art. I A, B and C), so as to transfer certain areas of land specified in the Treaty from one side of the river to the other.

93. *Execution and costs of the changes in location of the Rio Grande.* The changes in location of the Rio Grande shall be executed by the International Boundary Commission[74] as soon as practical in accordance with the engineering plans recommended by it and approved by the two Governments. The costs of these changes in location shall be equally divided between the two Governments, through an appropriate division of work recommended by the Commission in the same engineering plans. On the date on which the two Governments approve the Commission's Minute confirming the completion of the relocation of the channel of the Rio Grande, the change of location of the international boundary shall be effected in each case and the middle of the new channels of the Rio Grande and the present channel north of the Horcon Tract and north of the Beaver Island shall become the international boundary; and the consequential territorial adjustments defined in the Treaty shall take place (art. I E and F).

94. *Delineation of the international boundary.* The Parties agree that, except as provided in the Treaty, from the date on which the Treaty enters into force, the international

[67] Came into force on 16 October 1968.

[68] United Nations, *Treaty Series*, vol. 671, p. 55.

[69] *Ibid.*, vol. 635, p. 91.

[70] Came into force on 18 November 1969.

[71] United Nations, *Treaty Series*, vol. 709, p. 311.

[72] Came into force on 18 April 1972.

[73] *United States Treaties and other International Agreements*, vol. 23 (1972) (Washington, D.C., U.S. Government Printing Office, 1973), part 1, p. 371.

[74] Established under the Convention between the United States and Mexico, signed at Washington on 1 March 1889: see p. 76 above, document A/5409, paras. 184–185.

boundary between them in the limitrophe sections of the Rio Grande and the Colorado River shall run along the middle of the channel occupied by normal flow and, where either of the rivers has two or more channels, along the middle of the channel which in normal flows has the greater or greatest average width over its length, and from that time forward, this international boundary shall determine the sovereignty over the lands on one side or the other of it, regardless of the previous sovereignty over these lands (art. II A).

95. *Provisions concerning the problems brought about by changes in the limitrophe channels of the Rio Grande and the Colorado River.* When the Rio Grande or the Colorado River moves laterally eroding one of its banks and depositing alluvium on the opposite bank, the international boundary shall continue to follow the middle of the channel occupied by the normal flow or, when there are two or more channels, it shall follow the middle of the channel which in normal flow has the greatest average width over its length.

96. Where, through other movements, the river separates a tract from a country, two procedures are provided for, depending on the acreage and number of inhabitants of the tract. In the case of a smaller tract, the Government of the country concerned may choose to restore the river to its prior location at his expense; otherwise, the tract will pass to the other country and the Commission will create in favour of the country losing territory a credit to be cancelled either when the river naturally cuts land of equal acreage to its side of the river or in a future project to straighten or rectify the same river. In the case of a larger tract, the Commission will restore the acreage to the country from which it is cut either where the cut is made or at a more advantageous place in the same section of the river, with the two Governments sharing the cost equally (art. III).

97. *Preservation of the boundary channels.* In order to reduce to a minimum the shifting of the channels of the Rio Grande and the Colorado River in their limitrophe sections, and the problems that would be caused by the separation of the tracts of land, the Parties agree to the following:

(a) *Protection of banks against erosion.* Each Party, in the limitrophe sections of both rivers, may protect its bank against erosion and, where either of the rivers has more than one channel, may construct works in the channels that are completely within its territory in order to preserve the character of the limitrophe channel. The works to be executed should not adversely affect the other Party through the deflection or obstruction of the normal flow of the river or of its flood flows (art. IV A).

(b) *Works in the main channel of the river.* Both in the main channel of the river and on adjacent lands to a distance on either side of the international boundary recommended by the Commission and approved by the two Governments, each Party shall prohibit the construction of works in its territory which, in the judgement of the Commission, may cause deflection or obstruction of the normal flow of the river or of its flood flows. If the Commission should determine that any of the works constructed by one of the Parties in the channel of the river or within its territory causes such adverse effects on the territory of the other Party, the Government of the Party that constructed the works shall remove them or modify them and, by agreement of the Commission, shall repair or compensate for the damages sustained by the other Party (art. IV B).

(c) *Recommendations of the Commission.* The Commission shall recommend to the two Governments the execution of works it may consider advisable for improvement and stabilization of the channels of both rivers in their limitrophe sections, including among others the following measures: clearing, channel excavations, bank protection and rectifications. The Commission's recommendations shall include an estimate of the costs of construction, operation and maintenance of the works, and a proposal for the division of the work and costs between the Parties (art. IV C).

98. *Transfer of lands and improvements from one Party to the other.* The lands and improvements which, upon relocation of the international boundary under the provisions of the Treaty, are transferred from one Party to the other, shall pass to the respective Party in absolute ownership, free of any private titles or encumbrances of any kind; compensation to the owners of the lands to be transferred shall be the responsibility of the delivering Party. No payments shall be made between the two Governments for value of the lands and improvements transferred from one Party to the other as a result of the change of location of the international boundary (art. VI A).

99. *Facilities for the construction and operation of the works required for the implementation of the Treaty.* All materials, implements, equipment and repair parts intended for the construction, operation and maintenance of the works required to carry out the provisions of the Treaty shall be exempt from taxes relating to imports and exports. The personnel employed on the construction, operation or maintenance of such works shall be permitted to pass freely from one country to the other for the purpose of going to and from the place or location of the works, without any immigration restrictions, passports, or labour requirements (art. VI C).

Argentina–Paraguay

Agreement concerning a study of the utilization of the resources of the River Paraná, signed at Buenos Aires on 16 June 1971[75, 76]

100. *Establishment of the Paraguayan–Argentine Mixed Commission for the River Paraná. Composition. Functions.* A Mixed Commission, composed of one delegate from each Party, shall be established for the purpose of undertaking a study and evaluation of the technical and economic possibilities of utilizing the resources of the River Paraná in the section bordering the two countries, from the junction with the River Paraguay to the mouth of the Iguassu. The Mixed Commission shall not deal with matters falling within

[75] No information is available regarding the entry into force of this Agreement.

[76] Original Spanish text in *Rios y Lagos Internacionales (Utilización para fines Agrícolas et industriales)*, 4th ed., rev., OEA/Ser.I/VI, CIJ-75 rev.2 (Washington, D.C., Organization of American States, 1971), pp. 511 (*a*)–511 (*d*).

the terms of reference of the Joint Paraguayan–Argentine Commission for Yacyretá–Apipé, established under the Agreement of 23 January 1958[77] (arts. I and II). The Parties shall, by exchange of notes, agree on the Mixed Commission's programme of work and rules of procedure (art. VI).

101. *Decisions of the Commission.* The decisions of the Mixed Commission shall be adopted jointly by the delegates of the two Parties. Any doubtful or disputed matters shall be submitted to the Governments of the Parties for their consideration (art. III).

102. *Submission to the Parties of technical progress reports on the studies undertaken.* The Mixed Commission shall, quarterly, submit to the Parties technical progress reports on the studies undertaken. The final report shall, in addition, contain any recommendations which the Mixed Commission deems it advisable to submit to the Governments (art. V).

103. *Costs.* Common costs involved in the operation of the Mixed Commission shall be shared equally by the two Governments (art. VII).

104. *Facilities granted to the Commission and its members.* The members of the Mixed Commission and their technical assistants shall, in connexion with the work they are to carry out, be allowed free entry into the territory of either country in the areas involving such work (art. VIII). Vessels, provisions, apparatus and operating equipment of the Mixed Commission, together with those for personal use by the persons referred to above, may be transported duty-free between the territories of the two countries (art. IX). The Mixed Commission shall be exempt from taxes and charges on official documents (art. X). Members of the Mixed Commission and their assistants domiciled in the territory of either Party shall pay taxes applicable to their fees or salaries under the relevant legislation solely to the State of domicile. The same rule shall apply in respect to contributions for superannuation or other social benefits payable by such persons (art. XI).

105. *Confirmation of the principles enunciated in the Act of Asunción.* The Parties confirm their adherence to the principles enunciated in the Act of Asunción on the Utilization of International Rivers adopted at the Fourth Meeting of the Ministers for Foreign Affairs of the Countries of the River Plate Basin (art. XII).[78]

Canada–United States of America

Agreement on the Great Lakes Water Quality, signed at Ottawa on 15 April 1972[79, 80]

NOTE. In 1964, the Governments of Canada and the United States asked the International Joint Commission[81] to make a complete study of pollution problems in the lower Great Lakes and the International Section of the St. Lawrence River, and to recommend measures to restore and protect water quality in these lakes. In 1965, the International Joint Commission engaged leading scientists and experts from the two Parties as advisors. In 1970, the Commission submitted a report containing comprehensive recommendations for pollution control programmes and other measures.[82] The Agreement on Great Lakes Water Quality is based on the Commission's findings and recommendations. The Agreement sets out a series of general and specific "water quality objectives" for the Great Lakes. These describe the target condition of the water—conditions agreed by both countries to be desirable—which are goals of the programmes.

106. *General and specific water quality objectives.* The Parties adopted the following *general water quality objectives* for the boundary waters of the Great Lakes System. These waters should be:

(*a*) Free from substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life or waterfowl;

(*b*) Free from floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or deleterious;

(*c*) Free from materials entering the waters as a result of human activity producing colour, odour or other conditions in such a degree as to create a nuisance;

(*d*) Free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life;

(*e*) Free from nutrients entering the waters as a result of human activity in concentrations that create nuisance growths of aquatic weeds and algae (art. II). Annex I to the Agreement sets forth a number of *specific water quality objectives* which are adopted for the boundary waters of the Great Lakes System (art. III, para. 1). New or modified specific objectives may be subsequently adopted (art. III, paras. 2 and 3).

107. *Maintenance of the existing levels of the water quality.* All reasonable and practicable measures shall be taken to maintain the levels of water quality existing at the date of entry into force of the Agreement in those areas of the boundary waters of the Great Lakes System where such levels exceed the specific water quality objectives (art. III, para. 4).

108. *Consistency of water quality standards and other regulatory requirements of the Parties with the achievement of the water quality objectives.* Water quality standards and other regulatory requirements of the Parties shall be consistent with the achievement of the water quality objectives. The Parties shall use their best efforts to ensure that water quality standards and other regulatory requirements of the State and Provincial Governments shall

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[77] See paras. 65–68 above.

[78] See para. 326 below.

[79] Came into force on 15 April 1972.

[80] Summary supplied by the Canadian Government. The text of the Agreement will be reproduced in United Nations, *Treaty Series*, vol. 837.

[81] Established by the Boundary Waters Treaty of 1909 (see p. 73 above, document A/5409, paras. 164–165; see also *Legislative texts and treaty provisions ... (op. cit.)*, p. 260).

[82] For the text of these recommendations, see International Joint Commission, Canada and United States, *Pollution of Lake Erie, Lake Ontario and the International Section of the St. Lawrence River* (Washington, D.C., U.S. Government Printing Office, 1970), pp. 149 *et seq.*

similarly be consistent with the achievement of the water quality objectives (art. IV).

109. *Programmes and other measures to be developed and implemented.* Programmes and other measures directed toward the achievement of the water quality objectives shall be developed and implemented as soon as practicable in accordance with legislation in the two countries. Unless otherwise agreed, such programmes and other measures shall be either completed or in process of implementation by 31 December 1975. They shall include programmes and other measures for the abatement and control of pollution from: municipal, industrial and shipping sources; agricultural, forestry and other land use activities; dredging activities; onshore and offshore facilities (art. V, para. 1). The Parties shall develop and implement such additional programmes as they jointly decide are necessary and desirable for the achievement of water quality objectives (art. V, para. 2).

110. *Responsibilities of the International Joint Commission.* The International Joint Commission shall assist in the implementation of the Agreement and shall be given, *inter alia*, the following responsibilities (art. VI):

(*a*) Collation, analysis and dissemination of data and information supplied by the Parties and State and Provincial Governments relating to the quality of the boundary waters of the Great Lakes System and to pollution that enters the boundary waters from tributary waters;

(*b*) Collection, analysis and dissemination of data and information concerning the water quality objectives and the operation and effectiveness of the programmes and other measures established pursuant to the Agreement;

(*c*) Tendering of advice and recommendations to the Parties and to the State and Provincial Governments on problems of the quality of the boundary waters of the Great Lakes System, including specific recommendations concerning the water quality objectives, legislation, standards and other regulatory requirements, programmes and other measures, and intergovernmental agreements relating to the quality of these waters;

(*d*) Provision of assistance in the co-ordination of the joint activities envisaged by the Agreement, including such matters as contingency planning and consultation on special situations;

(*e*) Provision of assistance in the co-ordination of Great Lakes water quality research, including identification of objectives for research activities, tendering of advice and recommendations concerning research to the Parties and to the State and Provincial Governments and dissemination of information concerning research to interested persons and agencies;

(*f*) Investigations of such subjects related to Great Lakes water quality as the Parties may from time to time refer to it.

111. *Establishment of joint institutions.* The International Joint Commission shall establish a Great Lakes Water Quality Board to assist it in the exercise of the powers and responsibilities assigned to it under the Agreement. Such Board shall be composed of an equal number of members from Canada and the United States. The Commission shall also establish a Research Advisory Board in accordance with the terms of reference attached to the Agreement. The members of the Great Lakes Water Quality Board and the Research Advisory Board shall be appointed by the Commission after consultation with the appropriate government or governments concerned. In addition, the Commission shall have the authority to establish as it may deem appropriate such subordinate bodies as may be required to undertake specific tasks, as well as a regional office, which may be located in the basin of the Great Lakes System, to assist it in the discharge of its functions under the Agreement (art. VII).

112. *Co-operation of the Parties in case of a special pollution problem.* When a Party becomes aware of a special pollution problem that is of joint concern and requires an immediate response, it shall notify and consult the other Party forthwith about appropriate remedial action (art. IX, para. 2).

113. *Comprehensive review of the operation and effectiveness of the Agreement.* The Parties shall conduct a comprehensive review of the operation and effectiveness of the Agreement during the fifth year after its coming into force. Thereafter, further comprehensive reviews shall be conducted upon the request of either Party (art. IX, para. 3).

114. *Existing rights and obligations.* Nothing in the Agreement shall be deemed to diminish the rights and obligations of the Parties as set forth in the Boundary Waters Treaty (art. XI).

Argentina–Uruguay

Treaty on the River Plate and its maritime outlet, done on 19 November 1973[83, 84]

115. *Purposes.* The Parties concluded this Treaty for the purposes of legally defining the exercise of their equal rights in the River Plate and of determining the extent and exercise of their rights in their respective maritime jurisdictions.

(a) *Provisions relating to the River Plate*

116. *Division of the waters.* A band of exclusive jurisdiction is established, adjacent to the shore on each side of the river, and of seven or two nautical miles in width, according to the zone. The remaining waters of the River shall be considered as being for common use (art. 2).

117. *Execution of works.* When either Party intends to construct new channels, to modify or significantly alter existing channels or to execute any other works, it shall so inform the Administrative Commission, which shall determine whether the project is likely to result in significant damage to the régime of the River. If it is so decided, or if no agreement is reached on the matter, the Party concerned shall notify the other Party of the plan through the said Commission (art. 17).

118. *Bed and subsoil of the River. Deposits.* The Parties shall have the right to explore and exploit the resources of the bed and subsoil of the River, in the zones adjacent to their respective shores as far as a specified line defined in

[83] Came into force on 12 February 1974.

[84] Text provided by the Argentine Government.

the Treaty (art. 41). Where a deposit extends on both sides of the aforementioned line, it shall be exploited in such a way that the distribution of the quantities of the resource extracted from the said deposit is proportionate to the amount of the deposit situated on the respective sides of the said line. Each Party shall conduct the exploitation of the deposits existing in such conditions without causing significant damage to the other Party and in accordance with the requirements of full and rational exploitation of the resource, according to the criterion defined in the preceding sentence (art. 43).

119. *Fishing and conservation of living resources.* Each Party shall have the exclusive right to fish in its respective coastal band. Beyond the coastal bands, the Parties mutually recognize the right of vessels of their flags to fish in the River (art. 53). The Parties shall agree on the measures to regulate fishing activities in the River with a view to the conservation and preservation of living resources; when the intensity of fishing so necessitates, they shall agree on the catch limits for each species and on the appropriate periodic adjustments to be made. Such catch limits shall be apportioned equally between the Parties (arts. 54 and 55). The Parties shall regularly exchange relevant information on fishing activities and catches for each species and on the register of vessels authorized to fish in the waters designated for common use (art. 56).

120. *Execution of scientific studies and research.* Each Party shall have the right to carry out scientific studies and research on any part of the River, provided that it gives prior notice to the other Party, indicating the nature of the activities, and informs it of the results obtained. In addition, each Party shall be entitled to participate in all phases of any study or research undertaken by the other Party. The Parties shall promote the execution of joint scientific studies of common interest and, in particular, studies relating to the comprehensive survey of the River Plate (arts. 57 and 58).

121. *Pollution*

(a) *Definition and obligations.* The Treaty defines pollution as the direct or indirect introduction by man into the aquatic environment of substances or energy producing harmful effects. Each Party undertakes to protect and preserve the aquatic environment, and in particular, to prevent its pollution, by enacting appropriate regulations and adopting appropriate measures, in accordance with the applicable international conventions and, where relevant, in conformity with the guidelines and recommendations of the international technical organizations. The Parties undertake not to reduce, in their respective legal provisions, either the existing technical requirements intended to prevent the pollution of the waters, or the severity of the established penalties for infringements, and undertake to inform one another of any regulation which they intend to impose in connexion with the pollution of the waters (arts. 47–50).

(b) *Liability.* Each Party shall be liable to the other for damage resulting from pollution caused by its own activities or by those of natural or juridical persons domiciled in its territory; the jurisdiction of each Party in respect of any violation committed with regard to pollution shall be exercised without prejudice to the rights of the other Party to obtain compensation for any damage which it may have suffered as a result of the same violation. To this end, there shall be mutual co-operation between the Parties (arts. 51 and 52).

122. *River Plate Administrative Commission.*

(a) *Composition, legal status and statute.* A mixed commission is established to be known as the River Plate Administrative Commission, and composed of an equal number of representatives of each of the Parties. It shall enjoy legal status for the performance of its duties and shall be provided with the necessary resources and all means and facilities essential for the discharge of its functions. The Commission may establish such technical organs as it deems necessary, shall function as a permanent body and shall be provided with the appropriate Secretariat (arts. 59–61). The Parties shall agree, through an exchange of notes, on the statute of the Commission, which shall determine its own rules of procedure (art. 62).

(b) *Privileges and immunities.* The headquarters of the Commission shall be accorded inviolability, together with other privileges established by international law (art. 63). The Commission, at the appropriate time shall conclude with both Parties the agreements specifying the privileges and immunites accorded, under international practice, to the members and staff of the Commission (art. 64).

(c) *Decisions and functions.* For the adoption of decisions of the Commission, each delegation shall have one vote (art. 65). The functions of the Commission shall be, *inter alia:* (i) to promote the joint execution of scientific studies and research, with special reference to the evaluation, conservation, preservation and rational exploitation of living resources and the prevention and elimination of pollution and any other harmful effects resulting from the use, exploration and exploitation of the waters of the River; (ii) to prescribe measures for the regulation of fishing activities in the River to ensure the conservation and preservation of living resources (art. 66).

123. *Conciliation procedure.* Any dispute which may arise between the Parties in connexion with the River Plate shall be considered by the Administrative Commission, on the proposal of either of the Parties (art. 68). If after 120 days the Commission is unable to reach an agreement, it shall so notify both Parties, which shall endeavour to settle the question through direct negotiation (art. 69).

(b) *Provisions relating to the maritime outlet*

124. *Line of division.* The lateral maritime boundary and the boundary of the continental shelf between the Parties shall be the median line, determined by the adjacent coast method, extending from the mid-point of the base-line constituted by the imaginary straight line joining Punta del Este (Uruguay) with Punta Rasa on Cabo San Antonio (Argentina) (art. 70).

125. *Exploitation of deposits.* Any deposit which extends on both sides of this boundary shall be exploited in such a way that the distribution of the quantities of the resource extracted from the said deposit is proportionate to the amount of the deposit situated on the respective sides of the said boundary. Each Party shall conduct the exploita-

tion of the deposits existing in such conditions without causing significant damage to the other State and in accordance with the requirements of full and rational exploitation of the resource, according to the criterion defined in the preceding sentence (art. 71).

126. *Fishing.* The Parties agreed to establish a common fishing zone, beyond the 12 nautical miles measured from the corresponding coastal base-lines, for duly registered vessels of their flags. The said zone is that demarcated by two arcs of 200 nautical miles radius, the centres of which are located at Punta del Este (Uruguay) and at Punta Rasa on Cabo San Antonio (Argentina) respectively. The catch limit for each species shall be apportioned equitably, in proportion to the fishery resources contributed by each of the Parties, as evaluated on the basis of scientific and economic criteria. The volume of any catch made by vessels of third flags with the authorization of one of the Parties shall be charged against the quota allocated to the said Party. These regulations shall not apply to aquatic mammals (arts. 73, 74 and 77).

127. *Execution of scientific studies and research.* Each Party shall authorize the other to carry out studies and research of an exclusively scientific nature in their respective maritime jurisdictions within the common zone defined in the preceding paragraph, provided that sufficient advance notice has been given and information provided as to the nature of the studies or research to be carried out, the areas in which they are to be conducted and their duration. The authorizing Party shall have the right to participate in all phases of such studies and research and to be informed of and provided with the results (art. 79).

128. *Pollution.* The depositing of hydrocarbons resulting from the washing of tanks, the emptying of bilges and of ballast and, in general, any other act capable of causing pollution, within a specified area defined in the Treaty, shall be prohibited (arts. 78).

129. *Joint Technical Commission*

(a) *Composition, legal status and statute.* A Joint Technical Commission composed of an equal number of representatives of each Party shall be established, the functions of which shall be to carry out studies and to adopt and coordinate plans and measures relating to the conservation, preservation and rational exploitation of living resources and to the protection of the marine environment in the common zone. It shall have legal personality for the performance of its functions and shall be provided with the funds necessary for that purpose. The Parties shall agree, through an exchange of notes, on the statute of the Commission, which shall determine its own rules of procedure (arts. 80, 81 and 84).

(b) *Functions.* The functions of the Commission shall be, *inter alia:*

(i) To determine the catch limits for each species, to apportion them to the Parties and to adjust them periodically;

(ii) To promote the joint execution of scientific studies and research, particularly within the common zone, with special reference to the evaluation, conservation, preservation and rational exploitation of living resources and to the prevention and elimination of pollution and any other harmful effects resulting from the use, exploration and exploitation of the marine environment;

(iii) To make recommendations and to submit proposals on ways of ensuring the continued efficacy and equilibrium of the bio-ecological systems;

(iv) To enact regulations and measures for the rational exploitation of species in the common zone and for the prevention and elimination of pollution;

(v) To formulate plans for the preservation, conservation and development of living resources in the common zone, and to submit them for consideration by the respective Governments;

(vi) To promote studies and submit proposals for harmonizing the legislation of the Parties on matters within the Commission's area of competence (art. 82).

(c) *Settlement of disputes*

130. Any dispute relating to the interpretation or application of the Treaty which cannot be settled by direct negotiation may be submitted by either of the Parties to the International Court of Justice. In those cases dealt with under "Conciliation procedure"[85] either Party may submit any dispute concerning the interpretation or application of the Treaty to the International Court of Justice if it has proved impossible to settle the said dispute within a specified period (art. 87).

C. Asia

Bilateral Treaties

China–Pakistan

Boundary Agreement, signed at Peking on 2 March 1963[86, 87]

131. *Delimitation of the boundary between China's Sinkiang and the contiguous areas. Water boundary lines.* In view of the fact that the boundary between China's Sinkiang and the contiguous areas, the defence of which is under the actual control of Pakistan, has never been formally delimited, the two Parties agree to delimit it on the basis of the traditional customary boundary line, including natural features, and in a spirit of equality, mutual benefit, and friendly co-operation (art. 1). The Parties have agreed that: (1) wherever the boundary follows a river, the middle line of the river bed shall be the boundary line, and that (2) wherever the boundary passes through Daban (Pass), the water-parting line thereof shall be the boundary line (art. 3).

132. *Establishment of a Joint Boundary Demarcation Commission. Composition. Functions.* The two Parties have agreed to set up, as soon as possible, a Joint Boundary Demarcation Commission. Each side shall appoint a

[85] See para. 123 above.

[86] Came into force on the date of its signature (art. 7).

[87] American Society of International Law, *International Legal Materials* (Washington, D.C.), vol. II, No. 3 (May 1963), p. 541.

Chairman, one or more members and a certain number of advisers and technical staff. The Joint Boundary Commission is charged with the responsibility, in accordance with the provisions of the Agreement, to hold concrete discussions and carry out the following tasks jointly: (*a*) to conduct necessary surveys of the boundary area on the ground, as stated in article 2 of the Agreement, so as to set up boundary markers at places considered to be appropriate by the two Parties and to delineate the boundary line on the jointly prepared accurate maps; (*b*) to draft a Protocol setting forth in detail the alignment of the entire boundary line and location of all the boundary markers and get printed detailed maps to be attached to the Protocol with the boundary line and the boundary markers shown on them (art. 4, para. 1).

133. *Settlement of disputes.* The two Parties have agreed that any dispute concerning the boundary which may arise after the delimitation of the boundary line actually existing between the two countries shall be settled peacefully by the two sides through friendly consultations (art. 5).

D. Europe

1. Multilateral treaties

France–Germany (Federal Republic of)–Luxembourg

Protocol, signed at Paris on 20 December 1961[88, 89]

134. *Establishment, composition and functions of the International Commission for the Protection of the Moselle against Pollution.* The Parties establish an International Commission for the Protection of the Moselle against Pollution. It is composed of delegates appointed by the Parties. Its purpose is to institute co-operation between the competent departments of the three Governments with a view to protecting the waters of the Moselle against pollution. To this end, it may: (*a*) make preparations for and arrange the execution of all research necessary to determine the nature, amount and origin of pollution, and utilize the results of such research; and (*b*) propose to the Parties measures to ensure the protection of the Moselle against pollution (arts. 1–3).

135. *Commission sessions and decisions.* The Commission holds a regular session once a year. It meets in special session when convened by the Chairman at the request of one of the Parties (art. 5). The Commission's decisions are adopted on a basis of unanimity (art. 7).

136. *Liaison with competent bodies.* The Commission, as it deems necessary, establishes liaison with all bodies competent in the questions of water pollution (art. 9).

137. *Settlement of disputes.* Disputes concerning the application or interpretation of the Protocol are to be settled in accordance with the provisions of chapter VII of the Convention concerning the canalization of the Moselle of 27 October 1956 (art. 11).[90]

[88] Came into force on 1 July 1962.

[89] *Verträge der Bundesrepublik Deutschland—Serie A: Multilaterale Verträge*, vol. 18 (Bonn, Carl Heymanns Verlag, 1964), No. 213.

[90] See p. 115 above, document A/5409, paras. 474–480.

France–Germany (Federal Republic of)–Luxembourg–Netherlands–Switzerland

Agreement concerning the International Commission for the Protection of the Rhine against Pollution (with protocol of signature), signed at Berne on 29 April 1963[91, 92]

138. *Co-operation for the protection of the Rhine against pollution.* The Parties undertake to pursue their co-operation in protecting the waters of the Rhine below the Untersee, through the International Commission for the Protection of the Rhine against Pollution (art. 1).

139. *Functions of the International Commission for the Protection of the Rhine against Pollution.* The Commission, composed of delegations appointed by the Parties (art. 3), has the following functions (art. 2):

(*a*) It makes preparations for and arranges the execution of all research necessary to determine the nature, amount and origin of pollution in the Rhine, and utilizes the results of such research;

(*b*) It proposes to the Parties measures for the protection of the Rhine against pollution;

(*c*) It drafts a basis for possible arrangements among the Parties for the protection of the waters of the Rhine;

(*d*) It is competent to deal with all other matters referred to it by mutual agreement among the Parties.

140. *Commission sessions and decisions.* The Commission holds a regular session once a year. It meets in special session when convened by the Chairman at the request of two delegations (art. 5). The Commission's decisions must be adopted unanimously (art. 6).

141. *Liaison with competent bodies or institutions.* For the purpose of research and utilization of the results of such research, the Commission may avail itself of the services of any scientific institution offering every guarantee of independence (art. 8). It may have recourse to the services of competent individuals or bodies, for the purpose of considering special questions (art. 90). It co-operates with the international commissions for the Rhine and its tributaries, and takes decisions on co-operation with other organizations responsible for water protection (art. 10).

Austria–Germany (Federal Republic of)–Switzerland

Agreement (with Final Protocol) regulating the withdrawal of water from Lake Constance, signed at Berne on 30 April 1966[93, 94]

142. *Elements to be taken into consideration in connexion with water withdrawals.* Each riparin State shall, in withdrawing water, endeavour to take due account of the legitimate interests of the other riparian States. Where a projected withdrawal of water from Lake Constance is such that it would adversely affect important interests of the other riparian States[95] and the adverse effects cannot be

[91] Came into force on 1 May 1965.

[92] Text provided by the French Government.

[93] Came into force on 25 November 1967.

[94] United Nations, *Treaty Series*, vol. 620, p. 191.

[95] The Final Protocol to the Agreement specifies that:
"No consideration shall be given to interests which may suffer adverse effects as a result of the utilization of the water in question

(Continued on next page.)

avoided or offset by reasonable compensatory measures or indemnification, the interest attaching to the withdrawal of water shall be duly assessed in relation to the other interests. In that assessment particular consideration shall be given to the interest attaching to the maintenance and improvement of living and economic conditions in the region of Lake Constance. This shall apply especially to the interests involved in the various types of utilization of the water of the lake, in navigation, in fishing, in the regulation of the lake, in the landscape preservation and in the power production. Withdrawals of water shall not be deemed to justify any claim to the provision of water in a specific volume or of a specific quality (art. 1, para. 2 and art. 3, paras. 1 and 2).

143. *Compensation for damage.* Where withdrawals of water result in unforeseen damage for which reparation must be made under international law, the riparian States shall reach agreement on the nature and extent of the reparation. Where the combined effect of a number of withdrawals of water makes it necessary, under the relevant provisions of the Agreement, to take compensatory measures, pay an indemnity or make reparation, each riparian State shall participate in such measures, indemnification or reparation in proportion to the amount of water it has withdrawn (arts. 4 and 5).

144. *Right to express views concerning water withdrawals and notification of such withdrawals.* In specific cases defined in the Agreement, the riparian States shall, before authorizing withdrawals of water, afford one another in good time an opportunity to express their views. In all other cases, the riparian States shall notify one another forthwith of all withdrawals of water (arts. 6 and 7).

145. *Pollution.* The measures to be taken in order to keep the waters of Lake Constance clean shall be governed by the Agreement of 27 October 1960 concerning the protection of Lake Constance against pollution[96] (art. 3, para. 3).

146. *Settlement of disputes (Consultative committee—Arbitration commission).* Where, in the course of an expression of views regarding withdrawals of water, objections are raised, the case shall be submitted to a consultative committee for consideration at the technical level with a view to preparing the way for an agreement. The consultative committee shall be composed of one representative of each of the riparian States. In case no agreement is reached through discussions in the consultative committee, agreement shall be sought through the diplomatic channel, and if no agreement is reached through the diplomatic channel, any interested riparian State may require that the case should be submitted to an arbitration commission, the composition of which is provided for in the Agreement. The arbitration commission shall endeavour, at every stage of the proceedings, to bring about an amicable settlement of the case. If it does not prove possible to achieve such a settlement, the commission shall adopt by majority vote a decision, which shall be final and binding upon all the riparian States. The arbitration commission shall base its proposals and its decisions for a settlement on: the provisions of the Agreement; any relevant agreements of a general or special nature in force between the riparian States; the general principles of law (arts. 8–11).

Belgium–Denmark–France–Germany (Federal Republic of)–Italy–Luxembourg–Netherlands–Switzerland–United Kingdom of Great Britain and Northern Ireland

European Agreement on the restriction of the use of certain detergents in washing and cleaning products, done at Strasbourg on 16 September 1968[97, 98]

147. *Measures to be adopted.* The Parties, considering that it is becoming increasingly necessary to secure harmonization of the laws on the control of fresh water pollution to protect effectively (*a*) the supply of water for the population, for industry, for agriculture and for other business occupations, (*b*) the natural aquatic fauna and flora and (*c*) the enjoyment of places devoted to leisure and sport, undertake to adopt measures as effective as possible in the light of the available techniques, including legislation if it is necessary, to ensure that: (*a*) in their respective territories, washing or cleaning products containing one or more synthetic detergents are not put on the market unless the detergents in the product considered are, as a whole, at least 80 per cent susceptible to biological degradation; (*b*) the appropriate measurement and control procedures are implemented in their respective territories (preamble and art. 1).

148. *Multilateral consultations.* The Parties shall every five years, or more frequently if one of the Parties should so request, hold multilateral consultations within the Council of Europe to examine the application of the Agreement, and the advisability of revising it or extending any of its provisions. These consultations shall take place at meetings convened by the Secretary-General of the Council of Europe (art. 3).

2. Bilateral treaties

Bulgaria–Romania

Agreement concerning the maintenance and improvement of the fairway in the Romanian–Bulgarian sector of the Danube, signed in Sofia on 29 November 1955[99, 100]

149. *Respective responsibilities of the Parties with regard to the maintenance and improvement of the Danube fairway.* Under the Agreement, each of the Parties is responsible for a specific segment (approximately 235 km long) of the sector of the Danube which constitutes the frontier between the two countries. Maintenance is to be carried out by the competent authorities of both States in the spirit of the

(Footnote 95 continued)
when there is not a sufficient causal link between the adverse effects and the actual withdrawal of the water. Thus, for example, objections to a withdrawal of water may not be based on the fact that the utilization of water may strengthen the economy of a particular region and thereby adversely affect the interests of one of the riparian States."

[96] See p. 110 above, document A/5409, paras. 435–438.

[97] Came into force on 16 February 1971.

[98] Text provided by the French Government. Reproduced in Council of Europe, *European Treaty Series*, No. 64 (October 1968).

[99] No information is available regarding the entry into force of this Agreement.

[100] Text provided by the Romanian Government.

Convention of 18 August 1948 concerning the régime of navigation on the Danube[101] and the decisions and recommendations of the Danube Commission (arts. 1 and 2).

150. *Planning and execution of hydraulic engineering works.* With respect to the planning and execution of the hydraulic engineering works for the regulation of the sectors concerned of the Danube River the Agreement entrusts the responsibility thereof to the specialized bodies of the States in whose national waters such works are needed. The technical solutions for the works whose purpose is to improve navigation conditions in the Romanian–Bulgarian sector and whose effect is to alter the state or water régime of the river in that sector shall be decided upon in consultation with the other Party. With respect to the measures necessary to prevent floods resulting from ice on the Danube, each Party shall act in accordance with a prearranged joint plan of action (art. 6).

151. *Gauging operations and hydrographic studies.* In connexion with the maintenance of the fairway each Party shall be required to undertake depth-gauging operations and hydrographic studies and determine the direction and speed of the current in the portion assigned to it for maintenance in the Romanian–Bulgarian sector of the Danube (art. 11).

152. *Establishment of the Mixed Romanian–Bulgarian Commission for the maintenance and improvement of the fairway. Composition. Functions.* To co-ordinate hydraulic engineering activities, the Agreement establishes a Mixed Romanian–Bulgarian Commission, composed of plenipotentiary representatives of the two Parties, which is to hold regular sessions twice a year and functions in accordance with the regulations annexed to the Agreement. The Commission is competent to: draw up proposals for general and long range plans relating to the improvement of navigation conditions in the Romanian–Bulgarian sector of the Danube, to be submitted for approval by the competent authorities of the two States; draw up and propose the annual plans for the works to be undertaken by each Party in the sectors in question; propose joint measures for the prevention of floods in the Romanian–Bulgarian sector of the Danube; make proposals concerning the extent of reciprocal exchanges of data and information of a technical nature, needed in connexion with the hydraulic engineering works for the maintenance and improvement of navigation conditions in the Romanian–Bulgarian sector of the Danube; review the technical solutions for the regulatory hydraulic engineering works carried out in the Romanian–Bulgarian sector of the Danube and affecting the régime of the river in that sector; verify the fulfilment of the obligations devolving upon each Party under the Agreement (arts. 7 and 8).

153. *Reciprocal exchanges of current information and transmittal of hydrographic plans.* Reciprocal exchanges of current information on the state of the fairway in the Romanian–Bulgarian sector of the Danube and the reciprocal transmittal of hydrographic plans for the sectors in question is to be effected directly between the competent authorities of the two States, in compliance with the laws in force in each State concerning the circulation of such data and documents (art. 10).

154. *Provisions concerning the movement of equipment and personnel.* The Agreement contains provisions concerning the movement of equipment and personnel outside the confines of national waters for the execution of works (arts. 12, 13 and 14).

155. *Settlement of disputes.* Disputes arising in connexion with the implementation of the Agreement which cannot be settled by the Mixed Romanian–Bulgarian Commission shall be submitted through the competent authorities to the two Governments for their joint settlement (art. 15).

Romania–Union of Soviet Socialist Republics

Agreement extending the provisions of the Romanian–Soviet Convention of 25 December 1952, concerning measures to prevent floods and to regulate the water régime of the River Prut, to the Rivers Tisza, Suceava and Siret and their tributaries and to the irrigation and drainage canals forming or intersecting the Romanian–Soviet frontier, signed at Bucharest on 31 July 1957[102, 103]

156. The Parties, desiring to prevent floods and to ensure the proper regulation of the water régime and system of irrigation and drainage canals in the Romanian–Soviet frontier regions, have decided to extend the provisions of the Convention between them concerning measures to prevent floods and to regulate the water régime of the River Prut, signed on 25 December 1952,[104] to the rivers Tisza, Suceava and Siret and their tributaries and to the irrigation and drainage canals forming or intersecting the Romanian–Soviet frontier (art. 1).

Czechoslovakia–Poland

Agreement concerning the use of water resources in frontier waters, signed at Prague on 21 March 1958[105, 106]

157. *Definition of the term "frontier waters".* For the purposes of the Agreement, "frontier waters" means: sections of watercourses along which the frontier between the two States runs and bodies of standing water intersected by the State frontier; surface and ground waters flowing from the territory of one State to the territory of the other, at those places where they are intersected by the State frontier (art. 2, para. 1).

158. *Questions governed by the Agreement.* The Agreement governs questions relating to the use of water resources in frontier waters, in particular: technical and economic measures which bring about any change in the water régime; discharge of flood waters, drifting of ice, pollution abatement, and conservation of natural resources in relation to the water economy (art. 2, para. 2).

[101] See p. 115 above, document A/5409, paras. 470–473.

[102] Came into force on 31 July 1957.

[103] Text provided by the Romanian Government.

[104] See p. 152 above, document A/5409, para. 791.

[105] Came into force on 7 August 1958.

[106] United Nations, *Treaty Series*, vol. 538, p. 89.

159. *Preservation of frontier waters*

(a) *Works affecting the water economy.* Neither Party may, without the consent of the other Party, carry out any works in frontier waters which may affect the latter Party's water economy (art. 3, para. 1).

(b) *Amount of water to be taken and runoff ratios to be preserved in the frontier waters.* The Parties shall come to agreement on the amount of water to be taken from frontier waters for domestic, industrial, power generation and agricultural requirements, on the discharge of waste water, and on what runoff ratios are to be preserved in frontier waters (art. 3, paras. 2 and 3).

(c) *Pollution.* The Parties have agreed to abate the pollution of frontier waters and to keep them clean to such extent as is specifically determined in each particular case in accordance with the economic and technical possibilities and requirements of the two States (art. 3, para. 4).

160. *Water resources development.* The Parties shall co-operate in drawing up joint comprehensive plans for water resources development in areas where the interests of the two States in such developments coincide or interact (art. 4). Within the framework of their economic plans, the Parties shall come to agreement on the terms, type and method of financing of river training works and water-use structures and facilities on frontier waters, and on the operation and maintenance of such works, structures and facilities and their protection against floods. The Parties shall come to agreement on the manner in which projected works are to be carried out (art. 5).

161. *Timber floating.* The entire width of frontier watercourses may be utilized by the Parties for the floating of timber. However, the floating of timber must not cause any damage to the hydraulic works, installations or other structures of the other Party (art. 6).

162. *Measurements to be taken by the Parties for the achievement of the purposes of the Agreement*

(*a*) Permission for the use of frontier waters and for the extraction of sand, gravel, stone or other materials from the beds of frontier watercourses shall be granted by the parties in accordance with their legal provisions and under conditions agreed upon between them (art. 7).

(*b*) The Parties shall exercise control over work carried out under the Agreement, over the diversion of water and over the extraction of material from stream beds, and shall inspect the quality of the water (art. 8, para. 1 (*a*)).

(*c*) The Parties shall provide each other with information on hydrological research and with reports on various hazards and on water-level forecasts, and will exchange the texts of important legal provisions relating to the use of water resources (art. 8, para. 1 (*b*)–(*d*)).

(*d*) In order that the tasks arising out of the Agreement may be carried out, each Party shall appoint a plenipotentiary (art. 9).

163. *Privileges and facilities granted for work on frontier waters.* Persons engaged in activities provided for in the Agreement may cross the State frontier, subject to the conditions specified in the annex to the Agreement. Materials required for work on frontier waters and items for the personal use of the workers shall be exempt when transported across the State frontier from import and export permit requirements and from customs duties and other charges (art. 11).

Romania–Union of Soviet Socialist Republics

Agreement extending the Convention of 25 December 1952, concerning measures to prevent floods and to regulate the water régime of the River Prut, to the frontier sector of the River Danube, from the mouth of the River Prut to the Black Sea, signed at Bucharest on 15 October 1959[107, 108]

164. The Parties, desiring to devise a rational arrangement for the management of water in the floodlands in the frontier sector of the River Danube, for the development of agriculture, pisciculture and reed cultivation and for the protection of such land against inundation by high water from the River Danube, have decided to extend the provisions of the Convention between them concerning measures to prevent floods and to regulate the water régime of the River Prut, signed on 25 December 1952.[109] to the frontier sector of the River Danube from the mouth of the River Prut to the Black Sea (art. 1).

Germany (Federal Republic of)–Netherlands

Treaty concerning arrangements for co-operation in the Ems Estuary (Ems–Dollard Treaty), signed at The Hague on 8 April 1960[110, 111]

165. *Co-operation in a spirit of good-neighbourliness.* The Parties, bearing in mind their common interests and having due regard to the special interests of the other contracting Party, shall co-operate in the Ems Estuary in a spirit of good-neighbourliness, in accordance with the Treaty, for the purpose of ensuring that their ports have such access to the sea as they may at any time require. This objective shall be attained—subject to the maintenance by both Parties of their legal positions with respect to the course of the international frontier—through the medium of practical arrangements with respect to questions affecting both States (art. 1). The co-operation of the Parties in a spirit of good-neighbourliness shall also extend to questions not expressly regulated in the Treaty which may arise in the Ems Estuary and which may affect common interests (art. 48).

166. *Maintenance and improvement of the fairways. Preparation of a Joint Plan.* The Parties undertake, in accordance with the provisions of the Treaty, to take all necessary measures to keep fairways open and, if necessary, improve them, and to give their support to measures of the same kind taken by the other Party. They undertake to refrain from any measures detrimental to that purpose (art. 2). With a view to furthering the

[107] Came into force on 15 October 1959.

[108] Provided by the Romanian Government.

[109] See p. 152 above, document A/5409, para. 791.

[110] Came into force on 1 August 1963.

[111] United Nations, *Treaty Series*, vol. 509, p. 2.

co-operation between them, the Parties shall draw up a "Joint Plan" which shall incorporate the results of consultations and investigations for the large-scale improvement of the existing fairways and of any new fairways in the Ems Estuary. The Parties shall at all times adapt the Joint Plan to scientific knowledge, to the needs of their ports and to the needs of their economies (art. 2).

167. *Land-reclamation and diking works.* The Parties shall carry out land-reclamation and diking works in the Dollard only by agreement (art. 5).

168. *Hydraulic works.* The Federal Republic of Germany shall carry out all hydraulic works for the maintenance and improvement of the main fairway, the Emden fairway and the Upper Ems. It shall also carry out any other hydraulic works in the main fairway which are in the interests of the German ports (art. 8). The Kingdom of the Netherlands shall carry out all hydraulic works for the maintenance and improvement of the channels between the Netherlands ports and the main fairway, including works directly connected therewith in the adjacent part of the main fairway. It shall also carry out any other hydraulic works in the main fairway which are in the interests of the Netherlands ports (art. 9). The hydraulic works falling under both articles 8 and 9 shall be carried out by the Federal Republic of Germany (art. 10).

169. *Payment of costs.* Each Party shall bear the costs of those works and measures which it is entitled or required to carry out or to take under the terms of the Treaty. The Parties may agree upon a different apportionment of costs (arts. 16 and 17).

170. *River-police functions. Law applicable.* The Kingdom of the Netherlands shall be responsible for river-police functions relating to specific areas of the Ems Estuary. In the remainder of the Ems Estuary, river-police functions shall be the responsibility of the Federal Republic of Germany (art. 19). River-police functions shall include the supervision and protection of hydrological conditions, the state of the fairways, and works and installations in the Ems Estuary, and supervision of the use of the Ems Estuary by third parties (art. 20, para. 1). River-police functions shall not include the supervision of shipping, fishing or hunting (art. 20, para. 3). In carrying out river-police functions, each Party shall apply its own laws and regulations (art. 21).

171. *Notifications and complaints.* If one of the Parties intends to carry out or permit new hydraulic works, it shall notify the Ems Commission as soon as possible before the initiation of the works. The same shall apply to river-police measures which may affect the interests of the other Party (art. 22). Either Party may within a reasonable period of time lodge with the Ems Commission a complaint against any works or measures whether proposed or already under way, or against any failure to undertake such works or measures (art. 23).

172. *The Netherlands–German Ems Commission. Composition. Functions.* The Parties shall establish a permanent Netherlands–German Ems Commission. Each Government shall appoint as Commissioners three experts (art. 29). The Commission has the following functions: to deliberate on questions relating to hydraulic works, sea-marks, the river police, surveys, soundings and hydrological investigations, land reclamation, diking works, coastal conservation, and the taking of sand, gravel and shells; to inspect the fairways and sea-marks and report to the Governments on the results of its inspections; make recommendations to the Governments; advise on all questions referred to it by the Governments; and receive notifications and examine complaints concerning the carrying out of new hydraulic works (art. 30).

173. *Fishing regulations (Common fishing area).* The Treaty defines a common fishing area where fishermen from both Parties shall be permitted on equal terms to fish. Outside the common fishing area, the fishing rights for fishermen from both countries shall remain unaffected (art. 41).

174. *Hunting regulations.* The Treaty contains provisions concerning seal hunting in a specified area. It specifies the matters which shall be regulated annually by mutual agreement (the maximum kill, the maximum number of hunters, the dates of the hunting season and hunting rules) (art. 42).

175. *The international frontier in the Ems Estuary.* The Treaty specifies that its provisions shall not affect the question of the course of the international frontier in the Ems Estuary and that each Party reserves its legal position in this respect. Either Party may refer the question of the course of the international frontier in the Ems Estuary to the International Court of Justice for settlement, or may submit it to arbitration in the manner provided for by the Convention of Arbitration and Conciliation between Germany and the Netherlands, signed at The Hague on 20 May 1926[112] (art. 46).

176. *Settlement of disputes* (Arbitral Tribunal). An arbitral tribunal shall be established, to the exclusion of other contractual provisions for the settlement of disputes, for the settlement of all disputes between the Parties relating to the interpretation or application of the Treaty. The arbitral tribunal shall be composed of a permanent president and four assessors appointed for each individual case. The Treaty contains provisions concerning the appointment of the president and the assessors, as well as the procedure before the arbitral tribunal. The arbitral tribunal shall base its decisions on the provisions of the Treaty and on the general rules of international law (arts. 50–53).

Germany (Federal Republic of)–Netherlands

Agreement to accept the compulsory jurisdiction of the International Court of Justice in disputes concerning the interpretation or application of the revised Convention on Rhine navigation, 1868 (Convention of Mannheim), signed at The Hague on 8 April 1960[113, 114]

177. Pursuant to this Agreement, disputes which may have arisen or may arise between the two Parties concerning the interpretation or application of the Revised Convention

[112] League of Nations, *Treaty Series*, vol. LXVI, p. 103.

[113] Came into force on 1 August 1963.

[114] United Nations, *Treaty Series*, vol. 509, p. 2.

on Rhine Navigation, signed on 17 October 1868,[115] as later amended, may be submitted for settlement to the International Court of Justice by both Parties on the basis of a special agreement, or by one of them by application. Such disputes shall not be subject to the provisions of the Convention of Arbitration and Conciliation between Germany and the Netherlands signed at The Hague on 20 May 1926.[116]

Poland–Union of Soviet Socialist Republics

Treaty concerning the régime of the Soviet–Polish State frontier and co-operation and mutual assistance in frontier matters (with Protocol), signed at Moscow on 15 February 1961[117, 118]

178. *Frontier line (Course of the frontier on frontier waters).* In sectors where it runs over land, and also where it crosses standing or running waters, the frontier shall extend in an immovable straight line from one frontier mark to the next. In sectors where it follows watercourses, the frontier shall be a movable straight, broken or crooked line, likewise running from one frontier mark to the next; on navigable rivers the frontier shall follow the middle of the main fairway (thalweg) and on unnavigable rivers, streams and canals, the middle thereof or the middle of the main branch (art. 3). On navigable rivers, the course of the frontier line shall vary with the natural displacement of the middle of the main fairway (thalweg). On unnavigable rivers and streams, the course of the frontier line shall vary with the displacement of the middle of such rivers and streams caused by natural changes in the configuration of their banks (art. 4). Those sectors of rivers, streams, canals along which the frontier line runs, and lakes and ponds which are crossed by the frontier line shall be deemed to be frontier waters (art. 12, para. 1).

179. *Use of frontier waters (Respect of the rights and interests of the other Party).* Each Party shall take appropriate steps to ensure that, in the use of frontier waters, the rights and interests of the other Party are respected (art. 12, para. 2).

180. *Maintenance of frontier waters.* The Parties shall be careful to ensure that the frontier waters are kept in good condition and to respect each other's rights and interests in such waters, and shall take steps to prevent wilful damage to the banks of frontier rivers, lakes and canals. Where a Party occasions material damage to the other Party by failing to meet these requirements, compensation for such damage shall be paid by the Party responsible therefor (art. 16, paras. 1 and 2).

181. *Removal of obstacles to the natural flow of waters.* The position and direction of frontier watercourses must so far as possible be preserved unchanged. To this end the competent authorities of the Parties shall jointly take the necessary steps to remove any obstacles which may cause displacement of the beds of frontier rivers, streams or canals or which may obstruct the natural flow of water, navigation and timber-floating along them. If joint works must be undertaken for this purpose, the appropriate authorities of the Parties shall decide how the works are to be executed. The expenses involved shall be divided equally between them unless a special agreement is concluded on this question (art. 16, para. 3).

182. *Strengthening of banks.* In order to prevent displacement of the beds of frontier rivers, streams or canals, their banks should be strengthened wherever the competent authorities of the Parties jointly find this necessary. Such works shall be executed and their cost defrayed by the Party to which the bank belongs (art. 16, para. 4).

183. *Correction of the bed of frontier rivers or streams.* Should a frontier river or stream shift its bed spontaneously or as a result of some natural phenomenon, the Parties must correct the bed by joint action if this is found necessary by their competent authorities (art. 16, para. 5).

184. *Régime of frontier waters.* The natural flow of water in frontier watercourses and in adjacent areas which are inundated during periods of high water must not be altered or obstructed to the detriment of the other Party by the erection or reconstruction of installations or structures in the water or on the banks, or in any other way (art. 17, para. 1). The competent authorities of the Parties shall agree upon the method of regulating drainage into and the division of water from frontier waters and upon all other questions relating to the water régime (art. 17, para. 2).

185. *Cleaning of frontier waters.* Frontier waters shall be cleaned out in sectors where the competent authorities of the Parties jointly find it necessary. In such cases the cost of cleaning shall be divided equally between the two Parties. In sectors situated wholly in the territory of one Party but belonging to waters which, in the other sectors, are frontier waters, cleaning shall be carried out by that Party at its own expense. When the frontier watercourses are cleaned out, the earth and stones removed must be dumped at such a distance from the bank and levelled in such a way as to preclude any danger of subsidence of the bank, obstruction of the bed, or any obstruction to drainage during periods of high water (art. 18).

186. *Pollution.* The competent authorities of the Parties shall take steps to keep the frontier waters clean by making it unlawful to poison or pollute them with chemicals or refuse from factories or industrial establishments, to steep flax or hemp in them, or otherwise to contaminate them (art. 19).

187. *Provisions concerning installations*

(a) *Preservation and use of existing installations.* Existing bridges, dams, sluices, dikes and similar installations on frontier watercourses shall be preserved and may be used, with the exception of those whose removal is found necessary by the appropriate authorities of the two Parties. If the reconstruction or removal of any of the installations on frontier watercourses becomes necessary, entailing a change in the water-level in the territory of the other Party, such work may be undertaken only after that Party's consent has been obtained (art. 20, paras. 1 and 2).

[115] See p. 116 above, document A/5409, paras. 482–483.

[116] For reference, see foot-note 112.

[117] Came into force on 20 September 1961.

[118] United Nations, *Treaty Series*, vol. 420, p. 161.

(b) *Construction of new installations.* No new bridges, dams, sluices, dikes or other hydraulic installations may be erected or used on frontier watercourses except by agreement between the Parties (art. 20, para. 3).

188. *Exchange of information to avert danger from floods or from drifting ice.* The competent authorities of the Parties shall exchange information concerning the level and volume of water and ice conditions in frontier waters, if such information may help to avert danger from floods or from drifting ice. Delay in communicating or failure to communicate such information shall not constitute grounds for a claim to a compensation for damage caused by floods or drifting ice (art. 21).

189. *Floating of timber.* Timber-floating may be freely carried out by both Parties throughout the length of the frontier watercourses, including places where both banks belong to one and the same Party. The Treaty contains provisions on the dates and sequence of operations for launching and floating timber and on the conditions under which timber-floating may be carried out. In cases where the floated timber is stripped of its bark, the bark removed must not be allowed to fall into frontier watercourses (art. 22–24).

190. *Supplementary special agreements.* Supplementary special agreements may be concluded on questions relating to the procedure for the use of frontier waters, the maintenance thereof, the floating of timber down frontier watercourses and co-operation in hydrometeorological matters (art. 25).

191. *Fishing in frontier waters.* Residents of each Party may fish in frontier waters up to the frontier line in accordance with the regulations in force in their respective territories but shall be prohibited from using explosive, poisonous or narcotic substances or other means which cause the destruction and multilation of fish (art. 31).

192. *Frontier Commissioners.* Each Party shall appoint Frontier Commissioners. The Commissioners of the two Parties shall co-operate with one another in performing the duties arising out of the provisions of the Treaty (art. 35, paras. 1 and 2).

193. *Claims for damages.* The Frontier Commissioners shall examine and settle all questions relating to claims for damages. Decisions taken jointly by the Frontier Commissioners in settlement of any case of irregularity occurring at the frontier shall be binding and final and shall take effect upon signature of the protocol on the questions examined. The Treaty determines the claims for damages which shall be submitted to the Parties through the diplomatic channel (art. 44).

France–Germany (Federal Republic of)

Protocol concerning the establishment of an International Commission for the Protection of the Saar against Pollution, signed at Paris on 20 December 1961[119,120]

194. *Establishment, composition and functions of the International Commission for the Protection of the Saar against Pollution.* The Parties established an International Commission for the Protection of the Saar against Pollution. The Commission is composed of delegates appointed by the Parties. Its purpose is to institute co-operation between the competent departments of the two Governments, with a view to protecting the waters of the Saar against pollution. To this end, it may: (*a*) make preparations for and arrange the execution of all research necessary to determine the nature, amount and origin of pollution, and utilize the results of such research; and (*b*) propose to the Governments of the Parties measures to ensure the protection of the Saar against pollution. It also deals with any other matters which the Governments of the Parties, by joint agreement, refer to it (arts. 1–3).

195. *Commission sessions and decisions.* The Commission holds a regular session once a year. It meets in special session when convened by the Chairman at the request of the Government of one of the Parties (art. 5).

196. *Liaison with competent bodies.* The Commission, as it deems necessary, establishes liaison with all bodies competent with regard to the question of water pollution (art. 9).

197. *Settlement of disputes.* Disputes concerning the application or interpretation of the Protocol are to be settled by the Parties through the diplomatic channel (art. 11).

Germany (Federal Republic of)–Netherlands

Supplementary Agreement to the Treaty concerning arrangements for co-operation in the Ems Estuary (Ems–Dollard Treaty) (with protocol and exchange of notes)[121] *signed at Bennekom on 14 May 1962*[122,123]

198. *Prospecting for and extraction of natural resources (Co-operation in a spirit of good-neighbourliness).* The Parties shall co-operate in a spirit of good-neighbourliness with respect to all questions in connexion with prospecting for and the extraction of natural resources underlying the Ems Estuary which may affect their interests (art. 2). The term "natural resources" means all solid, liquid or gaseous underground substances for extraction of which, under the mining legislation of one of the two Parties, a concession is required (art. 1).

199. *Deposits of petroleum, natural gas and other natural resources present in the frontier area.* The provisions of the Agreement concerning prospecting for and extraction of natural resources shall apply to deposits of petroleum and natural gas present in the frontier area before the commencement of extraction and to other substances recovered in the course of extraction. The Parties shall make arrangements in a separate agreement for the application of these provisions to other natural resources in the frontier area (art. 3). The term "frontier area" means the area hatched on a map annexed to the Agreement, together with the ground beneath it and the term "line" means the line marked in green on the map bisecting the frontier area lengthwise (art. 1).

[119] Came into force on 1 July 1962.

[120] France, *Journal officiel de la République française, Lois et décrets* (Paris), 25 August 1962, 94th year, No. 200, p. 8364.

[121] See paras. 165–176 above.

[122] Came into force on 1 August 1963.

[123] United Nations, *Treaty Series*, vol. 509, p. 2.

200. *Law applicable in the frontier area.* Netherlands law shall apply on the Netherlands side of the line and German law shall apply on the German side of the line to: prospecting and extraction; connected acts and omissions; and installations erected for prospecting and extraction purposes (art. 4, para. 1).

201. *Granting of concessions for prospecting and extraction purposes.* The Parties may, in accordance with their domestic law, grant concessions valid for the whole of the frontier area. Such concessions may be utilized only in accordance with the terms of the Agreement. The Parties shall notify each other of the concessions already in existence and when new concessions are granted, or when concessions are amended or revoked (art. 4, paras. 2 and 3). The term "concessionaire" means a person who has authorization to prospect for or to extract natural resources (art. 1). The Agreement contains provisions concerning concessions, the rights and obligations of German and Netherlands concessionaires, and the settlement of disputes (arts. 5–11).

France–Switzerland

Convention concerning the protection of the waters of Lake Geneva against pollution, signed at Paris on 16 November 1962[124, 125]

202. *Co-operation with a view to protecting the waters of Lake Geneva against pollution.* The Parties agree to co-operate closely in order to protect from pollution the waters of Lake Geneva and of its effluent to the point at which it leaves Swiss territory, including the surface water and ground water of their tributaries in so far as these contribute to polluting the waters of Lake Geneva and its effluent (art. 1).

203. *Establishment and functions of the International Commission for the Protection of the Waters of Lake Geneva against Pollution.* A Commission composed of delegates appointed by the Parties is established (arts. 2 and 4), with the following functions (art. 3):

(*a*) It organizes and arranges the execution of all research necessary to determine the nature, amount and origin of pollution, and utilizes the results of such research;

(*b*) It recommends to the Parties measures to remedy the existing pollution and to prevent any pollution in the future;

(*c*) It may prepare the basis for a set of international rules governing health standards for the waters of Lake Geneva;

(*d*) It considers all other matters related to pollution of the waters.

204. *Commission sessions and decisions.* The Commission's decisions are to be adopted unanimously (art. 5). The Commission holds a regular session once a year. It meets in special session when convened by the Chairman at the request of one of the Parties (art. 6).

205. *Liaison with competent international bodies.* The Commission, as it deems necessary, establishes liaison with international bodies competent in the question of water pollution, and also with those competent, in respect of Lake Geneva and the Rhone, in the question of navigation, fisheries and water drainage regulation (art. 9).

NOTE. As a result of recommendations drawn up by the International Commission for the Protection of the Waters of Lake Geneva against Pollution at a meeting held on 6 November 1970, the following provisions relating to the *financing of a study and research programme for the protection of the waters of Lake Geneva against pollution* were adopted by an exchange of letters between France and Switzerland, signed at Paris on 7 and 21 October 1971:

> The Swiss Federal Council and the Government of the French Republic shall draw up a five-year research and study plan for the period 1971–1975, relating to acoustic investigation of Lake Geneva and, in particular, to the origin of phosphorus, prospective biology, currents within the Lake and the distribution of higher aquatic flora. Switzerland will provide 75 per cent, and France 25 per cent, of the funds for the execution of this programme and for administrative expenses incurred by the Commission in supervising it. On the basis of the current parity, the two States shall accordingly contribute 3 million Swiss francs and 1,359,937 French francs respectively; the contributions shall be forwarded to the Commission by each of the two States at the end of each calendar year. The total amount shall be administered by the Commission, which may, as a matter of priority, allocate the funds supplied by each State to laboratories in that State and modify the application of its research and studies programme. The Commission shall also, during the same period, execute and co-ordinate studies and work relating to the determination of the sanitary condition of the Lake and the improvement of the quality of its waters. The Commission's recommendation that efforts to provide the Lake Geneva basin with water purification plants should be pursued, in order to ensure that, in the course of the five-year programme, the greater part of the waters of the basin are upgraded, is also approved . . . subject to the domestic procedures required by law.

Greece–Turkey

Protocol concerning the final elimination of differences concerning the execution of hydraulic operations for the improvement of the bed of the River Meriç–Evros carried out on both banks, signed at Ankara on 19 January 1963[126, 127]

206. *Flood protection. Modifications to the frontier line.* Because of the construction work designed to provide protection against flooding caused by the rising of the water level of the River Meriç–Evros, the frontier line is modified in certain areas. The Protocol lays down the rights and obligations of the Parties with regard to the construction or strengthening of dikes and the installation of drainage systems and pumping stations.

207. *Technical matters.* The Protocol authorizes the Parties to proceed with the construction of certain closures and summer dikes. It also provides that the Parties shall each carry out planimetric and hypsometric checks of all dikes and "fuse plugs" constructed or under construction (arts. 15 to 18).

208. *Work carried out without the prior agreement of the Parties.* The Protocol enumerates the work carried out, both by Greece and by Turkey without the prior agreement

[124] Came into force on 1 November 1963.
[125] Text provided by the French Government.
[126] Came into force on 10 August 1963.
[127] Text provided by the Greek Government.

of the Parties. The Protocol provides, *inter alia*, that no work which might affect the course of the river in its high-water bed should be carried out unless the relevant plans have been exchanged and that all matters relating to such work must be settled by the Regional Technical Commissions of the two Parties (art. 19).

209. *Improvement of the river bed.* Recognizing the need to proceed with the improvement of the bed of the river in the sector between the end of the Ferrai (Ferres) valley and the beginning of the Enez (Ainos) valley, the Parties agreed that the improvements would be carried out on the basis of plans drawn up by an *Ad Hoc* Joint Commission and that, after the plans have been approved by the two Parties, work on correcting the bed of the river could be begun on both sides, either jointly or separately. At the same time, it was agreed that each of the Parties would have the right to undertake the whole of such operations alone and subsequently to obtain from the other Party reimbursement of one half of the expenses incurred (art. 20).

210. *Water withdrawal, quantity and supervision.* With a view to making use of the waters of the River Meriç–Evros in a manner beneficial to both Parties, it was agreed, *inter alia*: that water flow measurement, both at existing stations and at stations to be constructed, would be continued by both Parties; that the formulation of studies and projects relating to water withdrawal works would be continued by both Parties; that water withdrawal installations for irrigations would take the form either of diversion dams constructed jointly by the two Parties, or of water withdrawal stations on one of the banks, constructed by the Party concerned with the prior agreement of the other Party; and that, pending the achievement of the above, water withdrawal for irrigation purposes would continue as in the past (art. 21).

Belgium–Netherlands

Treaty concerning the connexion between the Scheldt and the Rhine, signed at The Hague on 13 May 1963[128, 129]

211. *Improvement of the connexion between the Scheldt and the Rhine. Works to be carried out.* In order to improve the connexion between the Scheldt and the Rhine, the Treaty provides for the establishment of a specified navigable waterway (art. 2) and lists the works to be carried out for the purpose of establishing it, such as the making of arrangements in the interest of the water economy, including the prevention of salinization and of water pollution (arts. 3 and 4).

212. *Planning and execution of the works.* The Parties shall be responsible, each in its own territory, for the planning and execution of the works envisaged, and for these purposes they shall follow the procedure customary in the country in question for the execution of similar State works (art. 6). The two officials, designated by the Netherlands Minister and the Belgian Minister respectively, who are in charge of managing and supervising the planning and execution of the works in Netherlands and Belgian territory respectively shall consult together regularly on all questions of mutual interest that may arise in connexion with such planning and execution (art. 7). Specifications and contracts for the execution of works shall in theory be subject to prior approval by both the competent Ministers (art. 8).

213. *Measures relating to the water economy.*

(a) *Maintenance of the water level.* The Parties shall, each in its own territory, adopt the necessary measures to ensure that the water level of the canal running from the Antwerp harbour system to the Eastern Scheldt is maintained so far as possible at the level envisaged in the Treaty (art. 15).

(b) *Measures to prevent salinization and water pollution.* In view of the interests in the drinking-water supply and in water consumption for agricultural and industrial purposes which will be affected by the fresh-water basin to be formed in the waters of South Holland and Zeeland, every effort shall be made to prevent salinization of the said basin as a result of the use of the navigable waterway—in particular, of the system of locks referred to in the Treaty. Installations for that purpose shall be provided in and near the said system of locks, and the Netherlands shall take all necessary measures for the maintenance and operation of the said installations. The Parties are in agreement, on the one hand, that the need to safeguard these interests makes it undesirable that the quantity of fresh water in the basin in question should be diminished through any withdrawal of water therefrom as a precaution against salinization and, on the other hand, that Belgian interests in the drinking-water supply and in water consumption for agricultural and industrial purposes should equally be taken into account. In view of the said Netherlands interests, Belgium shall ensure the supply of a quantity of fresh water equal to the quantity withdrawn from the fresh-water basin for the purpose of preventing salinization, in so far as this is compatible with reasonable protection of the said Belgian interests and provided that the Netherlands does not indicate that a smaller quantity will suffice. Within five years after the date of signature of the Treaty, the two competent Ministers shall agree on a settlement concerning the application of these arrangements. The said settlement shall cover *inter alia* the quantity and quality of the fresh water to be supplied by Belgium to the Netherlands. If the Ministers fail to reach agreement within the time-limit fixed, either of the Parties may request the Arbitration Board to dictate, with regard to the question in dispute, the settlement in question. The two Ministers shall make arrangements and adopt measures to prevent any floating refuse, oil or other flotsam from entering the system of locks referred to in the Treaty. Without prejudice to the obligations laid on the Parties by multilateral treaties, the competent Ministers shall ensure that the water of the canal running from the Antwerp harbour system to the eastern Scheldt meets the standards of quality which they shall fix. They shall communicate to each other, in connexion with existing or future installations which discharge liquid and/or solid radioactive waste into the section of the canal situated in the respective

[128] Came into force on 23 April 1965.

[129] United Nations, *Treaty Series*, vol. 540, p. 3.

country, all particulars necessary to determine the degree of radioactive contamination of the canal water resulting from such discharge (arts. 16 and 17).

214. *Apportionment of costs. Payments.* The Treaty regulates the apportionment of the costs of the planning and execution of the works in Belgian territory and in Netherlands territory (arts. 19 to 25). It also specifies the arrangements for payments (arts. 26 to 31).

215. *Settlement of disputes.* There shall be instituted an Arbitration Board whose function, to the exclusion of any other jurisdiction, shall be to rule in all disputes that may arise between the Parties with regard to the interpretation or application of the Treaty. The Arbitration Board, whose composition, procedure and specific powers are laid down in an annex to the Treaty, shall base its decisions on the provisions of the latter and the general rules of public international law. It shall, if need be, decide *ex aequo et bono* in the cases specified by the Treaty (art. 42).

Hungary–Romania

Treaty concerning the régime of the Hungarian–Romanian State frontier and co-operation in frontier matters signed at Budapest on 13 June 1963[130, 131]

216. *Frontier line (Course of the frontier on frontier waters).* In sectors where it crosses standing or running waters, the frontier shall, as a rule, extend in a straight line from one frontier mark to the next. In sectors where it follows watercourses, the frontier shall proceed variously in a straight, broken or crooked line as follows: on unnavigable rivers, streams, ditches and canals, it shall follow the middle of the watercourse in question or the middle of the main branch; on navigable rivers, it shall follow the middle of the main fairway. Islands in frontier rivers shall be deemed to be part of the territory of one Party or the other according to their position in relation to the frontier line (art. 3). On navigable rivers, the course of the frontier shall vary with the natural changes occurring in the middle of the main fairway, except in one case specified by the Treaty. On unnavigable rivers, streams and canals, the course of the frontier shall vary with the displacement of the middle of such rivers, streams and canals caused by natural changes in the configuration of their banks (art. 4, paras. 1 and 2). Those sectors of rivers, streams and canals along which the frontier line runs shall be deemed to be frontier waters (art. 13, para. 1).

217. *Use of frontier waters.* The Parties shall take the necessary steps to ensure that, in the use of frontier waters, the provisions of the Treaty as well as all special regulations drawn up by agreement between the Parties are compiled with (art. 13, para. 2).

218. *Maintenance of frontier waters.* The Parties shall ensure that the frontier waters are kept in good condition and shall take steps to prevent wilful damage to their banks (art. 16, para. 1).

219. *Removal of obstacles to the natural flow of the waters.* The position and direction of frontier watercourses must, in so far as possible, be preserved unchanged. The Parties shall, by agreement, take the necessary steps to remove any obstacles which may cause displacement of the beds of frontier rivers or streams or a change in the position of canals or which obstruct the natural flow of water (art. 16, para. 2).

220. *Strengthening of banks.* In order to prevent displacement of the beds of frontier rivers, streams or canals, their banks must be strengthened wherever the Parties consider it necessary. Such works shall be executed and their cost defrayed by the Party to which the bank belongs (art. 16, para. 3).

221. *Correction of the bed of rivers, streams or canals.* Where a frontier river, stream or canal shifts its bed spontaneously or as a result of some natural phenomenon, the Parties must jointly and on the basis of equality undertake the work of correcting the bed if that is found necessary (art. 16, para. 4).

222. *Régime of frontier waters.* The natural flow of water in frontier watercourses and in adjacent areas which are inundated during periods of high water must not be altered or obstructed to the detriment of the other Party by the erection or reconstruction of installations or structures in the water or on the banks (art. 17, para. 1). Questions relating to the flow of other waters into frontier waters and the diversion of water therefrom as well as other questions relating to the régime of frontier waters shall be settled in conformity with special regulations drawn up by agreement between the two Parties (art. 17, para. 2).

223. *Provisions concerning installations*

(a) *Preservation and use of existing installations.* Bridges, dams and similar structures on frontier watercourses shall be preserved and may be used, with the exception of those whose demolition is found necessary by the Parties. If the reconstruction or demolition of any of such structures becomes necessary and such reconstruction or demolition will entail a change in the water level in the territory of the other Party, such work may be undertaken only after that Party's consent has been obtained (art. 18, paras. 1 and 2).

(b) *Construction of new installations.* No new bridges dams, sluices, dikes or other hydraulic installations on the frontier watercourses may be erected or used on frontier watercourses except by agreement between the Parties (art. 18, para. 3).

224. *Exchange of information to avert danger from floods or drifting ice.* The Parties shall transmit to each other in good time any information concerning the level of water and ice conditions in frontier waters if such information may serve to avert danger from floods or drifting ice. Delay in transmitting, or failure to transmit such information shall not constitute grounds for a claim to compensation for damage caused by floods or drifting ice (art. 20).

225. *Floating of timber.* The Parties may freely engage in the floating of timber throughout the length of the frontier watercourses (art. 21, para. 1). The Treaty contains

[130] Came in force on 4 June 1964.

[131] United Nations, *Treaty Series*, vol. 576, p. 275.

provisions on the dates and sequence of operations for launching and floating timber and on the conditions under which timber floating may be carried out (art. 21, para. 2 and art. 22). The Parties shall take steps to ensure that, in cases where the floating timber is stripped of its bark, the material resulting from such stripping is not deposited in the bed of frontier water-courses (art. 23, para. 2).

226. *Fishing.* Residents of the two Parties may fish in their own waters up to frontier lines in accordance with the regulations in force in their own territory, but shall be prohibited from using explosive, poisonous or narcotic substances capable of causing the mass destruction of fish, and from fishing in frontier waters at night. The Parties may conclude special agreements concerning the protection and development of fish-breeding in frontier waters, the prohibition of fishing for particular species of fish in certain sectors, the dates of the fishing season and other measures of an economic nature relating to fishing (art. 26).

227. *Frontier Commissioners.* The Parties shall each appoint frontier commissioners who will co-operate with one another in performing the duties arising out of the provisions of the Treaty (arts. 33–35). The frontier commissioners shall be under a duty *inter alia* to take the necessary measures to prevent violations of the régime of the frontier, to investigate and settle any cases involving violations of the régime of the frontier in particular the discovery of boats or other floating objects or of fishing equipment originating from the territory of the other Party, to investigate and settle, within certain limits, claims for compensation of any kind arising out of violations of the régime of the frontier (art. 37). Claims for compensation in excess of a certain amount shall be settled through the diplomatic channel as well as any case in which the frontier commissioners fail to agree on a settlement (art. 41, paras. 1 and 4).

France–Switzerland

Convention on the Emosson hydroelectric project signed at Sion on 23 August 1963[132, 133]

228. *Purpose of the Convention.* The Parties, having received an application for a concession to utilize the waters in a single hydroelectric project of several valleys situated in France and Switzerland, and having reached the conclusion that the necessary works should be built by a single concessionaire and that the available power should be shared between themselves, each being subsequently left free to use as it sees fit the power thus allotted to it, concluded this Convention, whose purpose is the utilization of the motive power of the waters collected in specified regions in both France and Switzerland, without prejudice to existing rights in each country. These waters shall be utilized alternatively in two power stations, one located in French territory, and the other located in Swiss territory. A reservoir located entirely in Switzerland, which will make it possible to store the Swiss and French waters in question by gravity or by pumping, shall be built by means of a dam constructed in the gorge of the Barberine where it opens into the Emosson plain (art. 1).

229. *Execution and operation of the works. Obligations of the concessionaire.* The designs and general plans of the works shall be prepared by the concessionaire; they may not be carried out without the prior approval of the Parties. With regard to security, they shall be subject to the legislation of the State in whose territory they are constructed (art. 2). The works may not be put into operation without the prior agreement of the two Parties. The Convention defines the obligations of the concessionnaire relating to drainage and spillways and obliges him to allow the flows deemed necessary to safeguard general interests (sanitation, irrigation, fish conservation, environmental protection, etc.) to run downstream from the dam and the water intakes (art. 3). The Parties establish a permanent supervisory commission to enforce the provisions of the Convention (art. 4).

230. *Apportionment of power between the two Parties.* The Parties recognize that the natural motive power of the waters to which the Convention applies is theoretically of an equal average strength for the waters provided by each of the two countries. They agree that the two States shall at all times have equal rights to utilize the project installations and the available capacity in the Emosson reservoir. In particular, the Convention determines the conditions for the apportionment between the Parties of the electric power produced alternately by the two generating stations, one located in France and the other in Switzerland (art. 5).

231. *Right of each Party to use its share of the power as it sees fit.* Each Party shall be able to use its share of the power in the manner and conditions which it deems useful (art. 6, para. 1).

232. *Exemptions applicable to power produced in the territory of one Party and used in the territory of the other Party.* Power produced in the territory of one State which is to be used in the other State shall be exempt in the first State from all taxes, dues or legal restrictions of any kind, so that such power can be freely transferred to the second State and is in all respects in the same condition as if it had been produced in the territory of the latter State (art. 6, para. 2).

233. *Economic and fiscal arrangements for the execution of the work.* With regard to the execution of work and the maintenance, supervision and operation of the installations, the Parties shall not levy any import or export customs duties on the materials and equipment imported from the other State for the execution of the work, and shall exempt such equipment and raw materials from economic prohibitions or restrictions concerning import or export (art. 16).

234. *Utilization by Switzerland of the French waters downstream from the project.* France recognizes that, downstream from the project which is the subject of the Convention, Switzerland may freely use the waters collected in France and diverted into the Emosson reservoir, with certain specified exceptions (art. 20).

[132] Came into force on 15 December 1964.

[133] *Revue générale de droit international public* (Paris), 3rd series, vol. XXXVI, No. 1 (January–March, 1965), p. 571.

235. *Settlement of disputes.* Any disputes concerning the interpretation or application of the Convention, or of one of the concessions provided for, shall, if it has not been settled within a reasonable period of time through diplomatic channels, be submitted, at the request of either Party, to an arbitral tribunal, the composition of which is determined by the Convention (arts. 21 and 22).

236. *Exchange of territory.* The Parties agree to conclude a Convention modifying the French–Swiss frontier so that the proposed installations (dam, storage reservoir, etc.) are situated entirely on one side of the frontier (art. 24).

Romania–Yugoslavia

Final Act, Agreement and other Acts relating to the establishment and operation of the Iron Gates Water Power and Navigation System on the River Danube, all signed at Belgrade on 30 November 1963[134, 135]

(a) *Final Act*[136]

237. Having approved the technical and economic memorandum concerning the regulation of the Danube in the Iron Gates sector, submitted to them by the Yugoslav–Romanian Mixed Commission in 1960, the Parties decided to enter into negotiations concerning the construction of the Iron Gates Water Power and Navigation System on the River Danube. In the course of those negotiations, the Parties prepared various instruments on the matter (art. I).

238. *Preservation of assets of archaeological and historical significance.* For the purpose of preserving assets of archaeological and historical significance, the Parties shall recommend to those of their organizations which are employed in studies and research for and in the construction of the Iron Gates System to provide full information and all possible assistance to scientific and specialized institutions engaged in the study and preservation of assets of archaeological and historical significance (art. V).

(b) *Agreement concerning the construction and operation of the Iron Gates Water Power and Navigation System on the River Danube*[137]

239. The two countries, wishing, through economic and technical co-operation, to facilitate the utilization of water power resources on the Danube river and to develop the water power potential of the Danube in the Iron Gates sector, undertake to construct and operate the Iron Gates Water Power and Navigation System on the River Danube under the conditions laid down in the Agreement (art. 1). The Agreement contains provisions on structures and works comprising the Iron Gates System, their situation, technical characteristics and parameters. It also indicates the way in which the System should be designed and constructed (arts. 2–4).

240. *Apportionment of the costs.* The Parties shall participate in equal shares in the total investments required for the construction of the System (art. 6, para. 1).

241. *Utilization of water power potential in equal share.* The Parties agree to utilize the water power potential harnessed by the System at all storage levels, in equal share, throughout the entire life of the System (art. 8).

242. *The frontier between the Parties on the Danube River (Special Protocols).* The present frontier on the Danube shall remain unchanged except in the area of the main structures, where frontier adjustments defined in the Agreement shall be made. Special protocols shall be drawn up concerning the frontier adjustments.[138] These adjustments shall remain in effect throughout the period of operation of the System dam, following which the present frontier shall be restored (art. 9, paras. 1 and 2).

243. *Ownership of the structures and works.* The structures and works to be executed in the territory of each Party shall be the property of that Party (art. 9, para. 4).

244. *Operation of the System.* Each Party shall be bound to ensure that those structures and works of the System which belong to it and which are essential to the normal operation of the System are used for the purposes for which they were constructed and are maintained, throughout their standard working life, in a fit condition for operation. Each Party undertakes to refrain from any action which might hinder the use of structures and works of the System belonging to the other Party. Any alteration in the structures and works of the System which might have the effect of changing the parameters of structures and works belonging to the other Party may be undertaken only by prior agreement between the Parties (art. 10, paras. 2, 7 and 8). The Parties undertake to co-ordinate the operation and maintenance of the structures and works to the extent required for the efficient operation of the System (art. 18, para. 1).

245. *Establishment of the Mixed Yugoslav–Romanian Commission for the Iron Gates.* With a view to maintaining permanent co-operation and co-ordination and ensuring the fulfilment and application of treaty provisions concerning the System, the Parties shall establish a Mixed Yugoslav–Romanian Commission for the Iron Gates, as a mixed organ of the two Governments. The functions of the Commission and its organs are defined in the Agreement, in the Conventions and Protocols concerning the Iron Gates System and in the Statute of the Mixed Commission[139] (art. 11).

246. *Settlement of disputes (Mixed Commission, diplomatic means, arbitration).* Any difference relating to the interpretation or application of the treaty provisions, concerning the System, and any other dispute of a legal nature relating to the construction or operation of the System shall be settled by the Mixed Commission. Where differences cannot be settled in the Mixed Commission, they shall be submitted to the two Governments for settlement by diplomatic means. Where agreement cannot be reached, the

[134] Came into force on 16 July 1964.

[135] United Nations, *Treaty Series*, vols. 512 and 513.

[136] *Ibid.*, vol. 512, p. 12.

[137] *Ibid.*, p. 42.

[138] See the Protocol concerning the adjustment of the State frontier in the area of the main structure of the Iron Gates Water Power and Navigation System on the Danube, signed at Orsova on 29 September 1964 (*ibid.*, vol. 559, p. 364).

[139] See para. 252 below.

Parties undertake to settle the said differences by arbitration and, for that purpose, to take all necessary steps to set up an arbitral commission, the composition of which is regulated by the Agreement (art. 21).

(c) *Convention concerning the preparation of designs for the construction of the Iron Gates Water Power and Navigation System on the River Danube*[140]

247. This Convention defines the successive stages in the designing of the Iron Gates System. It also contains provisions concerning the preparation and approval of, and the participation in, the preliminary design for the System, and the working and construction designs for structures and works.

(d) *Convention concerning the execution of works for the Iron Gates Water Power and Navigation System on the River Danube*[141]

248. Each Party shall arrange for the execution of such construction and assembly works and for the procurement of equipment for such structures and works in its territory as are required for the construction of the Iron Gates System. Construction works on the dam, river diversion works and works to regulate the bed of the Danube downstream of the dam, including the appropriate preparatory works therefor, shall be carried out by the Romanian Party in Yugoslav territory in a volume which shall be specified in the preliminary design, the master construction plan and the annual construction plans. In order to expedite the work or to equalize the value of the work to be carried out by the parties, the Mixed Commission may decide that one Party shall carry out a greater volume of work in the territory of the other Party than that specified in the preliminary design, in the master construction plan and the annual construction plans (art. 1).

The Convention regulates in detail the rights and obligations of the Parties concerning the execution of construction and assembly works and the provisions of the necessary equipment.

(e) *Convention concerning compensation for damage caused by the construction of the Iron Gates Water Power and Navigation System on the River Danube*[142]

249. The Convention provides that the value of investments for the construction of the Iron Gates System shall include compensation for damage directly caused by the creation of the storage lake for the System, and compensation for damage resulting from the interruption of production during the relocation of industrial organizations which are reconstituted (art. 1). The physical volume of damage and the level of compensation for damages are determined on the basis of methods prescribed by the Convention and by the annex thereto (art. 2).

(f) *Convention concerning the determination of the value of investments and mutual accounting in connexion with the construction of the Iron Gates Water Power and Navigation System on the River Danube*[143]

250. Each Party shall finance those of the works required for the construction of the Iron Gates System for whose execution it arranges in accordance with the provisions of the Agreement and Conventions concerning the Iron Gates System and of the preliminary design for the System. The Parties shall participate in equal shares in the total investments required for the construction of the Iron Gates System (art. 1). The Convention contains provisions concerning the methods of determining the estimated value of investments (arts. 3–15), the method of determining the accounting value of investments (arts. 16–19), the method of accounting between the Parties (arts. 20–29), the method of liquidating balances during the construction and after the completion of the construction of the System (art. 30), and the method of determining the final value of investments (art. 31).

(g) *Convention concerning the operation of the Iron Gates Water Power and Navigation System on the River Danube*[144]

251. The Parties undertake to arrange for the operation and maintenance of the Iron Gates System under the conditions laid down in the Convention (art. 1). The Convention specifies how responsibility for the management, operation and maintenance of the structures and works will be divided between the various entities concerned and regulates the method of arranging for co-ordination between those entities (art. 2). To that effect, the Convention provides that the Mixed Commission shall establish a Joint Co-ordination Authority and a Joint Energy Control Service and specifies the tasks to be performed by the bodies in question (arts. 3–5). The Convention contains detailed provisions concerning the utilization in equal shares of the water power potential (art. 6) and the maintenance of the structures and works of the System (arts. 7–12).

(h) *Statute of the Mixed Yugoslav–Romanian Commission for the Iron Gates*[145]

252. *Composition, functions and decisions of the Mixed Commission.* The Mixed Commission established by the Agreement referred to above[146] shall be responsible for ensuring permanent co-operation and co-ordination and for the fulfilment and application of the provisions of the Agreement, Conventions and Protocols concerning the Iron Gates System (art. 1). It shall be composed of two national groups, each Government appointing its own national group (art. 2). It shall draw up its own rules of organization and procedure and shall approve the rules of organization and procedure of the organs established by it.

[140] United Nations, *Treaty Series*, vol. 512, p. 94.
[141] *Ibid.*, p. 152.
[142] *Ibid.*, p. 208.
[143] *Ibid.*, vol. 513, p. 56.
[144] *Ibid.*, p. 126.
[145] *Ibid.*, p. 154.
[146] See above, paras. 239 *et seq.*

It shall ensure that the mixed organs established by it perform their functions and shall supervise their work (art. 3). The decisions of the Mixed Commission shall be based on agreement between the two national groups. Decisions taken by the Mixed Commission within the limits of its functions shall be final (art. 5).

253. *Board for the Settlement of Differences.* A Board for Settlement of Differences shall be established by the Mixed Commission (art. 3, para. 2 (*b*)) and shall be competent to settle such differences as the Mixed Commission refers to it for settlement. The Board shall settle differences in accordance with the Agreement, Conventions and Protocols concerning the Iron Gates System, and, in the absence of any provision applicable to the specific case, in accordance with equity *(ex aequo et bono)* (art. 7).

(i) *Protocol concerning crossing of the Yugoslav–Romanian State frontier in connexion with the construction of the Iron Gates Water Power and Navigation System on the River Danube*[147]

254. The Protocol governs: crossing of the frontier by personnel working on the construction of the System; customs clearance for materials, construction appliances and other articles dispatched in fulfilment of mutual obligations; frontier control and customs clearance in the case of works executed by one Party in the territory of the other Party in connexion with the construction of the System; and the régime applying to boats and floating structures used in the construction of the System.

(j) *Protocol concerning the settlement of certain questions in connexion with the construction and operation of the Iron Gates System*[148]

255. Under the Agreement concerning the construction and operation of the System,[149] the Parties shall participate in equal shares in the total investments of the System. The Protocol contains provisions designed to ensure an equal distribution of burdens and balancing the rights and obligations of the Parties in connexion with the construction and operation of the System.

Norway–Union of Soviet Socialist Republics

Protocol concerning the land in Norwegian and Soviet territory which is required for the operation and maintenance of the power stations at Boris Gleb and Skogfoss and which, in accordance with the Agreement of 18 December 1957 on the utilization of water-power on the Pasvik (Paatso) River, is made available free of charge by one Party for use by the other Party, signed at Oslo on 24 December 1963[150, 151]

256. *Sites required for the operation and maintenance of the power stations at Boris Gleb and Skogfoss.* The Protocol defines the sites which each Party under articles 5 and 6 of the Agreement of 18 December 1957[152] makes available to the other, free of charge for the operation and maintenance of the power stations at Boris Gleb and Skogfoss (arts. 1 and 2).

Finland–Union of Soviet Socialist Republics

Agreement concerning frontier watercourses, signed at Helsinki on 24 April 1964[153, 154]

257. The Agreement was concluded in order to define the principles governing the use of the common frontier watercourses of the Parties and to establish a régime for their use.

258. *Frontier watercourses.* Lakes, rivers and streams which are intersected by the frontier line or along which the frontier line runs are deemed to be frontier watercourses. The Agreement of 23 June 1960[155] (referred to in the remainder of the text as "the 1960 Agreement") between the Parties concerning the régime of their State frontier specifies which sections of frontier watercourses are deemed to be frontier waters (art. 1).

259. *Principles applicable to frontier watercourses.* No measures may be taken, in disregard of the procedure laid down in the Agreement, in frontier watercourses or on the banks thereof which might so alter the position, depth, level or free flow of watercourses in the territory of the other Party as to cause damage or harm to the water area, to fisheries, to land or to structures or other property; which might create a danger of flooding, cause a significant loss of water, alter the main fairway or interfere with the use of the common fairway for transport or timber-floating; or which might in some other like manner be prejudicial to the public interest. The same principle applies to measures which alter or block the fairway or change the course thereof, even where such measures would not have the aforementioned consequences. The frontier watercourses and structures situated therein are to be maintained in such a state that the damage or harm referred to above does not ensue (art. 2). The Parties shall ensure that the main fairways of frontier watercourses are kept open for the free flow of water and for transport, timber-floating and the passage of fish (art. 3).

260. *Pollution.* The Parties shall take measures to ensure that frontier watercourses are not polluted by untreated industrial effluents and sewage, by waste materials from timber-floating or wastes from ships or by other substances which immediately or in course of time, might cause shoaling of the watercourses, harmful changes in the composition of the water, damage to the fish-stock or substantial scenic deterioration or might endanger public health or have similar harmful consequences for the population and the economy (art. 4).

261. *Compensation for loss and damage.* Where the execution of certain measures by one Party causes loss or damage in the territory of the other Party, the Party permitting such measures in its territory shall be liable to make reparation to the Party suffering the loss or damage. Each Party shall

[147] United Nations, *Treaty Series*, vol. 513, p. 184.
[148] *Ibid.*, p. 220.
[149] See above, paras. 239 *et seq.*
[150] Came into force on 8 August 1964.
[151] United Nations, *Treaty Series*, vol. 535, p. 426.
[152] See p. 151 above, document A/5409, paras. 782–789.
[153] Came into force on 6 May 1965.
[154] United Nations, *Treaty Series*, vol. 537, p. 231.
[155] See p. 177 above, document A/5409, para. 944.

ensure that reparation for the loss or damage is made to nationals, organizations and institutions of its own country. The Parties may agree separately to make reparation for any loss or damage caused by such measures by granting the Party suffering the loss or damage certain privileges in the watercourses of the other Party (art. 5).

262. *Establishment of the Joint Finnish–Soviet Commission on the Utilization of Frontier Watercourses.* The Agreement provides for the establishment of this Joint Commission (art. 6) to deal with the matters relating to the utilization and the protection of frontier watercourses, to ensure that the Agreement is complied with and to keep the state of the water in frontier watercourses under observation (art. 8). The Agreement contains provisions concerning the composition, the functions and methods of work of the Commission, the nature of its decisions and the law to be applied (arts. 9–11).

263. *Provisions concerning specific questions*

(a) *Timber-floating and water transport.* Where one of the Parties, one of its nationals or an organization or institution wishes to float timber in frontier watercourses in the territory of the other Party, the Commission may, in consultation with the competent authorities, authorize such floating and approve a set of rules governing floating, which shall define the rights and obligations of the timber-floaters and their crews and enumerate the equipment and installations required for the floating operations. Such other questions relating to timber-floating as are not covered by the rules governing floating or by special agreements between the Parties shall be decided in the territory of each Party in accordance with the provisions in force there (art. 13). Transport in frontier watercourses shall be governed by the provisions of the 1960 Agreement so far as the frontier waters are concerned. In other sections of the frontier watercourses, the provisions of the law in force there shall apply (art. 14).

(b) *Protection of the fish stock and fisheries.* The Parties shall take measures to safeguard the fish stock and fisheries in specified frontier watercourses abounding in salmon and white fish (art. 15). So far as the safeguarding of the fish stock and fisheries in frontier watercourses other than those specified above is concerned, the provisions of the law in force in each Party shall apply (art. 16). Fishing in frontier waters shall be governed by the provisions of the 1960 Agreement (art. 17).

264. *Settlement of differences.* Where any differences of opinion arising from the interpretation or application of the Agreement cannot be settled by the Joint Commission, they shall be settled by a Joint Board. If the Board fails to reach agreement, such differences shall be settled through the diplomatic channel (art. 19).

Finland–Norway

Agreement regarding fishing in the fishing area of the Näätämö (Neiden) watercourse (with related fishing regulations), signed at Oslo on 9 June 1964[156, 157]

265. This Agreement was concluded in accordance with the Agreement of 25 April 1951 regarding the diversion from the Näätämö (Neiden) watercourse to the Gandvik watercourse of the water flow from Garsjöen, Kjerringvatn and Förstevannene Lakes.[158]

266. *The Näätämö (Neiden) fishing area.* The fishing area of the Näätämö (Neiden) watercourse comprises that part of the watercourse extending from the boundary between the river and the sea to the furthermost point in the watercourse to which salmon ascend. The boundary between the river and the sea shall be determined as provided in Norwegian law (art. 1 of the Agreement and art. 1 of the related fishing regulations).

267. *Measures to facilitate the ascent of salmon.* Both Parties undertake to build at their own expense the salmon passes which are necessary to facilitate the ascent of salmon (art. 4).

268. *Regulations concerning the catching of salmon, sea trout or other fish. Prohibition of certain methods of fishing.* The fishing regulations contain provisions concerning the tackle and methods which may be used for catching salmon, sea trout and other fish. They also prohibit certain methods of fishing and establish other rules for the protection and development of fish stocks in the Neiden watercourse.

Bulgaria–Greece

Agreement on co-operation in the utilization of the waters of the rivers crossing the two countries, signed at Athens on 9 July 1964[159, 160]

269. *Co-operation in studies concerning works and installations.* The Parties, anxious to control flooding more effectively and to derive the greatest possible benefit from the utilization of the waters, shall co-operate in the consideration and study of works and installations on the Strymon, Nestos, Arda and Evros rivers (art. 1). Bulgaria shall submit to Greece technical and economic studies on the feasibility of constructing engineering works in Bulgarian territory which will make it possible to irrigate lands in Greek territory, and to hold back materials washed down (art. 7).

270. *Obligation not to cause damage to the other Party.* The two Parties agree not to cause each other major damage of any kind by the construction and operation of works and installations in the rivers crossing their territories (art. 2).

271. *Exchange of data and information.* The two Parties shall exchange, for the purpose of the works and installations, technical, hydraulic, hydro-meteorological, topographical, geological, geotechnical, agricultural and economic data (art. 3). In order that measures may be taken in time to prevent the flooding of lands under cultivation, they shall exchange the necessary data and information for this purpose (art. 4).

272. *Settlement of disputes.* Any questions requiring arbitration, which may arise concerning the interpretation and

[156] Came into force on 9 June 1964. The fishing regulations came into force on 12 June 1964.

[157] United Nations, *Treaty Series*, vol. 503, p. 205.

[158] See p. 143 above, document A/5409, paras. 707–710.

[159] Came into force on 9 July 1964.

[160] Text provided by the Greek Government.

application of the Agreement, shall be settled through diplomatic channels (art. 8).

Poland–Union of Soviet Socialist Republics

Agreement concerning the use of water resources in frontier waters, signed at Warsaw on 17 July 1964[161, 162]

273. *Definition of frontier waters.* "Frontier waters" means: the surface waters referred to in the Treaty of 15 February 1961,[163] other surface waters intersected by the State frontier, and the ground waters intersected by the State frontier (art. 2).

274. *Co-operation in activities relating to the use of water resources.* The purpose of the Agreement is to ensure co-operation between the Parties in economic, scientific and technical activities relating to the use of water resources in frontier waters (art. 3). The Parties shall co-ordinate all activities capable of causing changes in the existing situation with regard to the use of water resources in frontier waters (art. 5). The Parties shall consult each other in formulating measures and co-ordinate their plans for the development of water use in frontier waters and shall assist each other in executing such plans (art. 6). They shall, in particular, co-operate and exchange experience with regard to: the designing and production of apparatus and equipment required in connexion with the use of water resources; the preparation of norms, standards and standardized designs for structures; and the training of staff required in connexion with the use of water resources (art. 7). They shall establish principles of co-operation governing the regular exchange of hydrological, hydrometeorological and hydrogeological information and forecasts relating to frontier waters and shall determine the scope, programmes and methods of carrying out measurements and observation and of processing their results and also the places and times at which the work is to be done. They shall take co-ordinated action with a view to the elimination or reduction of danger resulting from floods, drifting ice and other natural phenomena and shall determine the manner in which costs connected with the execution of joint works are to be met (art. 8).

275. *Works in frontier waters (prior agreement of the other Party).* Neither Party shall, save by agreement with the other Party, carry out any works in frontier waters which may affect the use of water resources by the latter Party. All works in frontier waters relating to the regulation of rivers, the installation of new hydraulic equipment and the renovation of existing hydraulic equipment, as well as the maintenance and operation of such equipment, shall be carried out by each of the Parties on the basis agreed upon by the two Parties (art. 9).

276. *Pollution.* The Parties shall jointly conduct measurements with regard to the pollution of frontier waters and shall work out common standards and norms of water purity and, if necessary, establish procedures for controlling pollution (art. 10). They shall endeavour to keep frontier waters clean, shall employ appropriate procedures for purifying sewage and rendering it harmless, and shall not discharge any sewage which may cause harmful pollution of frontier waters (art. 11).

277. *Implementation of the Agreement.* Each Party shall appoint a Plenipotentiary on matters relating to the use of water resources in frontier waters (art. 12).

278. *Facilities for the execution of works provided for in the Agreement.* Persons employed on the works in question may cross the State frontier in conformity with the provisions of the Protocol to the Treaty of 1961. Instruments and building materials may be brought by such persons provided that—save for building materials used on the work site—they are subsequently taken back (art. 14).

Austria–Yugoslavia

Treaty concerning the common State frontier, signed at Belgrade on 8 April 1965[164, 165]

279. *Water sectors of the frontier.* Where the Frontier Delimitation Commission has fixed the State frontier in the middle of a watercourse, it shall be permanently defined by the position of the centre line of the watercourse as originally established by that Commission on the basis of surveys, without regard to any subsequent changes in the watercourse; this shall apply, in particular, to the frontier sector of the Drau (Drava). Changes in the course of the Mur (Mura) subsequent to 25 November 1962 shall not affect the course of the State frontier (art. 4). Where the State frontier has been fixed by the Frontier Delimitation Commission on the Jelenbach (Jelen potok) along the latter's right bank, it shall be permanently defined by the position of the bank at the time of delimitation, without regard to any subsequent changes in the said bank (art. 5).

280. *Protection of the banks of the watercourses.* The Parties shall, where this is not contrary to the fundamental interests of water economy, take appropriate steps to ensure that the banks of the watercourses remain, in the frontier sectors, in the position originally determined by the Frontier Delimitation Commission. They shall in addition take appropriate steps to ensure that the banks of the Mur (Mura) remain, in the frontier sector, in the same position as on 25 November 1962 (art. 6).

281. *Surveying and marking of State frontier. Protection of frontier marks and measures to ensure that they remain visible.* The Treaty contains provisions concerning these questions, and establishes a Permanent Mixed Commission for the purpose of carrying out the tasks for which the two Parties are responsible under the Treaty (parts III, IV and V of the Treaty).

Austria–Czechoslovakia

Treaty concerning the regulation of water management questions relating to frontier waters, signed at Vienna on 7 December 1967[166, 167]

282. *Territorial scope of the Treaty.* The Treaty shall apply to water management questions and measures relating to

[161] Came into force on 16 February 1965.

[162] United Nations, *Treaty Series*, vol. 552, p. 175.

[163] See paras. 178–193 above.

[164] Came into force on 20 October 1966.

[165] United Nations, *Treaty Series*, vol. 587, p. 169.

[166] Came into force on 18 March 1970.

[167] Text provided by the Austrian Government. Reproduced in United Nations, *Treaty Series*, vol. 728, p. 313.

frontier waters, that is: (*a*) sections of watercourses along which the State frontier between the Parties runs; (*b*) waters intersecting the State frontier and waters adjoining the State frontier where any water management measures applied to them in the territory of one Party would have seriously adverse effects on water conditions in the territory of the other Party (art. 1).

283. *Substantive scope of the Treaty.* The expression "water management questions and measures" (art. 1) shall apply to changes in the river régime, the regulation of watercourses, the erection of high-water embankments, protection against flooding and ice, land reclamation and improvement, water supply, cleaning, utilization of water power, bridges and ferries and also navigation matters in so far as they are related to hydraulic measures within the meaning of the Treaty. The Treaty shall not apply to fisheries nor to the utilization of water power in so far as it affects the power industry (art. 2).

284. *General obligations.* Each Party undertakes to refrain from carrying out, without the consent of the other Party, any measures relating to frontier waters which would adversely affect water conditions in the territory of the other Party (art. 3, para. 1) and to discuss in the Austrian–Czechoslovak Frontier Water Commission,[168] before instituting proceedings concerning water rights, any planned measures relating to frontier waters (art. 3, para. 2). In frontier waters, the two Parties shall have the use, without prejudice to acquired rights, of half of the natural water yield not increased by technical means (art. 3, para. 3). Whenever necessary, they shall arrange for the purification of waste water arising from new sources (art. 3, para. 4). They shall further ensure that the operation of hydraulic installations and facilities of all kinds in frontier waters does not harm the interests of the other Party in the matter of water management (art. 3, para. 5).

285. *Maintenance and improvements.* The Parties shall provide, as necessary, for the maintenance of the frontier waters, including the structures, installations and facilities in such waters and shall make any necessary improvements thereto (art. 4, para. 1). They shall, in accordance with their domestic regulations, promote the construction in their territory of hydraulic installations and facilities to provide protection against the danger of flooding and ice along frontier waters; measures shall also be taken to ensure that frontier waters are kept clean and to construct hydraulic installations and facilities for the drainage or irrigation of adjoining territory, for the supply of water to frontier communities and for the utilization of water power from frontier waters or the improvement of navigation (art. 4, para. 2).

286. *Performance of maintenance work*

(a) *Maintenance of frontier waters and hydraulic installations.* Each Party shall be responsible in its own territory for the maintenance of frontier waters and of regulatory structures and other hydraulic installations and facilities situated in such waters. Each Party shall also be responsible for the maintenance of hydraulic installations and facilities constructed in its territory on the basis of a grant of water rights or by special agreement and serving the interests of the other Party (art. 5, paras. 1 and 2).

(b) *Cleaning of the bed and banks of frontier watercourses.* The cleaning of the bed and banks of frontier watercourses shall be carried out as necessary and shall, as a general rule, be undertaken by each Party in its own territory and at its own expense (art. 5, para. 3).

287. *Water management measures*

(a) *Planning.* Planning for water management measures by the Parties shall be undertaken on the basis of general directives established by the Commission. The Party concerned shall prepare the plans for measures to be carried out in its own territory. Where measures affect the territory of both States, the plans shall be prepared by the Party designated by the Commission (art. 6).

(b) *Execution.* Water management measures, and in particular regulatory and other hydraulic works, shall in principle be executed by each Party in its own territory. Decisions concerning the execution of measures—including major maintenance work—whose cost is to be borne by the two Parties jointly shall be taken by the Commission. Where it is necessary for measures to be executed in the territory of both States and such measures, for technical or economic reasons, can only be executed jointly, the method of execution shall be determined by the Commission (art. 7).

(c) *Costs.* Each Party shall bear the costs of the execution of water management measures which are to be carried out by it in its territory for its exclusive benefit. The costs of the execution of water management measures from which both Parties are to derive benefit shall be borne by the Parties in proportion to the benefit which each is to derive therefrom, regardless of whether the works are executed in the territory of only one Party or in the territory of both. The costs of the execution of water management measures which are carried out in the territory of one Party for the exclusive benefit of the other Party shall be borne by the Party which is to benefit from the measures. The Parties shall not reimburse to each other the costs connected with surveying and with the planning and management of the works executed, save as otherwise agreed in individual cases. These provisions shall also apply, as appropriate, in respect of costs connected with the maintenance and operation of hydraulic installations and facilities (art. 8).

288. *Provisions concerning water rights*

(a) *Law applicable.* Matters relating to water rights shall be adjudicated according to the law and by the authority of the Party to whose territory the proceeding relates (art. 10, para. 1).

(b) *Installations and facilities to be constructed in the territory of both Parties. Grant of water rights.* In the case of installations and facilities to be constructed in the territory of both States, the grant of water rights for the part to be constructed in the territory of each State shall be made by that State's competent water management authority; in such cases, an effort shall be made to conduct the proceedings consecutively with the participation of both States (art. 10, para. 2).

(c) *Installations and facilities to be constructed in the territory of one Party affecting rights or interests in the territory*

[168] See para. 291 below.

of both Parties. In the case of installations and facilities which affect rights or interests in the territory of both States but are to be constructed in the territory of only one State, the proceedings shall be conducted by each State in its own territory (art. 10, para. 3).

(d) *Proceedings concerning water rights coming within the jurisdiction of the Commission.* Proceedings concerning water rights in a case coming within the jurisdiction of the Commission may not be instituted, save where delay would entail risk, until the Commission or the Plenipotentiaries have taken up the matter (art. 10, para. 4).

(e) *Existing water rights.* Existing water rights in respect of frontier waters and the obligations connected therewith shall remain unaffected (art. 10, para. 6).

289. *Warning service.* The competent authorities of the Parties shall notify each other as quickly as possible of any danger of flooding or ice or other danger arising in connexion with frontier waters which comes to their attention (art. 11).

290. *Extraction of gravel and sand.* Gravel and sand may be freely extracted from sand banks for river engineering purposes in the frontier sector subject to prior agreement between the competent authorities of the Parties (art. 12).

291. *Austrian–Czechoslovak Frontier Water Commission. Composition. Functions.* A permanent commission, to be known as the Austrian–Czechoslovak Frontier Water Commission, shall be established by the Parties. Each Party shall send a four-member delegation to the Commission and shall appoint one member of the delegation as permanent plenipotentiary. The Commission shall deal, *inter alia*, with the following matters:

(*a*) The practical solution of technical and economic problems and the promotion of co-operation in the execution of hydraulic works;

(*b*) Questions relating to specific cases of adverse effects on water conditions and consideration of the need for measures in accordance with the provisions of the Treaty;

(*c*) The planning of hydraulic works, the determination of methods of execution of such works, and matters relating to their maintenance;

(*d*) Technical designs and budgets for hydraulic works, regulatory installations and other structures (bridges, dams, water-removal installations, etc.), schedules of execution for the structures, and inspection and acceptance of joint works and measures;

(*e*) Liability for costs in accordance with the Treaty;

(*f*) Verification of the implementation of decisions and execution of works and measures;

(*g*) Questions relating to the cleaning of frontier waters (art. 14 and arts. 1 and 2 of the Statute of the Commission, annexed to the Treaty).

292. *Approval of the Commission's decisions.* Decisions of the Commission shall not affect the right of the Governments to take decisions. Decisions may be carried out only if they are approved by the Governments of the Parties. The plenipotentiaries shall notify each other of decisions taken by their Governments (art. 5 of the Statute).

293. *Customs facilities granted for the execution of works and water management measures under the Treaty.* The Treaty provides for exemption from customs duty of construction materials, working stock, land and water vehicles and equipment for the execution of works and water management measures undertaken under the Treaty (art. 15). It also contains provisions concerning the crossing of the State frontier by persons in the performance of their duties under the Treaty (art. 16).

294. *Settlement of disputes. Arbitral tribunal.* Disputes concerning the interpretation or application of the Treaty shall be settled by the competent authorities of the two Parties. This provision shall not preclude settlement through the diplomatic channel. Any dispute which cannot be settled in such manner shall, at the request of either Party, be submitted to an arbitral tribunal constituted on an *ad hoc* basis which will take its decision on the basis of the Treaty and by application of customary international law and of the generally recognized principles of law (art. 19).

295. *Transitional provisions.* The provisions of the Treaty shall supersede the agreements previously concluded between the two Parties concerning the regulation of water management questions and measures relating to frontier waters. Works and measures begun or carried out before the entry into force of the Treaty shall be deemed to be works and measures within the meaning of the Treaty (art. 20).

296. *Domestic obligations.* Domestic regulations and obligations concerning water management measures and the defrayal of costs pertaining thereto shall not be affected by the obligations assumed by the Parties under the Treaty (art. 21).

Czechoslovakia–Hungary

Agreement concerning the establishment of a River Administration in the Rajka–Gönyü sector of the Danube, signed at Prague on 27 February 1968[169, 170]

297. *Establishment of the River Administration.* The Parties shall establish a River administration in the joint Czechoslovak–Hungarian sector of the Danube between Rajka and Gönyü for the purpose of ensuring that the hydraulic works necessary for maintaining and improving the fairway are carried out and for the purpose of regulating navigation conditions (art. 1).

298. *Jurisdiction of the River Administration.* The jurisdiction of the Administration shall comprise that sector of the Danube river-bed extending from Rajia to Gönyü between km 1850 and km 1791 (art. 3).

299. *Legal status and privileges of the River Administration.* The Administration, as a joint Czechoslovak–Hungarian organization, shall be a body corporate. The legal status and privileges of the Administration shall be governed by the Convention on the legal status and privileges of international specialized organizations for economic co-operation, signed at Warsaw on 9 September 1966[171] (art. 4, paras. 1 and 3).

[169] Came into force on 27 February 1968.

[170] United Nations, *Treaty Series*, vol. 640, p. 49.

[171] *Ibid.*, vol. 652, p. 223.

300. *Composition and functions of the River Administration.* The Administration shall consist of a Council and of a secretariat, headed by a director (art. 4, para. 2). The functions of the Administration shall specifically include: the making of provisions for studies, investigations and research, for preparatory and project documentation and for the contracting for and supervision and acceptance of hydraulic works to be carried out in the sector; and the conduct of the technical, economic, administrative, legal and financial business connected with its activities. The functions of the Administration shall extend to water-management activities outside the fairway in so far as such activities have a bearing on the maintenance of the fairway and the improvement of navigation conditions; they shall not extend to flood-control or ice-control activities or the maintenance of ports and dikes (art. 6).

301. *Execution of hydraulic works.* The term "hydraulic works" means all activities, including maintenance and dredging operations, intended to establish suitable dimensions for the fairway and to ensure the regular flow of high, mean and low water and the unimpeded movement of ice along the river-bed (art. 7, para. 1). The Administration shall provide for the execution of the hydraulic works in such a way that the relevant contracts are given to the competent organizations of the two Parties. The works for which they have been given contracts shall ordinarily be carried out by the organizations of the two States in the territory of their own State. This provision shall not apply to dredging operations or to the supply and transport of construction materials (art. 7, paras. 2 and 3).

302. *Previous studies and surveys to be made available to the River Administration.* The Parties shall make available to the Administration the results of previous studies and surveys which relate to the fairway and are needed by the Administration, including existing documentation on completed construction and project documentation on construction in progress or being planned. The Administration shall inform the competent organizations of the two States of the results of surveys and studies and of work carried out in the sector (art. 8).

303. *Apportionment of hydraulic works to be carried out in the sector.* The hydraulic works to be carried out in the sector shall be apportioned between the Parties in physical units on an equal basis. Provision for the costs of such works shall be made by the Parties in their budgets (art. 15, para. 1).

304. *Settlement of disputes.* Any disputes arising out of the application of this Agreement which are not settled by the Council shall be referred to the Parties for a decision (art. 21).

Greece–Yugoslavia

Agreement concerning the study of the over-all improvement of the Axios/Vardar basin, signed at Belgrade on 12 June 1970[172, 173]

305. The two Parties, desiring to undertake jointly, with the help of UNDP, the study of the project for the over-all improvement of the Axios/Vardar basin, in order to be able to develop subsequently, in the interests of both countries, the resources of the said basin by the execution of this project, agree to submit a request jointly to UNDP with a view to the preparation of this study (art. 1). The Agreement provides for the establishment of a Joint Commission for the Development of the Axios/Vardar Basin, composed of five representatives of each Government, and responsible for supervising all work on preparing the study in question and for submitting to the two Governments the proposals necessary for the smooth execution of this work (art. 3). If the study, once it has been prepared and adopted, proves the economic and technical feasibility of the over-all improvement for each of the two Parties, the two Governments shall conclude an agreement concerning the execution of the work necessary for the over-all improvement of the Axios/Vardar basin and the joint financing of such work, and including provisions concerning the apportionment of costs and the method of financing. The two Parties agree that the purposes of the over-all improvement are: (*a*) to satisfy the needs of Greece relating to the Axios/Vardar irrigation system and (*b*) to satisfy as a matter of priority the present and future needs of Yugoslavia by its free utilization of all the water, other than the quantity of water needed by Greece (art. 7).

Bulgaria–Greece

Agreement concerning the establishment of a Greek–Bulgarian Commission for co-operation between the two countries in questions relating to electric power and the utilization of the rivers crossing their territories, signed at Sofia on 12 July 1971[174, 175]

306. *Formation of the Greek–Bulgarian Commission. Composition. Functions.* A permanent Greek–Bulgarian Commission, with 12 members, is established. Each Party is represented by six members (art. 2). The Commission's task is to carry out studies and take decisions on matters concerning co-operation between the two Parties in questions relating to electric power and the utilization of the waters of the rivers crossing their territories. The Commission is also competent to enforce the Agreement of 9 July 1964.[176] It may submit proposals to the two Parties and study all questions of common interest (art. 1).

Finland–Sweden

The Frontier Rivers Agreement of 16 September 1971[177, 178, 179]

307. The Governments of Finland and Sweden, in order to ensure such use of the frontier watercourses as to

[172] Text provided by the Greek Government.

[173] Agreement applicable on a provisional basis immediately upon signature, in accordance with article 9.

[174] Came into force on 12 July 1971.

[175] Text provided by the Greek Government.

[176] See paras. 269–272 above.

[177] Came into force on 1 January 1972.

[178] Text provided by the Swedish Government.

[179] Under its chapter 10, article 4, this Agreement supersedes, *inter alia*, the Convention of 10 May 1927 between the Parties concerning the joint exploitation of the salmon fisheries in the Tornea (Tornio) and Muonio rivers (see p. 148 above, document A/5409, paras. 752 *et seq.*).

conform with the interests of their two countries and of the borderland, concluded this agreement for the regulation of certain questions pertaining to water rights and fishing rights relating to these watercourses.

308. *Water areas covered by the Agreement.* The Agreement applies to: the rivers Könkämä and Muonio and the part of the River Torne and the lakes through which the Finnish–Swedish frontier runs (the frontier rivers); the lakes and watercourses which form branches of or affluents to the frontier rivers; the special effluents formed by the various branches at the mouth of the River Torne; the part of the Gulf of Bothnia lying between the Finnish and Swedish parishes of Lower Torne (chap. 1, art. 1).

309. *Use of waters. Preservation of fish stock and prevention of water pollution.* The waters covered by the Agreement shall be used in such a manner that both countries derive benefit from the frontier watercourses and that the interests of the frontier areas are promoted as effectively as possible. Particular importance shall be accorded to the interests of nature conservancy; the greatest possible attention shall be given to the preservation of fish stocks and the prevention of water pollution. In cases involving a number of different projects which affect the same waters or for some other reason cannot be carried out concurrently, preference shall be given to the project which may be assumed to be of the greatest public and private benefit. Conflicting interests shall, in so far as possible, be adjusted in such a way that each may be satisfied without substantial injury to the others (chap. 1, arts. 3 and 4).

310. *Right to an equal share of the water volume. Respect for acquired rights (judicial decision, immemorial usage).* In frontier rivers with branches, each party shall be entitled to an equal share of the water volume even if a larger portion thereof discharges in one State than in the other. This provision shall be without prejudice to any individual water rights based on a judicial decision, immemorial usage or other special legal grounds. An owner or usufructuary of the bank of a frontier river may, without regard to the frontier, use waters along the bank belonging to a third party to erect a small landing-stage, boathouse, bathouse, washhouse or other similar building. Any person shall be entitled to take water or ice from frontier rivers for domestic requirements or to use the water for other smiliar purposes. Waters may not be used for the purposes specified in the Agreement if the owner of the waters is thereby caused significant inconvenience or if fishing or timber floating is hampered. This provision shall be without prejudice to other regulations applicable to traffic across the State frontier (chap. 1, arts. 5 and 6).

311. *Law applicable.* In cases where no special provision is made in the Agreement, the laws in force in each State shall apply (chap. 1, art. 8).

312. *Establishment of the Finnish–Swedish Frontier River Commission. Composition. Functions.* For purposes of the application of the Agreement, a joint permanent Commission shall be established consisting of six members. Each State shall appoint three members. The Commission shall, pursuant to its own decisions, institute such inquiries and investigations as are required in order to enable it to accomplish its tasks in accordance with this Agreement. It may enter into direct contact with the authorities of either State and may call upon them for assistance in obtaining any necessary information and arranging for any necessary consultations (chap. 2, arts. 1–3). The Commission shall, in co-operation with the competent authorities of the two States, exercise supervision of water use and keep water conditions in general under review within the area of application of the Agreement. This Agreement does not entail any restriction of supervision exercisable under the legislation of either State. The Commission may issue regulations concerning the exercise of supervision by a specially appointed expert. Fishery supervision may, by decision of the Frontier River Commission, be exercised by joint supervisory patrols of the two States. Each State shall pay and equip its own supervisory personnel. The Commission shall maintain continuous observation of water flow at the point where the River Tärentö (Tärendö) flows out of the River Torne. As the basis for this activity the Commission shall have the necessary studies and calculations made as soon as possible in order to determine the volume of water flowing in each of the two rivers under prevailing natural conditions (chap. 9, arts. 1–3).

313. *Criminal liability of the members and officials of the Commission.* Members of the Frontier River Commission shall, while serving with the Commission, be criminally liable for their actions under the law of the State by whose Government they were appointed. The staff of the Commission shall be subject, in the matter of criminal liability, to the legal provisions relating to civil servants of their State of residence. Members and staff of the Commission shall, while in the performance of their duties, enjoy the protection under criminal law which is accorded to civil servants in the State in which the duties are performed (chap. 2, art. 5).

314. *Facilities granted to the Commission and its members and officials.* The authorities of each State shall permit members and staff of the Commission and experts appointed to exercise supervision pursuant to the Agreement to cross the frontier wherever appropriate for the purposes of the Commission's work or for the purpose of exercising supervision and shall grant them the most favourable possible treatment with regard to passports and other identity papers and with regard to the times when they may cross the frontier and stay in the State concerned. The property of the Commission shall be exempt from all customs formalities and from import and export duties (chap. 2, arts. 6 and 7).

315. *Rules concerning hydraulic construction works.* Where any person would suffer damage or inconvenience as a result of the construction of hydraulic works, the works shall be carried out only if they can be shown to bring public or private benefit that substantially outweighs the inconvenience. Where the construction would result in a substantial deterioration in the living conditions of the population or cause a permanent change in natural conditions such as might entail substantially diminished comfort for people living in the vicinity or a significant nature conservancy loss or where significant public interests would

be otherwise prejudiced, the construction shall be permitted only if it is of particular importance for the economy or for the locality or from some other public standpoint (chap. 3, art. 3). Where hydraulic construction works are such that they may have a harmful effect on fishing, the person carrying out the construction shall take or pay for such measures as are reasonably called for in order to protect the fish stock or maintain fishing of an equal standard (chap. 3, art. 7). Any person who carries out hydraulic construction works shall be bound to take or pay for reasonable measures to prevent inconvenience to traffic. Persons carrying out construction works shall also be bound to take or pay for the measures required in order to prevent any significant inconvenience to timber floating. Where, in a particular case, relatively extensive measures are required in order to relieve inconvenience to timber floating, the two States shall consider jointly whether and to what extent the cost of such measures may be defrayed from public funds (chap. 3, art. 8).

316. *Hydraulic construction works and water pollution.* In carrying out hydraulic construction works, care shall be taken to ensure that, apart from occasional, temporary turbidity, no pollution occurs that causes any significant inconvenience (chap. 3, art. 9).

317. *Fishing*

(a) *Scope of application of the relevant provisions.* The Agreement defines the area referred to as the "Fishery Zone of the River Torne" to which its provisions on fishing are applicable. The part of the Fishery Zone of the River Torne lying north of the mouth of the river defined as a straight line between the tip of Hellälä north point on the Finnish side and the tip of Vitakari point, the nearest site on the opposite Swedish side, shall be called the river zone; the part lying south of that line shall be called the sea zone. The effluents of the River Torne shall be part of the river zone (chap. 5, art. 1).

(b) *Fish channels.* Within the river zone there shall be fish channels in the deepest water in each branch where fishing is carried on. The fish channel shall occupy one third of the width of the water at the most frequently occurring low water level. Fish channels which, in conformity with the law of the State concerned, lie in an affluent to the river zone shall extend with unchanged width up to the fish channels in the said zone. The Frontier River Commission may decide that the fish channels shall run in some other part of the water than that referred to in the Agreement; however, such a change may be made only if it can be presumed that it will not cause any substantial injury to any person who has not agreed thereto. Fishing gear and other devices may not, save in the case of measures for which permission has been obtained in accordance with the provisions of this Agreement relating to hydraulic construction works, be set up or used in such a manner as might hinder fishing in the fish channels or otherwise prevent fishing from proceeding there. The Frontier River Commission may, however, grant exceptions in certain cases if it can be presumed that this will not present a danger to fishery conservancy or cause substantial injury to any person who has not agreed to the measures in question. Where any person has a special right to close the fish channels to fishing, that right shall continue to exist (chap. 5, art. 2).

(c) *Reserve zones.* Within the sea zone there shall, in addition to fish channels established in conformity with the law of each State, be reserve zones. These shall consist of the waters to a distance of 200 metres on each side of a series of straight lines defined in the Agreement. The provisions on fishing gear and other devices laid down with respect to fish channels also apply in the case of reserve zones (chap. 5, art. 3).

(d) *Fishing for salmon or sea trout.* The Agreement forbids the use of certain types of gear designed for catching salmon or sea trout within a specified portion of the sea-zone. Seine fishing in the river zone for salmon or sea trout may be established in respect of certain fishing sites, provided that other fishing does not suffer significant inconvenience as a result, that fishing shall be carried on jointly across the State frontier. Decisions to that effect, which shall be valid for a maximum of 10 years in each case, shall be adopted by the Frontier River Commission on the proposal of one or more of the persons possessing fishing rights. In the decision the Commission shall establish regulations for joint fishing, indicating the area in question and the principles governing the conduct and management of fishing operations. Farm owners in villages at and near the fishing site shall, in accordance with the principles set out in the regulations, receive precedence in the granting of fishing rights. Decisions of the Commission shall become effective upon confirmation by the two Governments (chap. 5, art. 6).

318. *Protection against water pollution.* No solid or liquid wastes or other substances may be discharged into waters to a greater extent than is permitted under this Agreement where such discharge results in harmful aggradation, a harmful change in the nature of the water, damage to fish stocks, diminished comfort for the population or endangerment of their health or other such damage or inconvenience to public or private interests. The provisions applicable shall be, in addition to those of the Agreement, the provisions of the legislation concerning health, construction and nature conservancy of the State in which the discharge occurs or is to occur and the provisions of that State's special protective legislation against specific types of water pollution (chap. 6, arts. 1 and 2).

319. *Compensation. Law applicable.* Any person who is granted the right under this Agreement to use property belonging to a third party, to use water power belonging to a third party or to take measures which otherwise cause damage or inconvenience to property belonging to a third party shall be liable to pay compensation for the property used or for the loss, damage or inconvenience caused. Save as otherwise provided, compensation shall be fixed at the time when permission is granted for the measure in question. The Frontier River Commission may also take decisions, otherwise than in connexion with applications for permission, on questions of compensation arising from measures falling within the scope of this Agreement. Save as otherwise provided in the Agreement, the law of the State in which the property used is situated or in which loss, damage or inconvenience otherwise occurs shall apply in respect of the grounds for compensation, the right of the

owner of property used or damaged to demand payment and the manner and time of payment of compensation (chap. 7, arts. 1, 2 and 3).

320. *Settlement of disputes.* Any dispute between the two States concerning the interpretation and application of the Agreement shall be settled in accordance with the Convention concluded between Finland and Sweden on 27 June 1924 concerning the establishment of a permanent Commission for investigation and conciliation[180] (chap. 10, art. 1).

321. *Transitional provisions.* If any installation or project referred to in this Agreement is built or carried out before the Agreement enters into force or is built or carried out subsequently pursuant to a decision of a court or other authority based on previously applicable provisions, the previously applicable provisions shall be applied in determining the legality of the installation or project and the associated rights and obligations. However, the provisions of this Agreement concerning review shall apply to the said installation or project. Cases or other matters which, at the time of the entry into force of this Agreement, are pending in court or before any authority and which affect questions covered by the Agreement shall be dealt with and decided in accordance with the previously applicable provisions (chap. 10, art. 5).

[180] League of Nations, *Treaty Series*, vol. XXIX, p. 19.

Chapter II

OTHER INTERNATIONAL INSTRUMENTS

Argentina–Bolivia–Brazil–Paraguay–Uruguay

Act of Asunción on the use of international rivers, signed by the Ministers for Foreign Affairs of the States of the River Plate Basin at their Fourth Meeting held from 1 to 3 June 1971

322. In 1941, Argentina, Bolivia, Brazil, Paraguay and Uruguay met in a Regional Conference of the Countries of the River Plate, at Montevideo, for the purpose of solving common problems relating to economic and financial matters and commercial transit concerning the River Plate. The Conference adopted a resolution[181] recommending to States represented at the Conference to establish joint technical commissions in order to study ways and means of improving the navigability of the rivers constituting the hydrographic system of the River Plate. The resolution also recommended that the States concerned should conclude agreements among themselves regarding the use of the River Plate for industrial and agricultural purposes.

323. In February 1967, the Ministers for Foreign Affairs of the five States met in Buenos Aires to discuss matters relating to the joint efforts for the development of the Plate Basin. In a joint Declaration,[182] the Ministers expressed the determination of their Governments to carry out the joint and integrated study of the River Plate Basin with a view to realizing a programme of international as well as national works useful for the development of the region. The Declaration also set up an Intergovernmental Co-ordinating Committee. The Committee was given the function to centralize and disseminate information, and to co-ordinate the joint action considered necessary.

324. The Second Meeting of the Ministers for Foreign Affairs of the River Plate Basin States was held in Santa Cruz de la Sierra, Bolivia, in May 1968. The Meeting adopted the "Act of Santa Cruz de la Sierra"[183] and the Statute of the Intergovernmental Co-ordinating Committee.[184] In the Act, it was decided to hold meetings periodically for the purpose of considering harmonious and well-balanced development of the region, and to entrust the Committee with the task of preparing a draft treaty for securing the institutionalization of the River Plate Basin. The Committee was requested to submit, within 120 days, the draft treaty to the Governments for consideration.

325. In the following year, the First Extraordinary Meeting of the Foreign Ministers of the River Plate Basin States was convened in Brasilia to adopt the Treaty concerning the Basin of the River Plate which the Ministers of the five States signed on 23 April 1969.[185] The Ministers continued to meet in Brasilia, as the Third Regular Meeting of the Foreign Ministers, and discussed various matters relating to the River Plate Basin. Among the documents adopted by the Meeting was the "Act of Brasilia of 25 April 1969",[186] in which the Ministers recommended to the Intergovernmental Co-ordinating Committee that groups of experts be established for various purposes, and made the Committee responsible for carrying out studies relating to the formulation of operative projects for the execution of the new Treaty.

326. The Fourth Meeting of the Foreign Ministers of the River Plate Basin States met in Asunción from 1 to 3 June 1971 and adopted the "Act of Asunción"[187] containing 25 resolutions.[188] The texts of this Act and of resolutions Nos. 5, 6, 15, 22, 23 and 25 are reproduced below.

ACT OF ASUNCIÓN

The Ministers for Foreign Affairs of the Republic of Argentina, Mr. Luis María de Pablo Pardo; of the Republic of Bolivia, Mr. Huáscar Taborga Torrico; of the Federative Republic of Brazil, Mr. Mario Gibson Barbosa; of the Republic of Paraguay, Mr. Raúl Sapena

[181] See p. 212 above, document A/5409, annex I, section B.

[182] "La Declaración Conjunta de los Cancilleres de los Países de la Cuenca del Plata, 27 de febrero de 1967", reproduced in *Ríos y Lagos Internacionales . . . (op. cit.)*, pp. 148–150.

[183] *Ibid.*, pp. 151–156.

[184] *Ibid.*, pp. 157–162.

[185] For a summary of this Treaty, see paras. 60–64 above.

[186] *Ríos y Lagos Internacionales . . . (op. cit.)*, pp. 175–178.

[187] *Ibid.*, pp. 183–186.

[188] The text of the Act and the resolutions annexed to it were provided by the Argentine Government. The text of resolution No. 25 was also transmitted by the Government of Brazil.

Pastor; and of the Eastern Republic of Uruguay, Mr. José A. Mora Otero,

Considering the terms of the agreements reached in the past listed in the Joint Declaration of Buenos Aires, the Act of Santa Cruz de la Sierra, and in the Act of Brasilia,

Aware of the responsibility which devolves upon them in view of the entry into force of the Treaty of the River Plate Basin, which has occurred since their last Meeting,

Determined to give practical and effective form to the action undertaken by the five countries with a view to the full utilization of the immense resources of the River Plate Basin, as described in the relevant provisions of the Treaty,

Desiring formally to recognize the advances made through the Intergovernmental Co-ordinating Committee since its last meeting and also to establish new guidelines for the joint work under the Treaty of the River Plate Basin, and in accordance with the initiatives proposed by each of the countries,

Agree to approve the resolutions annexed to this Act, which are listed below, as follows:

...

Resolution No. 5

ESTABLISHMENT OF THE RIVER PLATE BASIN DEVELOPMENT FINANCING FUND

The Fourth Meeting of Foreign Ministers of the countries of the River Plate Basin,

Considering

Paragraph IV (*a*) (iii) of the Act of Brasilia (1969),

Decides

1. To create a body with international juridical personality for an indeterminate period, to be called the "River Plate Basin Development Financing Fund";

2. To request the Intergovernmental Co-ordinating Committee to prepare a draft convention for the implementation of this agreement, which shall be submitted to the Governments with a view to its consideration at the next Meeting of Foreign Ministers. For this purpose, all the background information and documents submitted at this and previous meetings shall be taken into account.

Resolution No. 6

STUDIES BY THE INTERGOVERNMENTAL CO-ORDINATING COMMITTEE ON HARMONIZED NATIONAL LEGISLATIVE MEASURES TO FACILITATE AND PROMOTE REGIONAL ELECTRICAL INTERCONNEXIONS

The Fourth Meeting of Foreign Ministers of the countries of the River Plate Basin,

Considering

That the regional electrical integration of the River Plate Basin is an economic factor that will have a powerful influence on the development of the entire area; and

That, nevertheless, the purchase, sale, exchange and transmission of electric power by the member States will be made difficult by the lack of harmonized legislation in the countries concerned that would embrace the many complex factors that come into play in this field,

Decides

To request the Intergovernmental Co-ordinating Committee to ensure the continuation of the studies on this question, with the aim of suggesting to the countries of the Basin standardized national legislative measures which would facilitate and promote regional electrical interconnexions.

Resolution No. 15

IMPORTANCE OF TAKING HEALTH PROBLEMS INTO ACCOUNT IN STUDIES AND PLANS FOR THE DEVELOPMENT OF THE BASIN

The Fourth Meeting of Foreign Ministers of the countries of the River Plate Basin,

Considering

That there are grave health problems arising from ecological relationships in the geographic area of the River Plate Basin, which have an unfavourable impact on the social and economic development of the region;

That this health syndrome is related to the quality and quantity of the water resources;

That close co-ordination and co-operation between the countries concerned in programmes for the control and eradication of these diseases is important;

That these problems are aggravated by the shortage of medical resources, particularly in the rural areas,

Decides

1. To emphasize the importance of taking health problems into account in plans and studies for the development of the Basin and to incorporate specific health activities in such plans and studies;

2. To recommend that when it is considering the health aspects of projects for the Basin, the Intergovernmental Committee on Co-ordination, while being careful to avoid duplication with the work on water resources being done by the Group of Experts on that subject, should bear in mind the recommendations and decisions adopted by the Ministers of Health of the member countries at their periodic meetings and duly communicated to the competent national policy-making levels;

3. To transmit to the Intergovernmental Co-ordinating Committee CI/RC/IV/Working Paper No. 4.1 for its consideration and study in consultation with the Ministers of Health of the countries of the Basin through the regular channels.

Resolution No. 22

JOINT STUDIES ON THE MULTIPURPOSE USE OF THE WATER RESOURCES OF THE PILCOMAYO RIVER BASIN

The Fourth Meeting of Foreign Ministers of the countries of the River Plate Basin,

Considering

That project B-1, adopted in accordance with the Act of Santa Cruz de la Sierra and welcomed by the Second Meeting of the countries of the River Plate Basin, refers to the decision of the Governments of Argentina, Bolivia and Paraguay to undertake joint studies of the Pilcomayo River Basin and of the upper basin of the Bermejo River, with a view to the multipurpose use of its water resources;

That, according to the report submitted by the Intergovernmental Co-ordinating Committee to this Conference, the activities concerning the upper basin of the Bermejo River are in progress, under agreements between the Governments of Argentina and Bolivia and the General Secretariat of OAS;

That it is necessary to proceed with the execution of the above-mentioned project B-1, in so far as it concerns the River Pilcomayo basin;

Decides

1. To recommend that the Governments of Argentina, Bolivia and Paraguay should expedite the formulation of the terms of reference for joint studies of the River Pilcomayo Basin for the multipurpose use of its water resources;

2. To request the Intergovernmental Co-ordinating Committee to make the necessary arrangements for that purpose with the international organizations involved in technical and financial co-operation, in accordance with the guidelines established in section II of the Act of Brasilia.

Resolution No. 23

STUDY AND PROPOSALS ON REGULATIONS FOR THE PREVENTION OF HYDROCARBON POLLUTION OF THE RIVERS OF THE RIVER PLATE BASIN

The Fourth Meeting of Foreign Ministers of the countries of the River Plate Basin,

In view of

The need to control water pollution and preserve as far as possible the natural qualities of the water as an integral part of a policy in the conservation and utilization of the water resources of the Basin;

Bearing in mind

The considerations and suggestions made by the Second Meeting of Experts on Water Resources,

Decides

To recommend that the Intergovernmental Co-ordinating Committee should study and propose rules to prevent hydrocarbon pollution of the rivers of the River Plate Basin.

Resolution No. 25

DECLARATION OF ASUNCIÓN ON THE USE OF INTERNATIONAL RIVERS

The Fourth Meeting of Foreign Ministers of the countries of the River Plate Basin,

Decides

To endorse all the resolutions so far adopted in this field and to express its particular satisfaction at the results of the Second Meeting of Experts on Water Resources, held at Brasilia (18–22 May 1970). They also wish to express their conviction that such an important subject will continue to be dealt with in the same spirit of frank and cordial collaboration at the third Meeting of this Group, convened for 29 June 1971.

The Foreign Ministers consider that it is of real value to record the fundamental points on which agreement has already been reached, on the basis of which the studies on this subject are to proceed:

1. In contiguous international rivers, which are under dual sovereignty, there must be a prior bilateral agreement between the riparian States before any use is made of the waters.

2. In successive international rivers, where there is no dual sovereignty, each State may use the waters in accordance with its needs provided that it causes no appreciable damage to any other State of the Basin.

3. As to the exchange of hydrological and meteorological data:

(*a*) Processed data shall be disseminated and exchanged systematically through publications;

(*b*) Unprocessed data, whether in the form of observations, instrument measurements or graphs, shall be exchanged or furnished at the discretion of the countries concerned.

4. The States shall try as far as possible gradually to exchange the cartographic and hydrographic results of their measurements in the River Plate Basin in order to facilitate the task of determining the characteristics of the flow system.

5. The States shall do their best to maintain the best possible conditions of navigability on the reaches of the rivers under their sovereignty and shall adopt for that purpose whatever measures may be necessary to ensure that any permanent works that are constructed do not interfere with the other present uses of the river system.

6. When executing permanent works for any purpose on the rivers of the Basin, the States shall take the necessary steps to ensure that navigability is not impaired.

7. When executing permanent works on the navigable waterways system, the States shall ensure the conservation of the living resources.

Argentina–Chile

Act of Santiago concerning hydrologic basins, signed on 26 June 1971[189]

327. This Act, which was signed by the Ministers for Foreign Affairs of Argentina and Chile, representing their respective Governments, reads as follows:

Guided by the spirit of solidarity and friendly co-operation which characterizes the relations between their Governments and peoples,

Bearing in mind the increasing importance of the use of the waters of rivers and lakes and the desirability of expressly recognizing general rules of international law and of supplementing them with specific regulations governing the utilization of the waters common to the two countries,

Considering the necessity of conserving the living resources of their international river basins and of preventing the pollution thereof in order to improve ecological conditions,

Desirous of co-ordinating the works undertaken in the said basins with a view to their optimum utilization and of avoiding the difficulties which may arise between the two countries from the improper or indiscriminate use of their common waters,

Determined to conclude as soon as possible a Convention containing complete and detailed regulations governing the utilization of the water resources of the Argentine-Chilean river basins,

Have agreed on the following fundamental rules which shall serve as a basis for the aforementioned Convention and which they declare to be immediately applicable:

1. The waters of rivers and lakes shall always be utilized in a fair and reasonable manner.

2. The Parties shall avoid polluting their river and lake systems in any manner and shall conserve the ecological resources of their common river basins in the areas within their respective jurisdictions.

3. Prior to the utilization of the waters of contiguous reaches of international rivers, a bilateral agreement must be concluded between the riparian States.

4. Each Party shall recognize the other's right to utilize the waters of their common lakes and successive international rivers within its territory in accordance with its needs, provided that the other Party does not suffer any appreciable damage.

5. If a State intends to utilize a common lake or successive river, it shall first transmit to the other State the plans for the works, the plan of operations and other data which may be useful in determining the impact of the works in the territory of the neighbouring State.

6. Within a reasonable period of time, which in any case shall not exceed five months, the requested Party must indicate whether there are any aspects of the plans or plan of operations which might cause it appreciable damage. If so, it shall indicate the technical reasons and calculations substantiating that claim and shall suggest changes in the plans or plan of operations in question which would avoid such damage.

7. Disputes arising in that connexion shall be submitted to a Mixed Technical Commission for settlement. In the event that the technical experts should disagree, they shall prepare reports expressing their views for consideration by the Governments. The Governments shall endeavour to find a solution through the diplomatic channel or by any other means they may agree upon, striving always to reach an amicable and just solution.

8. The Parties shall exchange hydrological, meteorological and cartographical data as follows:

(*a*) Processed data shall be disseminated and exchanged systematically through publications;

(*b*) Unprocessed data, whether in the form of observations, instrument measurements or graphs, shall be exchanged or furnished at the request of the Parties; and

(*c*) As far as possible, the States shall regularly exchange the findings from their measurements in the various basins, thereby facilitating the task of determining the characteristics of the different flow systems.

...

Argentina–Uruguay

Declaration on water resources, signed at Buenos Aires on 9 July 1971[190]

328. The text of this Declaration, which was signed by the Ministers of Foreign Affairs of Argentina and Uruguay, representing their respective Governments, reads as follows:

Guided by the spirit of traditional solidarity and friendly co-operation which characterizes the relations between their Governments and peoples, and

Seeking to ensure a reasonable and fair participation by the States in the use and benefits of the waters of international rivers and their tributaries,

[189] Text provided by the Argentine Government.

[190] Text provided by the Argentine Government.

Confirming the principles outlined in resolution LXXII of the Seventh International American Conference of Montevideo of 1933 and the rules agreed upon in the Tripartite Declaration signed at Buenos Aires on 23 September 1960, the Treaty of the River Plate Basin, and the Declaration of Asunción on the Use of International Rivers adopted by the Fourth Meeting of Ministers for Foreign Affairs of the Countries of the River Plate Basin,

Mindful that the two Governments have already begun to develop the River Uruguay, as prescribed in the time-table in force for the Salto Grande Dam and in execution of the joint efforts to draw up the River Uruguay Statute, thus providing tangible evidence of the deep understanding and close co-operation between the two Parties,

Noting that another meeting between the Presidents of their respective countries has been arranged for this day, which further emphasizes the common will of their two peoples to develop new and effective forms of co-operation and rapprochement,

The two foreign ministers express their agreement on the following basic principles governing the régime for the utilization of international rivers and their tributaries:

1. The river waters shall be utilized in fair and reasonable manner.

2. States shall refrain from polluting international rivers and tributaries in any manner and shall conserve the ecological resources in the areas within their respective jurisdictions.

3. If a State intends to utilize the waters of a river, it shall first transmit to the other States concerned the plans for the works, the plan of operations and other data which may be useful in determining the impact of works in the territories of those States.

4. Within a reasonable period of time, the requested Party must indicate whether there are aspects of the plans or plan of operations which may cause it appreciable damage. If so, it shall indicate the technical reasons and calculations substantiating that claim and shall suggest changes in the plans or plan of operations designed to avoid such damage.

5. Disputes arising in that connexion shall be submitted to a Joint Technical Commission for settlement. In the event that the technical experts should disagree, they shall prepare a report expressing their views for consideration by the Governments. The Governments shall endeavour to find a solution through the diplomatic channel or by any other means they may agree upon, striving always to reach an amicable and just solution.

...

Argentina–Bolivia

Act of Buenos Aires on Hydrologic Basins, signed on 12 July 1971[191]

329. The provisions of this Act are broadly similar to those of the Act of Santiago of 26 June 1971 between Argentina and Chile concerning Hydrologic Basins, the text of which is reproduced above.[192]

[191] Text provided by the Argentine Government.

[192] See para. 327 above.

Part Three

Survey of Studies made or being made within intergovernmental organizations

Chapter I

UNITED NATIONS

A. United Nations Conference on the Human Environment (1972)

330. The United Nations Conference on the Human Environment (Stockholm, 5–16 June 1972) adopted a Declaration on the Human Environment consisting of a preamble and 26 principles designed "to inspire and guide the peoples of the world in the preservation and enhancement of the human environment". It also adopted within the framework of an Action Plan for the Human Environment 109 recommendations for action at the international level. The Declaration and recommendations have a very wide scope extending far beyond the subject matter of this report. Those of their elements which seem relevant to the question under consideration are reproduced below.

(a) *Declaration of the United Nations Conference on the Human Environment*

...

II. Principles

...

Principle 2

The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

...

Principle 6

The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of all countries against pollution should be supported.

Principle 7

States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

...

Principle 21

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

Principle 22

States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

...

Principle 24

International matters concerning the protection and improvement of the environment should be handled in a co-operative spirit by all countries, big or small, on an equal footing. Co-operation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.[193]

...

(b) *Action Plan for the Human Environment*

...

Recommendations for action at the international level

...

ENVIRONMENTAL ASPECTS OF NATURAL RESOURCES MANAGEMENT

...

Recommendation 51

It is recommended that Governments concerned consider the creation of river-basin commissions or other appropriate machinery for co-operation between interested States for water resources common to more than one jurisdiction.

(*a*) In accordance with the Charter of the United Nations and the principles of international law, full consideration must be given to the right of permanent sovereignty of each country concerned to develop its own resources;

(*b*) The following principles should be considered by the States concerned when appropriate:

(i) Nations agree that when major water resource activities are contemplated that may have a significant environmental effect on another country, the other country should be notified well in advance of the activity envisaged;

(ii) The basic objective of all water resource use and development activities from the environmental point of view is to ensure the best use of water and to avoid its pollution in each country;

(iii) The net benefits of hydrologic regions common to more than one national jurisdiction are to be shared equitably by the nations affected;

(*c*) Such arrangements, when deemed appropriate by the States concerned, will permit undertaking on a regional basis:

(i) Collection, analysis, and exchanges of hydrologic data through some international mechanism agreed upon by the States concerned;

(ii) Joint data-collection programmes to serve planning needs;

(iii) Assessment of environmental effects of existing water uses;

(iv) Joint study of the causes and symptoms of problems related to water resources, taking into account the technical, economic, and social considerations of water quality control;

(v) Rational use, including a programme of quality control, of the water resource as an environmental asset;

(vi) Provision for the judicial and administrative protection of water rights and claims;

(vii) Prevention and settlement of disputes with reference to the management and conservation of water resources;

(viii) Financial and technical co-operation of a shared resource;

(*d*) Regional conferences should be organized to promote the above considerations.[194]

...

IDENTIFICATION AND CONTROL OF POLLUTANTS OF BROAD INTERNATIONAL SIGNIFICANCE

A. POLLUTION GENERALLY

...

Recommendation 71

It is recommended that Governments use the best practicable means available to minimize the release to the environment of toxic or dangerous substances, especially if they are persistent substances such as heavy metals and organochlorine compounds, until it has been demonstrated that their release will not give rise to unacceptable risks or unless their use is essential to human health or food production, in which case appropriate control measures should be applied.

Recommendation 72

It is recommended that in establishing standards for pollutants of international significance, Governments take into account the relevant standards proposed by competent international organizations, and concert with other concerned Governments and the competent international organizations in planning and carrying out control programmes for pollutants distributed beyond the national jurisdiction from which they are released.

...[195]

B. Economic and Social Council and Subsidiary Bodies

331. There have been a number of Economic and Social Council resolutions, as well as a number of reports, studies and other documents prepared within the framework of the Council and its Committee on Natural Resources which concern the development and utilization of water resources. As the present supplementary report is concerned with the legal aspects of the utilization and protection of international watercourses, only the elements of this documentation which have a direct or indirect bearing on this subject are briefly summarized in this section.

1. ECONOMIC AND SOCIAL COUNCIL

(a) *The initial stages*

332. The main preoccupation which, in the initial stages, guided both the work of the Economic and Social Council in this field and the relevant studies prepared by the Secretary-General at the request of the Council has been that of developing co-operation between States and strengthening co-ordination between the activities of the various international organizations concerned.[196] In 1956, the Council gave its activities in this field a more specific orientation by establishing, under resolution 599 (XXI) of 3 April 1956, a Panel of Experts on Integrated River Basin Development. This Panel prepared a report[197] which was

[193] *Report of the United Nations Conference on the Human Environment* (United Nations publication, Sales No. E.73.II.A.14), pp. 4–5.

[194] *Ibid.*, pp. 6, 7 and 17.

[195] *Ibid.*, p. 20.

[196] See, for example, "International co-operation on water control and utilization: report of the Secretary-General under Council resolution 346 (XII) E/2205 and Corr.1 and Add.1); "International co-operation with respect to water resource development (Council resolution 417 (XIV)): report by the Secretary-General" (*Official Records of the Economic and Social Council, Eighteenth Session, Annexes*, agenda item 4, document E/2603); "International co-operation with respect to water resource development: report of the Secretary-General" (*ibid., Twenty-first Session, Annexes*, agenda item 7, document E/2827) (prepared under Council resolution 533 (XVIII).

[197] *Integrated River Basin Development* (United Nations publication, Sales No. 58.II.B.3).

the outcome of meetings held in New York in January and November 1957. Relevant passages from this report are reproduced in the Secretary-General's initial report on the legal problems relating to the utilization and use of international rivers.[198] A new version of the report of the Panel of Experts was issued in 1970.[199] With the exception of minor editorial changes and certain explanatory foot-notes, the main text of the original version remained unchanged. However, certain alterations were made to the annexes. Annex VII to the new version reproduces the text of the Helsinki Rules on the Uses of the Waters of International Rivers, adopted by the International Law Association at its fifty-second Conference (Helsinki, 1966).

(b) *Study on "Abstraction and Use of Water: A Comparison of Legal Régimes" submitted under resolution 1033 D (XXXVII)*

333. On 14 August 1964, the Economic and Social Council adopted resolution 1033 D (XXXVII) on water resources development, endorsing the Secretary-General's proposals concerning the terms of reference of the Water Resources Centre, which included paying "special attention to the administrative and legislative problems related to water resources development in developing countries".[200] To this end, a study on legal régimes relating to the abstraction and use of water was prepared within the Secretariat of the United Nations. A summary of the problems raised and discussed in this study may be deduced from the following paragraphs:

In view of this keen competition for water for consumptive uses, administrations are faced with major questions: whether the legal framework is adequate for the job; whether the laws encourage the efficient use of water or impede the necessary and desired development; how much should be borrowed from other legal systems and how much retained from the old and the customary.

Water laws in the past were the product of many factors and influences, in which political structure and climatic conditions made for differentiation of a common regional heritage. In Europe, for instance, political structure rather than climate seems to have accounted for variations in the water law principles bequeathed by Roman law. In the United States of America, on the other hand, climate was the factor that forced the west to deviate from the common-law heritage. The powerful influence of climate is also shown by the fact that, more often than not, water law systems introduced through colonization into areas with entirely different climatic conditions have had to be drastically modified. This happened in Australia and other arid countries of primarily British settlement and influence. The Spanish system was retained by South American countries with dry climates, but not by the more humid countries, which preferred to follow the French model.

The question arises whether these factors are still at work; or whether the increased use of water in general, and for irrigation in particular, tends to offset climatic differences and to promote a certain uniformity in the solution of problems that have become more and more alike in all parts of the world. In this respect, it may be mentioned that areas with very disparate climates, such as Israel, and Iowa and Alaska in the United States of America, have chosen to treat all waters as public, a common device for increasing the control of the administration over water disposition. On the other hand, England and Wales (United Kingdom), when introducing a permit system, felt compelled—perhaps by tradition—to retain a great many features of long-established riparianism.

Administrative hesitation between old and new systems is best shown in the treatment of rights acquired under a system that is being replaced. The change may be dictated by increased water use, and a system that has proved adequate for an arid region may be introduced to a more humid one, as, for example, the prior appropriation system of the arid western part of the United States of America was adopted by the state of Mississippi. To a great extent, however, the treatment of prior systems of water use rights is influenced by political structure.

Iran, it would appear, has managed to make a drastic break with the past; whereas in the United States, in many instances, where the old rights were abolished the status of the new laws remains in doubt.

Water law has been used in the past and still is being used as a tool for purposes of social engineering. The question is whether that makes for efficiency—undoubtedly an important objective of water legislation—and, if not, the extent to which efficiency may have to yield to other desiderata incidental to water use. In Peru and Chile, for example, water law is employed to achieve a more equitable distribution of land, as was done in the past in the United States of America to help settle the west, and in Australia to settle the Murray River basin. The close association of irrigation agriculture with social policy is as relevant, then, to old and densely populated areas as to newly settled regions; for in densely populated areas redistribution of land can often be achieved only concomitantly with the intensive application of water to small parcels of land that would otherwise be incapable of supporting a family. Small-scale proprietors, however, have not the means to support expensive irrigation works: and, thus, another problem is linked to the first, namely, how to finance ever-larger irrigation projects.

In arid countries where this problem has always been acute, waterworks have long been built, financed and often managed by the Government. In humid countries this trend is as yet less evident. A good example of the difference between the two types of areas is furnished by the United States of America. In the arid west, the federal Government has been responsible for the water-supply since the beginning of the twentieth century; whereas in the east, water-supply is still chiefly a matter for each landowner individually.

When the role of the administration grows in this fashion, the question is whether it is adequately counterbalanced by what amounts to the unionizing of users. Users' associations are of ancient tradition and have spread to most countries that use water for irrigation—another example of a tendency towards conformity in water law—but not everywhere do they show the same vitality. In some countries, they are almost moribund and play only a minor role on minor canals; in others, they are no more than a "rubber-stamp" for administrative decisions. Where they are large enough and financially solvent, as in Chile or in some parts of the western United States of America, for example, the question is whether they become equal partners with the central Government for the development of the water resources of a region.

This study discusses in a systematic way the solutions given in the customary law, statutes and regulations, and, where relevant, the administrative and court decisions of more than fifty countries, representing the three major systems of water distribution—riparian, prior appropriation and permit—to the problem of getting water from the source of supply to the user who needs it.

The discussion covers the legal water régimes of countries throughout the world:

...

More than 250 pieces of legislation have been studied and analysed to provide a basis for comparison. In order to systematize the material amassed, the ways in which the major systems of water law usually handle the problem of water distribution are described first, thus setting the stage for a detailed and comparative treatment of particular factors in the acquisition and use of water. These factors—beginning with the question of who can acquire what water and how—include the types of suppliers and their rights and duties in each system, and the role of users' associations; the powers and duties of agencies granting authorizations; procedural requirements for acquiring a water use right; methods of payment for waterworks and water; quantity of water allotted; duration of right; attachment of right to

[198] See p. 215 above, document A/5409, annex II, B.

[199] United Nations publication, Sales No. E.70.II.A.4.

[200] *Official Records of the Economic and Social Council, Thirty-seventh Session, Annexes*, agenda item 14, document E/3894/Rev.1., p. 26.

the land; protection of acquired rights under existing laws as well as under earlier ones; and loss, revocation and suspension of right.

Lastly, an attempt is made to deduce from the material amassed broad trends in legislation concerning water use rights.[201]

2. Committee on Natural Resources

334. The Committee on Natural Resources was established by Economic and Social Council resolution 1535 (XLIX) of 27 July 1970. The issues before the Committee in connexion with international water resources development were summarized as follows in a report prepared by the Secretary-General:

1. At a time when the international aspects of water utilization were restricted almost entirely to navigation, small scale irrigation and fishing, with ground-water and atmospheric water reserves not even calculated, and the self-cleaning capacity of the available water far exceeding waste disposal and effluent dilution requirements, the prevailing terminology—"international waterways", "international rivers" or "international water courses"—reflected that era's need for international co-ordination and joint use. With the rapid expansion of increasingly complex societies in most parts of the world, this early, minimal approach proved insufficient. Multiple, often conflicting uses and much greater total demand have made imperative an integrated approach to river basin development in recognition of the growing economic as well as physical interdependencies across national frontiers.

2. Over the last few decades considerable experience has been gained with regard to the development and use of international water resources [defined as water in a natural hydrological system shared by two or more countries] in different parts of the world ...

3. The occurrence of international water resources offers a unique kind of opportunity for the promotion of international amity. The optimum beneficial use of such waters calls for practical measures of international association where all parties can benefit in a tangible and visible way through co-operative action. Water is a vital resource, the benefits from which can be multiplied through joint efforts and the harmful effects of which may be prevented or removed through joint efforts. An incentive towards international co-operation thus demonstrably accompanies the status of co-basin state in an international river basin. Moreover, when plans are made and implemented jointly, valuable experience is gained with international institutions both at the policy and working levels. A characteristic trend in more recent international arrangements for water resources development has been the broadening of the scope and diversity of the parties' international water development activities. New dimensions are being added to the traditional organizational patterns developed in Europe and in North America, which were largely based on single-purpose and non-consumptive uses of the international rivers.

The expanding scope of international water resources development

4. The fundamental factor responsible for the changing patterns of international co-operation for water resources development and use has been the above-mentioned recognition of physical and economic interdependence.

5. Overdrawing of ground-water resources in one country may have an effect upon the surface water discharge and thus, say, the navigation potential in another. The use of river water for cooling in thermal power plants may alter the fisheries potential downstream; industrial effluents discharged into the stream in one country may make water unsuitable for municipal or even agricultural uses in another country. Cloud seeding operation in one country can have unpredictable, possibly harmful effects in a country downwind as a result either of an increase or decrease in expected precipitations at a particular time.

...

The need for adequate information on international water resources and their development potential

8. The major incentive to co-operate in the development of international water resources depends largely upon an identification and appreciation of the benefits to be derived from such co-operation. It is thus imperative that the benefits in quantitative and qualitative terms be clearly known to the national decision makers concerned. International co-operation should, to the fullest extent possible, be based upon reliable knowledge and a thorough understanding of alternative courses of action.

9. Unfortunately, for a large portion of the world's international water resources, information is still insufficient or non-existent. Nevertheless in many of these cases co-operative efforts by the Governments in developing these resources could provide valuable benefits to the people in the area. To some extent "international projects" have received second priority in national water development plans and often there are unrealistic expectations or misinformed apprehensions about international undertakings.

...

The need for new institutional solutions

12. As the pressure rises for more extensive development and use of international water resources, and the potential for conflict and the need for co-operation becomes every day more evident, water administrators, political leaders, regional planners and international lawyers are called upon to devise improved institutional frameworks capable of coping with the increased requirements for international co-operation. New flexible and broad-based channels of communication are needed between countries embarking upon the development and use of international water resources and those organizations and individuals having experience and information in these fields.

13. The range of alternative institutional arrangements is impressive. It includes, for instance, the mere nomination of one official in each country who is empowered to exchange data or even development plans for a specific purpose; or it may entail the establishment of an international basin agency with its own professional staff, technical services and an intergovernmental governing body.

14. Institutional arrangements should be responsive to the specific co-ordination requirements in each case. Taking a long-term perspective, flexibility is also necessitated by the changing demands for water, the nature and characteristics of the resource base, and by other dynamic environmental influences. In no case, however, should countries merely copy institutional arrangements in another basin. The advisory services dealt with in document E/C.7/3 could play a most important role in this regard and would of course be able to draw on the comparative experience accumulated in the United Nations from work with more than a dozen major international river basins over the past ten years.

The need for an adequate legal framework

15. A map prepared for the *Integrated River Basin Development*[202] identifies about 170 international drainage basins in the world. For more than half of these basins no international agreements are in force and for many more legal and institutional arrangements are inadequate to meet present complex requirements for co-ordinating and realizing water development and use for multiple purposes. With recent exceptions, international agreements have so far not expressly included ground water within the scope of international co-operation. No agreements are known to exist with regard to international co-operation in the use of atmospheric water resources; however, twenty-one states in the United States of America have enacted legislation relating to weather modification.

16. The need for some official codification and progressive development of the general rules of international law regulating the development and use of international water resources has been the growing concern of many Governments, international organizations and non-governmental international and national associations, as well as of the academic community ...

...

[201] *The abstraction and use of water: a comparison of legal régimes* (United Nations publication, Sales No. E.72.II.A.10), pp. 4–7.

[202] See para. 332 above and foot-note 199.

18. In whatever form legally binding rights and obligations of countries with regard to the development of international water resources are determined, it is essential to keep the fundamental means-end relationship in mind that also applies to international water resources agreements and law. The fundamental propositions, actually the definition of the problems *per se* will depend not only upon the actual development objectives of the contracting countries but upon the input provided by the aforementioned broad range of different disciplines concerned with different aspects of water resources development.

19. The recent and growing concern over marine pollution and the fact that the bulk of such pollution is a result of river discharge (see document E/C.7/2/Add.8 on river discharge and marine pollution) highlights the fact that existing international river concepts and agreements impose no restriction on the downstream country which is free to pollute the river. A new relationship, therefore, should be considered, namely, the relationship of the activities of one country on a river in relation to the world oceans, or broadly speaking, the relationship of the river to the ocean and not only the relationship of the activities of one country to the other concerning one river.

20. The Committee on Natural Resources may wish to consider the desirability of offering to the International Law Commission information and guidelines on economic, social, technical and administrative aspects of international water resources development, which factors underlie any successful legal régime in this area and therefore should be taken fully into account in deliberations about principles and rules of law governing inter-state relations with respect to water resources.[203]

335. In another report submitted to the Committee on Natural Resources, and dealing with "River discharge and marine pollution" the Secretary-General stated the following:

...

2. Though rivers in the past have been the arteries of human settlement and development, we do not yet possess full information on them all. We know that some of the rivers carry large amounts of silt, but information on other material carried by them is being assembled only now. Of the many rivers in the world, most of the big ones are international and so the bulk of river discharge comes from international rivers.

...

River discharge and marine pollution

21. The preceding paragraphs are intended to demonstrate that polluted river waters discharged into the ocean have to be considered as a principal contributor to ocean pollution. As industrialization in river basins, and in particular in the estuary regions of rivers has progressed, the polluting consequences of river discharge on the ocean has assumed large-scale proportions ...

22. The growing quantities of wastes being carried by rivers to the oceans will make it necessary to view river basins as part of a larger interdependent system. Consequently the interests of all coastal countries with regard to the use of rivers as major waste disposal agents will require broader international consideration keeping in mind the related interests in ocean resources and ocean life.

23. In view of the increasing use of rivers as waste disposal agents, a practice which results in marine pollution, it seems increasingly necessary that water quality standards for water users in the downstream regions of rivers be established, taking due account of the quality requirements of the ocean waters into which rivers discharge.

...

25. There seems to be a need for broader concepts of water resources management. In particular, it has become necessary to consider and manage the use of surface water resources as major waste disposal agents together with its effect on marine pollution. Such a concerted approach to both management and marine pollution would require the setting and effective application of water quality standards for river waters discharged into the ocean by coastal countries in conformity with the requirements for international marine pollution control. Coastal countries, in addition to upstream co-basin countries in an international river basin, would have to accept an equitable limitation of their use of river waters, including waste disposal and effluent dilution, in order to safeguard water quality in conformity with the interests of all countries in marine pollution control. To some extent the obligations and rights of equitable utilization of water resources, a concept that has evolved over the past decades with regard to the use of international non-maritime water resources would need to be extended beyond the river basin system to a larger interdependent system including the oceans.

26. It is, therefore, necessary to recognize that marine pollution is essentially a river management problem. Keeping in mind the growing urgency of an effective solution to the problem of marine pollution, and in view of the objectives and scope of the forthcoming United Nations Conference on Human Environment, the Committee on Natural Resources may wish to recommend that the Secretary-General, in co-operation with other United Nations organizations concerned, convene an interdisciplinary group of experts covering aspects of both river basin management and ocean pollution in a comprehensive manner and making appropriate recommendations. The Committee on Natural Resources may further wish to consider the recommendation that the report of this group of experts be submitted to an intergovernmental working group which, on the basis of the experts' report, could prepare specific recommendations to the United Nations Conference on Human Environment.[204]

336. In the course of its first three sessions, the Committee on Natural Resources *inter alia* formulated "Guidelines for action in the development of natural resources"[205] which include a section on objectives and priorities in the field of water resources development. It also examined the technical and economic aspects of international river basin development.[206] Finally, it recommended to the Economic and Social Council that it approve the holding in 1977 of a United Nations water conference.[207] This recommendation was endorsed by the Council in resolution 1761 C (LIV) of 18 May 1973. The draft agenda prepared for the Conference by the Intergovernmental Panel of Specialists on the United Nations Water Conference established under Economic and Social Council resolution 1973 E (LII) of 2 June 1972 includes the following questions:

2. Policy measures (current and future) required to promote the national use of water resources.

3. Implementation of national water policies and programmes:

(*a*) Organizational and administrative structures;

(*b*) Water legislation and regulatory measures;

(*c*) Economic aspects including prize systems;

4. Comprehensive planning for the use of water:

(*a*) National and regional assessment;

(*b*) Planning institutions;

(*c*) Consideration of multiple objectives in planning, such as economic development and environmental effects of proposed programmes.

5. Optimization in planning of water resources, taking into account their multiple uses.

6. Economic, social, legal, administrative and environmental aspects of inter-basin transfer of water, including water grids.

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[203] E/C.7/2/Add.6, pp. 1–7.

[204] E/C.7/2/Add.8/Rev.1, pp. 1, 6 and 7–8.

[205] See *Official Records of the Economic and Social Council, Fifty-second Session, Supplement No. 5* (E/5097 and Corr.1), para. 20.

[206] *Ibid., Fifty-fourth Session, Supplement No. 4* (E/5247) paras. 129–137; see also document (E/C.7/35), an updated version of which is now in preparation.

[207] *Official Records of the Economic and Social Council, Fifty-fourth Session, Supplement No. 4* (E/5247), para. 114.

7. International co-operation with regard to water resources common to more than one national jurisdiction, in particular experience with international river basin organization.[208]

3. Regional economic commissions[209]

Economic Commission for Europe

(a) *Recommendations concerning the hydro-electric development of international rivers*

337. The ECE Committee on Electric Power has dealt with matters relating to international rivers. The following relevant recommendations were elaborated under its auspices in the early stages of its work:

(i) *Recommendation No. 2 submitted to Governments by the Committee on Electric Power with a view to facilitating the hydro-electric development of contiguous rivers and lakes (adopted by the Committee on 3 October 1957)*

338. A study on legal aspects of the hydro-electric development of rivers and lakes of common interest,[210] prepared within the ECE secretariat, was published in 1950, and a revised text[211] was issued in 1951. It was undertaken as the result of the concern expressed in the Committee on Electric Power of ECE at the complexity of the legal problems entailed in the hydro-electric development of certain waterways and lakes which border or traverse two or more States. The Committee felt that difficulties of a legal nature might hamper the harmonious development of a European policy on electric power. It therefore requested that this aspect of the problem should be examined and solutions in principle sought which might prove acceptable to the various States, and at the same time be satisfactory from the point of view of the European economy. The object of the study was to help Governments to find suitable solutions for a series of extremely practical problems.

339. The study defines the fundamental facts of the situation presented, reviews the ways in which this problem has been dealt with by States in specific instances in the past, and assesses the measures of their success in each such case.

340. In its concluding part, the document contains the following statements:

A State has the right to develop unilaterally that section of the waterway which traverses or borders its territory, in so far as such development is liable to cause in the territory of another State, only slight injury or minor inconvenience compatible with good neighbourly relations.

On the other hand, when the injury liable to be caused is serious and lasting, development works may only be undertaken under a prior agreement.

Conversely, a State has no right to oppose the hydro-electric development of a section of an international waterway situated in the territory of another State if this will entail only slight injury to itself. In the event of serious injury, the States concerned should enter into negotiations and supply each other in advance with all the information necessary for the execution of the projects in hand.

Is it possible, however, to establish a criterion as a basis for the distinction between slight and serious injury?

Some authors contend, like Kaufman, that States are obliged to have regard "in just measure" [*Annuaire de l'Institut de droit international*, vol. 24, p. 184] for the interests of other States; like von Ullmann, that riparian States are found to act in conformity with the principle of "equity" [*Blätter für administrative Praxis*, 1910, p. 65] or, finally, like von Bar that a State must not make use of a waterway in such a manner as to change "its character" [*Annuaire de l'Institut de droit international*, vol. 24, p. 156]. Treaties are concerned with safeguarding the "legitimate interests" of the other States.... The truth is that it is impossible to lay down any hard and fast principle; only appraisement of the injury inflicted in concrete cases can determine how serious it is. But since a formula must be found, that of good neighbourly relations will be retained.

The concept of injury in international law is very complex indeed. It is difficult to set an absolute limit beyond which the injury is sufficient to provide legitimate grounds for opposing the action taken by another State.

Should the criterion for a distinction be sought in the absolute value of the development works to be carried out, i.e., the international economic advantages they represent, or rather in the extent of the modification caused to the "essential and utilizable" character of the waterway; or finally—which would seem preferable—in the relative value of this modification in relation to the utility of the development?

If a slight injury is to be taken into account, the danger is that a State may for a trivial reason refuse to take part in the necessary development. The limit therefore depends on the good will of States, on their readiness to negotiate and on the good relations between them. And if they sustain slight injury as a result of good neighbourly relations, that merely gives them the right to take part in the negotiations in order to claim fair compensation

In studying the additional clauses we have seen examples of this compensation for injury being made in the form of power supplies. We have also seen the considerable extent to which these negotiations, essential in the case of hydro-electric development, are facilitated by the appointment for that purpose of a joint commission composed of technicians.[212]

341. The problems raised by the Study were examined by the Group of Experts for the Study of Legal Questions. The Group made a number of recommendations and drew a distinction between successive rivers, i.e., rivers which cross the frontier, and contiguous rivers, i.e., rivers which form the frontier between two or more States.

342. The Committee on Electric Power adopted those recommendations.[213] In the case of successive rivers, the Committee felt that in present circumstances the preparation of a general convention presented difficulties. The hydro-electric development of a successive river raised specific issues which could only be solved by means of agreements between the interested countries. At the same time, the conclusion of such agreements was liable to give rise to certain difficulties. On the other hand, the hydro-electric development of contiguous rivers raised a number of difficulties which were common to all countries. The Committee, therefore, put forward a recommendation to

[208] E/C.7/31, p. 4.

[209] The Secretariat of ECLA indicated, in a letter dated 17 January 1973, that its studies on water development had only incidentally touched on the subject and that the problem had never been specifically dealt with in ECLA's reports. The Secretariat of ECAFE stated, in a letter dated 10 January 1973, that the problem of pollution in watercourses had received only limited and comparatively recent attention in the ECAFE region. It added that some information had been assembled by member countries in preparation for the United Nations Conference on Human Environment and that the subject "technical measures and socio-economic considerations entailed in the abatement of water pollution" had been discussed at the tenth session of the Regional Conference on Water Resources Development held at Manila from 18 to 25 September 1972.

[210] E/ECE/EP/98.

[211] E/ECE/EP/98/Rev.1 and Corr.1.

[212] *Ibid.*, p. 211.

[213] *Ibid.*, p. 301.

Governments on various points. The Committee's idea in making this recommendation was that its clauses might be reproduced in conventions concluded between the Governments of countries interested in the development of rivers forming their frontiers. The text of the recommendation is as follows:

The Committee on Electric Power,

Considering that the hydro-electric development of rivers or lakes serving as a frontier between two or more States—so-called contiguous rivers and lakes—is of increasingly great importance for the development of European electrical resources and for the satisfaction of the requirements of the European economy,

But that this development raises a certain number of political, legal and administrative difficulties concerning both the construction and the operation of plants,

Draws the attention of Governments to the importance of introducing into conventions regarding such development, clauses which might be drafted as follows:

Where two or more neighbouring States participate in the construction of works, such works shall be treated by the States concerned in the same way as if construction were taking place on their own territory, irrespective of the site chosen.

The two States agree that supplies of equipment and materials and the various services required for carrying out the harnessing shall not be charged import duties (customs duty etc.) irrespective of the site on which any of such supplies and services are actually used.

Similarly any taxes levied on exports in either of the two States shall not be levied by that State, irrespective of the site on which any such supplies and services are actually used.

Should special taxation be imposed in either of the two States, for instance in the form of a capital levy, the necessary measures shall be taken to grant adequate compensation to the other State for any damage sustained by it or by the natural or juridical persons under its jurisdiction.

The two States, each in so far as it is concerned, shall grant residence, working, entry, exit and any other similar permits required by persons needed by the concessionnaires for the construction of the works.

Recommends

1. With regard to construction:

(*a*) that the best site should be selected after an examination of the locality by a joint commission composed of representatives of the two countries concerned, on the basis of technical considerations irrespective of the position of the frontier; this commission might also be entrusted with supervision of the fair and rational apportionment of supplies and services between the two countries;

(*b*) that in the event of a country setting up several joint commissions with another country, that country's representatives on these various commissions should consist, in part, of the same individuals;

2. With regard to operation:

(*a*) that power allocated to one of the two States and produced on the territory of the other should be exempted by the latter from all taxation, dues and legal restrictions of any kind, so that it may be freely transmitted to the former State, and be subject to the same conditions, in every respect, as power produced on its own territory;

(*b*) that the power allocated to each of the two States should be exportable to the other State in accordance with the legal provisions governing the export of electric power in force in the State entitled to that power;

(*c*) that if either State is unable to utilize the power allocated to it on its own territory, it should do nothing to prevent the power thus available from being exported to the territory of the other State;

(*d*) that the same facilities should be accorded to personnel operating the works as were laid down for the construction period;

3. More generally, with regard to the legal position of the common concessionnaire:

(*a*) that taxes and dues on companies should be levied in accordance with the fiscal agreements and conventions on double taxation concluded between the countries concerned, but that taxes and dues on dividends should not include charges which would result in differentiation between the sums finally received by the shareholders;

(*b*) that fiscal agreements or conventions on double taxation, where these do not already exist, should be concluded between the countries concerned;

(*c*) that each of the two States should undertake to provide the joint concessionary undertaking, upon request, with the necessary currency transfer facilities, both during the construction period, and for the operating requirements of the works;

(*d*) that the above provisions regarding currency exchange regulations should be included in an agreement to be concluded between the two States for the payment of wages; such agreement should also make provision for the transfer by workers belonging to the other riparian State of their wages and allowances to their country of origin.[214]

(ii) *Recommendation No. 4 submitted to Governments by the Committee on Electric Power with a view to promoting the hydro-electric development of successive rivers in Europe (adopted by the Committee on 26 May 1954)*

343. At its eleventh session in 1954, the Committee on Electric Power adopted the text of recommendation No. 4 which reads as follows:

The Committee on Electric Power,

...

Being of opinion that the hydro-electric development of rivers that flow through the territory of a number of States in turn and in so doing cross their frontiers—the so-called successive rivers—is becoming of increasing importance for the development of Europe's electric power resources and the satisfaction of the European economy's requirements,

but that such development, in most cases, raises a number of political, legal and administrative difficulties relating both to the building and the operation of plants;

Considering that, in order to facilitate the conclusion between States of agreements concerning the development and utilization of such rivers, it would be better to look for possible means of overcoming the difficulties which arise in this connexion, rather than contemplate the conclusion of a general convention or even prejudge at this juncture the possibility of making recommendations on the problem as a whole;

Considering it essential for this purpose to adopt a procedure in keeping with accepted standards of international courtesy and in the interests of the harmonious hydro-electric development of successive rivers in Europe;

...

Recommends that a State proposing to embark within its own territory on projects likely to have serious repercussions on the territory of other States, whether upstream or downstream, should first communicate to the States concerned such information as would enlighten them as to the nature of those repercussions;

Recommends that, in the event of objections being raised by the States concerned following such prior notification, the State proposing to embark on the projects should endeavour, by negotiations with those States, to reach an agreement such as will ensure the most economic development of the river system.[215]

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[214] *Ibid.*, p. 305. The text of the recommendation was also circulated as document E/ECE/EP/117.

[215] E/ECE/EP/147.

(b) *Recommendations concerning the protection of international rivers*[216]

344. According to a letter of 12 February 1973 received from the Executive Secretary of ECE

The activity of the Committee on Water Problems is concentrated on problems concerning the rational development of water resources and their protection against aspects of these problems; special studies directly relating to the law of uses of international watercourses have not been undertaken and they are not foreseen in the long-term programme of work of the Committee, covering the period up to 1977. The legal aspects concerning the protection of water resources against different kinds and sources of pollution (which were considered by the Committee, by its subsidiary organs and by a seminar sponsored by the Committee) comprised provisions for the direct protection of water bodies (for example, standards defining the maximum permissible concentration of pollutants in waste waters, classification of watercourses by quality standards, obligation to install treatment plants, etc.), as well as legislation stimulating and providing guidance for better water pollution control. Although these aspects were discussed at the international level, they concerned solutions, experiences and shortcomings in this field on the national scale and no results, in the sense of agreements on the unification of basic legal questions with respect to the protection of international water bodies, can be noted. Several recommendations, which were transmitted to all ECE Governments for implementation, may be considered as a first and essential step towards the creation of better conditions for further and more concrete activities such as the unification of relevant provisions or standards, bilateral and multilateral agreements or conventions in the field of the use and protection of international water bodies.

The following recommendations should be mentioned:

(i) *Recommendation to ECE Governments concerning the protection of ground and surface waters against pollution by oil and oil products, approved by the Committee on Water Problems in 1970*

345. The text of this recommendation reads as follows:

Preamble

1. With the growth of industrialization and mechanization and the rising demand for oil as a raw material for the chemical industry, the production of crude oil has greatly increased. The trend towards the replacement of solid fuel by liquid fuel as a source of energy and domestic heating, as well as the rapidly increasing needs for oil and oil products arising from the development of air, rail, road and water transport, have resulted in the storage of ever-increasing quantities of crude oil and oil products in commercial and domestic tanks and their transport over long distances by rail, road and inland water tankers, as well as in pipelines. Consequently there is a growing danger of water and soil pollution by oil on both a national and an international scale, affecting ground as well as surface waters—a danger which is causing grave concern particularly because relatively small quantities of oil may have serious water pollution effects. Attention is drawn, not only to the dangers resulting from oil-drilling, production and refining, and to the problem of industrial effluents, including those from petrochemical plants, but also to the number of spillages due to human errors of judgement, to traffic accidents and to storage tank failures, particularly at consumer level.

2. At the present time, when the need for conserving the quality of water resources has become urgent, concerted action is required in order to ensure:

(*a*) adequate administrative and legal measures aimed at prevention of accidents at the earliest possible stage of oil production, as well as during transport, storage and consumption; it is particularly important that regulations be established regarding the compulsory reporting of all accidents and failures of storage and transport facilities and that emergency plans be prepared for remedial measures in case of accidents and failures under specified conditions;

(*b*) the further development of methods and techniques for identifying and assessing oil pollution and for both routine and emergency treatment of waste water, surface waters, ground waters and soil contaminated by oil and oil products;

(*c*) co-operation between ECE Governments especially as regards joint preventive and remedial action with respect to waters in whose use they have a direct common interest, and which could take the form of multilateral agreements between the countries concerned.

Recommendations

3. On the basis of the above considerations, ECE Governments are recommended:

(*a*) to designate "protection zones" in areas needing to be preserved from pollution in view of their utilization and where the use, storage and transport of crude oil and oil products are permitted only under special conditions of safety and precaution;

(*b*) to issue, where this has not yet been done, regulations aiming at the safe storage and transport of oil and oil products, as well as at the disposal of waste oils, of effluents from oil industries and of surplus products resulting from the treatment of such effluents, in such a way that water pollution is avoided in case of human and material failure, and to ensure adequate enforcement of these regulations;

(*c*) to render compulsory the immediate reporting to the nearest appropriate public authority of all spillages of oil and oil products likely to contaminate either ground or surface waters;

(*d*) to make arrangements for the periodic inspection by appropriate bodies of oil storage and transport facilities and of pipelines;

(*e*) to set up systems which in the event of oil accidents would immediately warn water users likely to be affected;

(*f*) to organize emergency task forces which would be equipped to intervene rapidly and to circumscribe the damage caused in the case of oil accidents (particularly in protection zones);

(*g*) to establish national study groups comprising water and oil disciplines to help resolve their common technical problems; these national study groups could serve as focal points in an international network of such contacts under the auspices of the ECE for the exchange of experience and the promotion of water supplies for multiple uses;

(*h*) to take appropriate steps to intensify research into the most effective and economical methods for detecting, determining and preventing pollution as well as for neutralizing the results of water and soil contamination by oil products;

(*i*) to undertake programmes of education and publicity in order to draw attention to the economic and social effects of water contamination by crude oil and oil products and to the need for intensified water resources protection in this respect;

(*j*) to encourage co-operation from the public in reporting oil pollution;

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[216] It should be noted that in 1966 ECE, by resolution 10 (XXI), adopted, on the recommendation of a Meeting of Governmental Experts held in October 1965, a series of Principles which the Meeting had agreed upon as part of an ECE declaration of policy on water pollution control. Paragraphs 1 and 9 of the Principles read as follows:

"1. Water pollution control constitutes a fundamental governmental responsibility and calls for close international collaboration as well as the co-operation of local communities and of all uses of water. Control of water pollution forms an integral part of water resources and water utilization policies. All problems concerning the rational utilization of water resources should be viewed in relation to the special features of each drainage area.

"9. States bordering on the same surface water should reach an understanding to the effect that such water represents for them a common asset, the use of which should be based on the desire to reconcile their respective interests to the greatest possible extent. This involves more particularly concerted action in pollution control, and such States should, by means of bilateral or multilateral agreements, define their mutual relations on water pollution. These agreements should provide that States are to maintain water at a quality such that neither public health nor the basic needs of the economy are jeopardized."[a]

[a] *Official Records of the Economic and Social Council, Forty-first Session, Supplement No. 3* (E/4177), part III.

(*k*) to arrange with neighbouring countries for joint or co-ordinated action which should usefully be taken with respect to common boundary waters (ground as well as surface) in case of oil accidents and for the prevention of pollution by oil.[217]

(ii) *Recommendation to ECE Governments concerning river basin management, approved by the Committee on Water Problems in 1971*

346. The recommendation reads as follows:

Preamble

1. Rapid industrial development and intensive urbanization, together with increased standards of living throughout the last decades have resulted in every higher demands for water and an increasing deterioration of the environment in virtually all ECE countries. These growing demands, including more stringent needs for high quality water, in conjunction with the natural fluctuations and the growing pollution of the water resources, have caused water shortages to occur in more and more regions. In certain areas water has thus become a determining factor in the location of water-using industries, and a shortage of it is considered a limiting factor in economic and social development. It is accepted that only careful planning and rational management of the allocation, utilization and conservation of water resources as well as a disciplined use of water for the various legitimate purposes can assure that requirements will be met in the future and that the natural environment will be improved and preserved. However, there is a growing gap between the standard of management of water resources and available modern technology. On the basis of existing experience it appears that the improvement of water resources management may best be attained through the establishment of appropriate regional organs which operate in the framework of natural river basins, sub-basins or groups of smaller basins, as physical and administrative conditions may require in individual countries.[1] At the same time, it seems that a successful solution to all these problems would, in certain cases, demand some strengthening of national policies, programmes of development and research activities.

Recommendations to ECE Member and Participating Governments

2. It is therefore recommended that ECE Member and Participating Governments consider the establishment and/or strengthening or co-ordination of river basin management organs within their countries, taking into account the following needs to the extent that the physical conditions and administrative structures prevailing in each country permit:

(*a*) to create or strengthen the necessary legal framework and policies at the national level;

(*b*) to give water authorities at the national level the powers required efficiently to guide and co-ordinate activities carried out at the regional or river basin level;

(*c*) to establish, at both national and river basin levels, the maximum possible integration and co-ordination of all the interests concerned with water resources management;

(*d*) to define clearly the relationship between river basin organs and the authority or authorities responsible for national water management and to take note of the need for more extensive action and guidance by central governmental authorities;

(*e*) to establish close links between the management of water resources and over-all regional planning within the same river basin, with a view to facilitating the gradual integration of water management into the over-all management of the environment;

(*f*) to define the scope and powers of river basin organs so as to provide for the comprehensive management of all ground and surface water resources, including water quality control and flood protection within the context of environment, as well as the possibility of influencing user behaviour to effect economies in water use;

(*g*) to ensure that the river authorities have the staff and technical facilities needed for the proper management of water resources;

(*h*) to set up basin-wide networks for continuous monitoring of water quality and flow, making use, as far as possible, of computers for data processing and analysis;

(*i*) to require water users to bear all or part of the investment costs involved in any action taken to improve the water resources of the basin and, in addition, all or part of the operating costs of the river basin organ;

(*j*) to assess users' charges in a way that relates to the effect on the balance of water resources in each case, taking into account the various criteria such as abstractions made and the pollution caused;

(*k*) to intensify scientific research into problems arising in integrated river basin management, in particular with regard to:

the methods of long-term prognosis of future water flow;

prognosis of water consumption and water supply for various users during periods of low flow according to the degree of reliability required;

possibilities of assessing and forecasting water pollution as well as self-purification processes in river basins;

flow regulation by water storage;

optimization of integrated water systems at the planning, designing and operative stages, using computers and appropriate mathematical methods;

(*l*) to ensure adequate training, particularly for the personnel of operational agencies, in the use of computers and the application of mathematical modelling techniques;

(*m*) to co-ordinate the programmes and activities of river basin management organs with those of corresponding organs of neighbouring countries.[218]

[1] In relatively flat countries adjacent to sea coasts this concept is bound to be less significant; in such areas water management can perhaps be more efficiently organized on a regional basis, covering the relevant estuaries or coastal areas, together with the tributary rivers and land drainage.

(iii) *Recommendation to the Governments of Southern European countries concerning selected water problems, approved by the Committee on Water Problems in 1972*

347. The recommendation reads as follows:

I. Preamble

1. In the last two decades the rational development and protection of water resources have assumed very great importance in the ECE region, as a result of rapid industrial and agricultural development and urbanization.

2. Water, which was formerly abundant and cheap, is today regarded in many countries as a limited economic resource needing careful planning and management. The problems to which this situation gives rise are of particular importance for the southern European countries which participated in the Seminar on Selected Water Problems in Southern Europe. These countries have many features in common, including in particular—

(*a*) Very marked seasonal and interannual fluctuations in precipitation causing considerable variations in stream flow and in some cases floods and long periods of drought;

(*b*) Intense evapotranspiration, resulting in very heavy water consumption for irrigation, particularly in summer;

(*c*) A very marked imbalance between natural water resources and the needs of the population and of various sectors of the economy;

(*d*) Pollution of rivers and coastal waters, which is beginning to affect the environment and economic development.

3. Consequently in all the countries of this region the development of water resources creates numerous problems, viz.:

(*a*) Stream flow regulation, to safeguard economic development;

(*b*) Protection of water resources from depletion and ever-growing pollution;

[217] E/ECE/WATER/7, annex I.

[218] E/ECE/WATER/9, annex II.

(*c*) Control measures to prevent and combat erosion, flooding and other harmful events.

4. Of late years the governments of the southern European countries have made a special effort to solve these numerous problems. If various difficulties in the control and use of water are to be avoided, most of the countries must introduce long-term planning for hydrographic basins and large economic complexes, promote intensive research and teach the principles of the rational use of water resources.

II. Recommendations to the governments of Southern European countries

5. As a help in coping with these more or less specific problems and ensuring the necessary conditions for healthy economic growth, the following suggestions are recommended for consideration by the governments of the southern European countries:

(*a*) Formation (or improvement) of an effective and rational water policy closely linked to development plans for the whole country and to regional planning schemes;

(*b*) Appointment (or reinforcement) of adequate bodies for the whole country and for each river basin, to apply policies of water-quality protection, water resources management, erosion and flood control, etc.;

(*c*) Adoption of modern techniques and application of the latest techniques, experience and methods to water treatment, pollution control, resources management, etc.;

(*d*) Strengthening of international co-operation in water management, especially in the protection of quality, above all in countries sharing a river basin.[219]

C. Report of the Panel of Experts on the Legal and Institutional Aspects of International Water Resources Development

348. With a view to assisting member countries in dealing effectively with the problem of international water resources planning, the United Nations Secretariat decided in 1968 to constitute an interdisciplinary Panel of Experts on the Legal and Institutional Aspects of International Water Resources Development. The Panel was composed of economists, engineers, lawyers, public administration specialists and executives with widely varying experiences in various parts of the world.

349. Participants from the interested agencies of the United Nations system of organizations also took part in the discussion. The Panel held two sessions respectively in December 1968 and December 1969. The outcome of its deliberations is contained in a report[220] which, after reviewing the concepts most generally accepted and considerations most often emphasized by the technical experts and policy planners experienced in this field (chap. I), deals successively with the question of the choice and scope of régimes (chap. II), the question of the selection of appropriate organizational structures (chap. III), important legal and managerial considerations (chap. IV), accommodation of differences and dispute settlement (chap. V). The report also contains "Findings" which summarize the Panel's collective and independent judgement (chap. VI, A), and a series of specific proposals (chap. VI, B). A brief summary of some relevant parts of the report follows.

350. The report points out that changes in one part of a hydro-system frequently affect directly the possibilities of water exploitation in other parts of the system and that the presence and behaviour of water endangers or benefits, or both, flora and fauna and all of man's activities within the system. Awareness of this interdependence has led to the employment of the drainage basin concept as the basis for delimiting the scope of the legal régime for water resources management. The report defines the water resources of a drainage basin as comprising both the surface waters within the basin's total watershed and the underground water resources that are physically interconnected into one system of waters; wherever there is interconnexion, surface or underground, and more than one State's territory is involved, the water resources so occurring must be treated as international. According to the report, it would not be satisfactory to apply international law rules only to a portion of the internationally interconnected water resources and therefore expressions such as "international river" or "international river system" are viewed as inadequate. The report further submits that the concept of "international drainage basin" should be amplified in order to encompass atmospheric water and international frozen water resources (glaciers, continental ice-mantles and polar ice) and to take into account interaction between water, other resources, and the environment. It thus arrives at the concept of "international water resources system".

351. The report points out that in the case of an international basin or system, all activities in the territory of one State may be adversely, or beneficially, affecting activities in the territory of one or more co-basin or co-system States and that each basin State should recognize the legitimacy of the interest that its co-basin States have in the use of the waters of their international drainage basin and co-operate to maximize, or optimize the uses and the management of the system on a basin-wide, long-term basis. The report recalls in that connexion that appreciation of the need to effect integrated management of international water resources—that is hydro-systems extending to more than one State—has led to inter-State co-operation in the form of conclusion of agreements (formal or informal, bilateral or multilateral), harmonization of national laws pertaining to waters and adoption of parallel legislation.

352. The report observes that co-operation among riparian States in respect of the development of their shared water resources has in many cases led to a more efficient exploitation than would otherwise have been possible. It points out that the exchange of hydrological and other data, the establishment of an agreed régime of water allocation and regulation, co-ordinated or joint construction and operation of projects such as dams and river training works, and the sharing of costs of such undertakings have been the subject matter of numerous successful arrangements.

353. The major obstacle in institutionalizing action for international water resources development, conservation and use, the report observes, consists of reluctance to accept international collaboration and the long-range consequences of placing into motion processes over which

[219] ST/ECE/WATER/6/Add.1, p. 11.

[220] *Management of international water resources: institutional and legal aspects—Report of the Panel of Experts on the Legal and Administrative Aspects of International Water Resources Development*, Natural Resources/Water Series No. 1 (United Nations publication, Sales No. E.74.II.A.2).

the individual State does not retain sole unqualified control, especially when the potential benefits cannot be perceived readily and reliably and in cases where there is a marked disparity between the stages of development or sizes and strengths of the countries concerned. A related problem mentioned by the report is that of reconciling national development goals and planning machinery with regional international goals and new untested machinery and adjusting the national priorities and procedures to regional international priorities and procedures as influenced by the interests of neighbouring States. The degree of delegation of authority from the individual Governments to any joint or international institutions created by their initiative will vary and must reflect the will and intentions of the participating countries. The report reviews the various types of possible institutional structures, from the very simple, even irregular consultation arrangements to complex, full-time organizations with autonomous authority and describes their respective advantages and drawbacks in relation to determined international water resources tasks.

354. Finally, the report points out that, in the field of international water resources as in any other field, differences are bound to arise in the process of implementation of agreed policies and legal régimes and the operation of joint international institutions. Such disputes may oppose two or several system States or two or several organs of any institutional framework established; they may also arise between an international water resources agency and either a system State, an extra-system State, a private party or some international entity. The report reviews the various possible means of settlement from resolution at the technical level (through exchange of data and initial consultations, the establishment of technical commissions of inquiry, recourse to specialized hearing and ruling tribunals, etc.) to the traditional means of settlement of international disputes.

Chapter II

SPECIALIZED AGENCIES AND INTERNATIONAL ATOMIC ENERGY AGENCY

A. Food and Agriculture Organization of the United Nations

355. In a letter of 19 April 1973 the Food and Agriculture Organization noted that "in considering the legal control of water pollution, FAO studies have consistently stressed the interdependence of international and national (comparative) law on the one hand, and of inland water and marine pollution control on the other". The letter stressed that this integrated approach, which had been confirmed by the United Nations Conference on the Human Environment, was reflected in a number of FAO documents. The present section contains, in subsection (*a*), a brief account of one of those documents entitled "The control of marine pollution and protection of living resources of the sea: a comparative study of international controls and national legislation and administration". It reproduces, in subsection (*b*), a draft agreement on water utilization and conservation in the Lake Chad Basin, prepared in 1972 by the FAO Legal Office.

(a) *The control of marine pollution and the protection of living resources of the sea: a comparative study of international controls and national legislation and administration*[221]

356. The object of this study is to examine how uses of the sea that cause pollution, such as the disposal of wastes, the exploration and exploitation of the resources of the sea-bed and navigation, have been reconciled, at both the national and the international level, with the use of the sea as a source of food. In discussing international management, the study examines those international conventions that regulate activities causing marine pollution, the present state of customary international law on the subject and the activities of international bodies in this field.

357. Regarding the *present state of customary international law*, the study states:

> In the absence of generally approved State practice, it is necessary to examine the writings of jurists to cast some light on the state of customary international law concerning marine pollution. Most legal writers deal more with international river pollution than with marine pollution, although the questions may be analogous in some respects, especially where pollution of the coastal waters of a neighbouring State is concerned. Briefly, the theory of absolute territorial sovereignty prevailing at the beginning of the century, which holds that each State has sovereign power to do what it likes in its own territory, regardless of the results outside that territory, is now treated with disfavour. So also is the contrary view that a State may do nothing within its territory which may produce harmful effects, however slight, within the territory of another State. So far as inland water pollution is concerned, most legal writers now adopt a compromise position between these two extremes, which requires that a State should act in such a way as to avoid causing appreciable and unreasonable harm on the territory of a neighbouring State. Most also argue that this obligation extends to harm caused in the territorial waters of another State, or at least a neighbouring State. Where damage to the resources of the sea beyond the limit of national territorial jurisdiction is concerned, even though one State or many may have essential interests in those resources, the State of customary international law is less clear.[222]

(b) *Draft agreement on water utilization and conservation in the Lake Chad Basin, prepared by the FAO Legal Office.*

358. In the course of FAO technical assistance to the Lake Chad Basin Commission, the Legal Office (Legislative Branch) prepared a draft agreement on water utiliz-

[221] FIR: MP/70/R-15, presented at the 1970 FAO Technical Conference on Marine Pollution and its Effects on Living Resources and Fishing.

[222] *Ibid.*, p. 6.

ation and conservation in the Lake Chad Basin, "which is currently under review by the four Member Governments (the United Republic of Cameroon, the Republic of Chad, the Republic of Niger and the Federal Republic of Nigeria)". The text of the draft agreement reads as follows:

Preamble

The Federal Republic of Cameroon, the Republic of Chad, the Republic of Niger and the Federal Republic of Nigeria,

Being the Member States of the Convention and Statute Relating to the Development of the Chad Basin, concluded at Fort-Lamy on 22 May 1964 (hereinafter referred to as the Fort-Lamy Convention and Statute);

Recognizing the need to formulate principles of equitable water utilization, with a view to the optimum development and conservation of the water resources of the Lake Chad Basin;

Reaffirming their mutual recognition of the existing national boundaries, as declared at the First Fort-Lamy Conference on 21 December 1962, and as solemnly resolved by the Organization of African Unity on 24 July 1964;

Have agreed as follows:

Article I

The Member States undertake to observe the provisions of the present Agreement on Water Utilization and Conservation in the Lake Chad Basin, including its Technical Annex attached hereto, and to take appropriate measures for the effective implementation of these provisions.

Article II

For the purpose of this Agreement, the Lake Chad Basin (hereinafter referred to as the Basin) shall comprise that part of the territory of the Member States which is situated within the hydrological drainage area of Lake Chad, as delineated by the Lake Chad Basin Commission (hereinafter referred to as the Commission) in Technical Annex No. 1 attached hereto.

Article III

(1) This Agreement shall apply to the abstraction, diversion or other utilization of surface water in the Basin.

(2) This Agreement shall not apply to the utilization of ground water or atmospheric water resources by any Member State, unless in the view of the majority of the Commission such utilization is likely to have a serious harmful effect on water utilization in one or more other Member States.

(3) This Agreement shall not apply to the abstraction or diversion of water below the applicable "minimum rates" as determined by the Commission in Technical Annex No. 2 attached hereto.

Article IV

Each Member State shall, with regard to schemes or projects for water utilization in its territory, take every reasonable measure to ensure the conservation of the water resources of the Basin; to maintain their natural flow and quality; to prevent their misuse, waste or pollution; and to plan and implement such schemes or projects in a manner conducive to the integrated development of the Basin, in conformity with the present Agreement and with the Fort-Lamy Convention and Statute.

Article V

(1) Each Member State shall be entitled, within its territory, to a reasonable and equitable share in the beneficial utilization of the water resources of the Basin.

(2) At the request of any Member State, the Commission may determine what constitutes a reasonable and equitable share, taking into account all relevant hydrological, ecological, economic and social circumstances.

Article VI

(1) An existing reasonable utilization of water resources may continue in operation unless the Commission, after evaluating all relevant circumstances pursuant to the preceding Article, recommends that it be modified or terminated.

(2) The mere reservation of future water utilization by a Member State shall not constitute a basis for objections to present reasonable utilization by one or more other Member States.

Article VII

Each Member State shall in due course inform the Commission of all schemes or projects for water abstraction or diversion in excess of the applicable "minimum rates" as determined in Technical Annex No. 2 attached hereto, in pursuance of Article VI of the Fort-Lamy Statute and of Rule 9 of the Commission's Rules of Procedure.

Article VIII

Within the principles laid down by the present Agreement, Member States shall be free to enter into bilateral or multilateral agreements for the mutual apportionment of water resources, provided that the Commission is kept fully informed of the contents of such agreements, and provided further that the water abstractions or diversions contemplated therein do not exceed the applicable "safe maximum rates" as determined by the Commission in Technical Annex No. 3 attached hereto.

Article IX

(1) No Member State shall carry out or permit to be carried out on its territory, unilaterally or jointly with one or more States, any scheme or project for water abstraction or diversion in excess of the applicable "safe maximum rates" as determined in Technical Annex No. 3 attached hereto, unless the Commission has been consulted reasonably in advance so as to give it an opportunity for a hearing.

(2) The preceding provision shall equally apply to any scheme or project for water abstraction or diversion in excess of the applicable "minimum rates" as determined in Technical Annex No. 2 attached hereto, where such abstraction or diversion would result in utilization of the water outside the Basin.

Article X

(1) The Commission shall be empowered to set seasonal "safety levels", the measurement of which is to be determined in Technical Annex No. 4 attached hereto.

(2) When the water falls below the "safety level" so determined, the Commission may amend or suspend the applicable "safe maximum rates" or "minimum rates", or take other emegency measures as specified in Technical Annex No. 5 attached hereto.

Article XI

(1) In the course of consultations and hearings pursuant to Article IX of the present Agreement, objections may be raised by any Member State on the basis of Articles IV to VI, where in the view of the majority of the Commission the scheme or project in question is likely to have a serious harmful effect on water utilization in other Member States.

(2) Where objections have so been raised, the Member States concerned shall endeavour to reach agreement on the appropriate preventive or compensatory measures to meet such objections.

(3) Where no agreement has been reached within six months after an objection was raised, the question shall, at the request of any Member State, be referred for final settlement to the Commission of Mediation, Conciliation and Arbitration of the Organization of African Unity.

(4) While any of the above-mentioned proceedings are pending, the scheme or project in question may not be carried out.

Article XII

(1) Each Member State shall in due course inform the Commission of water-polluting immissions originating in its territory, which are likely to have a serious harmful effect on water utilization in one or more other Member States.

(2) The Commission shall be empowered to set common water pollution regulations and standards in Technical Annex No. 6 attached hereto, including requirements for Member States to report, restrict or prohibit specific water-polluting immissions.

Article XIII

(1) Where as a result of water abstraction, diversion or other utilization, including water-polluting immissions within the meaning

of the preceding Article, a Member State suffers damage which is subject to compensation under international law, the aggrieved Member State shall notify the Commission of such damage, and the Member States concerned shall endeavour to reach agreement on the appropriate measures for its evaluation, compensation and future prevention.

(2) Where damage occurs as a cumulative effect of water utilization by several Member States, these Member States shall share in the compensatory and preventive measures in proportion to their respective amounts of utilization which caused the damage.

(3) Where no agreement has been reached within six months after the Commission was notified of the damage Articles XI (3) and (4) of the present Agreement shall apply accordingly.

Article XIV

(1) The Commission shall be empowered to verify compliance with the provisions of this Agreement.

(2) At the request of the Commission, Member States shall, for the purpose of this Agreement and as specified in Technical Annexes No. 7 to 9 attached hereto:

(*a*) collect and supply the information required;

(*b*) install or permit to be installed on their territory the required measuring equipment, and protect such equipment from interference;

(*c*) permit the required inspections to be carried out on their territory, and facilitate the performance of such inspections.

(3) The Commission shall in due course communicate to Member States any information, measuring results and inspection reports obtained under the provisions of this Article.

Article XV

(1) For the purpose of this Agreement, the Commission shall set up an Expert Committee on Water Utilization and Conservation (hereinafter referred to as the Expert Committee), which shall be composed of experts of each Member State.

(2) Prior to taking action on matters within the scope of this Agreement, the Commission shall hear the Expert Committee.

(3) The Expert Committee may, upon request by the Commission or upon its own initiative, formulate recommendations to the Commission.

(4) Recommendations by the Expert Committee shall require a majority of votes, each Member State having one vote.

(5) The Expert Committee may set up Sub-Committees to deal with specific watercourses shared by two or more Member States, which shall be composed of experts from each riparian State of such water courses.

...

Article XX

(1) Any dispute concerning the interpretation or implementation of this Agreement, which cannot be settled by negotiations between the Member States concerned within six months after the negotiations began, shall at the request of any Member State be submitted to the Commission.

(2) Any such dispute, which cannot be settled by the Commission within six months after its submission, shall at the request of any Member State be referred for final settlement to the Commission of Mediation, Conciliation and Arbitration of the Organization of African Unity.[223]

...

B. World Health Organization

359. In a letter of 9 February 1973 received from WHO, it was stated that while the question of pollution in international water bodies was of great importance to this Organization, it had not so far carried out any specific study on the subject. Mention was made of a comparative survey of health legislation on the control of water pollution, published in the *International Digest of Health Legislation*.[224] This survey was based on such source material as was available, for each of the countries concerned, at the Headquarters of WHO up to the end of September 1966. It was not intended to provide an exhaustive coverage of world legislation in the field in question, but to give typical examples of the form that such legislation had taken. Thus, the pertinent legislation in the following countries was reviewed separately: Belgium, Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic of), Netherlands, New Zealand, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom and United States of America.[225]

C. World Meteorological Organization

360. In a letter of 10 January 1973, WMO indicated that it has recently launched two investigations which have a particular bearing on the problem of the pollution of international watercourses. These investigations consist of a study initiated by the WMO Commission for Hydrology on the effects of saline intrusions into the lower reaches of rivers as a result of the erection of dams and other watercourse management structures and a second study, also under the direction of the Commission for Hydrology in collaboration with WMO Regional Association VI (Europe) on the thermal pollution of waters due to effluents from energy producing installations. It is believed that both of these studies will, when completed, serve to highlight particular aspects which could have legal implications. Since these studies have only been begun very recently they are not sufficiently advanced to be of use in the preparation of the "supplementary report" at the present time.

D. International Atomic Energy Agency

REPORT ON DISPOSAL OF RADIOACTIVE WASTES INTO RIVERS, LAKES AND ESTUARIES, PREPARED BY A PANEL OF EXPERTS IN 1969

361. In a letter dated 19 November 1973, the Agency indicated that, being aware of the threat of possible pollution of fresh waters by radioactive material, it had convened in 1969, in conjunction with WHO, an *ad hoc* panel of experts which dealt with problems of preventing pollution in fresh water systems. The report of this panel was subsequently published.[226] The purpose of this report was to present, in the light of the information and experience accumulated to date, those principles and practices which, if applied to the disposal of radioactive wastes into inland surface and estuarial waters would ensure that man would not experience radiation exposures that were above the limits recommended by the International Commission on

[223] FAO/UNDP, *Survey of the water resources of the Chad Basin for development purposes—Surface water resources in the Lake Chad Basin*, Technical Report 1 (AGL:DP/RAF/66/579), appendix I, pp. 125 *et seq.*

[224] "Control of water pollution: a survey of existing legislation", *International Digest of Health Legislation*, vol. 17, No. 4 (1966), pp. 630–834.

[225] *Ibid.*, pp. 646–822.

[226] *Disposal of Radioactive Wastes into Rivers, Lakes and Estuaries: Report of a Panel of Experts sponsored by the International Atomic Energy Agency and the World Health Organization*, Safety Series No. 36 (International Atomic Energy Agency, Vienna, 1971).

Radiation Protection, and that radiation exposures were kept as far below those limits as was practicable.

362. In section I, entitled "Water supplies and wastes", the report points out that rivers are now regarded not simply as potential sources of fresh water supplies. They must accept effluents from industry and sewage treatment works, for later re-use downstream. Consequently, some rivers supply water that is used over and over again, with each use changing the water quality to a greater or less extent but generally to the disadvantage of subsequent users. The report quotes the following definition of a polluted river:

> A river is considered polluted when the water in it is altered in composition or condition directly or indirectly as a result of the activities of man so that it is less suitable for any or all of the purposes for which it would be suitable in its natural state.[227]

"Prevention of pollution", the report further states, is equated with "maintenance of quality". The efficient use of water resources therefore demands not only attention to the conservation of their quantity but also to the prevention of their pollution. In the same section, the report deals with the *contamination of waters by wastes*; it indicates that in dealing with radioactive wastes, the aim is to ensure that the amount of radioactive material released into the environment can be absorbed with safety, without risk of damage to man or to the environment.

363. In section V, entitled "Radioactive waste management policy", the report refers to organizational principles at the national level. It points out that in almost every country Governments have recognized the need to exert regulatory control over matters relating to nuclear energy, including the disposal of radioactive wastes. The precise method of effecting this control has varied widely, but by examining the various arrangements it is possible to identify certain important principles and procedures which have particular reference to radioactive waste management.

> Of fundamental importance is the designation by the appropriate organ of government of an authority competent to regulate matters relating to nuclear energy.... The powers invested in the competent authority will permit it to make regulations concerning the possession, use and disposal of radioactive materials; and to specify quantities of radioactive materials which are exempt from the regulations. They should also permit the authority to issue licences for specific operations and to attach appropriate conditions to those licences.

The same section of the report further envisages the question of an international collaboration in this field. In that connexion, the report suggests that one mode by which such collaboration might be achieved

> could be the establishment of an international convention which, by specification of water quality criteria, would control the quantities of radioactive materials passing from one country to another.... A more useful arrangement, better able to deal with changing circumstances, would be to make use of already existing organizations, established perhaps for other purposes; or to establish by international agreement an organization specifically for the purpose. In both cases means would have to be found of investing the organizations with powers of the type specified for national competent authorities.[228]

[227] *Ibid.*, p. 1, foot-note 1.

[228] *Ibid.*, pp. 34–38.

Chapter III

OTHER INTERGOVERNMENTAL ORGANIZATIONS

A. Regional organizations

1. Asian–African Legal Consultative Committee

Draft propositions on the law of international rivers, formulated in 1973 by a Sub-Committee

364. The Asian–African Legal Consultative Committee began preliminary discussion on the subject of the law of international rivers at its ninth session held in New Delhi in December 1967. At that session, the delegate of Iraq suggested two items for the consideration of the Committee: (*a*) definition of the term "international rivers" and (*b*) formulation of suitable rules relating to utilization of waters of international rivers by the States concerned for agricultural, industrial and other purposes apart from navigation. At the same session, the delegate of Pakistan suggested that the Committee should consider the uses of waters of international rivers, more particularly the rights of lower riparians. He also posed a fundamental question, namely how far the rules developed and practised by the European nations were applicable to the situations arising in the Asian–African region. At the tenth session held in Karachi in January 1969, the Committee decided to appoint a Sub-Committee to prepare draft articles on the law of international rivers, "particularly in the light of the experience of the countries of Asia and Africa and reflecting the high moral and juristic concepts inherent in their own civilizations and legal systems", for consideration at the Committee's eleventh session.[229]

365. The Sub-Committee, which met at New Delhi in December 1969, had before it a set of draft articles on the law of international rivers proposed by Pakistan, and a set of draft principles presented by Iraq.[230] The Sub-Committee was unable to conclude its discussion and referred the matter back to the Committee for consideration at its eleventh session.

366. At the eleventh session of the Committee, held at Accra in January 1970, the delegations of Pakistan and Iraq jointly proposed a new set of "draft articles on the law of international rivers", combining the elements of the drafts they had submitted to the Sub-Committee.[231]

[229] Asian-African Legal Consultative Committee, *Report of the Tenth Session held in Karachi* (21–30 January 1969) (New Delhi), pp. 31–39. See also *Yearbook ... 1969*, vol. II, p. 195, document A/CN.4/212, annex IV, resolution X(6).

[230] *Idem.*, *Report of the Eleventh Session held in Accra* (19–29 January 1970) (New Delhi), pp. 192–207.

[231] *Ibid.*, pp. 241–243.

The delegation of India introduced a proposal to the effect that the first eight articles of the "Helsinki Rules", adopted by the International Law Association in 1966, should be used as the basis of the Committee's study of this subject. The Committee did not decide which proposal should be taken as the basis of discussion. It decided, however, to circulate both proposals to the Governments of participating countries and to invite their comments.

367. At the twelfth session, held at Colombo in January 1971, the Committee appointed a new Sub-Committee, which requested its Rapporteur to study the subject with a view to preparing a set of draft articles amalgamating, as far as possible, the propositions contained in the joint draft articles submitted by Pakistan and Iraq and in the Helsinki Rules. The Rapporteur submitted a set of "draft propositions on the law of international rivers", which was considered by the Sub-Committee at two sessions held in 1971.[232,233] The Sub-Committee was unable to reach complete agreement on the draft propositions and therefore recommended further discussion at the Committee's thirteenth session, which was held at Lagos in January 1972. At that session, the Committee established a Standing Sub-Committee with a view to giving further consideration to the draft propositions in question.[234] At the fourteenth session of the Committee, held in New Delhi, the Sub-Committee considered a set of revised draft propositions submitted by the Rapporteur. It recommended to the plenary to consider the Sub-Committee's report at an opportune time in a future session.[235] The revised draft propositions read as follows:

Proposition I

The general rules set forth in these propositions are applicable to the use of waters of an international drainage basin except as may be provided otherwise by convention, agreement or binding custom among the basin states.

Proposition II

1. An international drainage basin is a geographical area extending over two or more states determined by the watershed limits of the system of waters, including surface and underground waters, flowing into a common terminus.

2. A "basin State" is a State the territory of which includes a portion of an international drainage basin.

Proposition III

1. Each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin.

2. What is a reasonable and equitable share is to be determined by the interested basin States by considering all the relevant factors in each particular case.

3. Relevant factors which are to be considered include in particular:

(*a*) the economic and social needs of each basin State, and the comparative costs of alternative means of satisfying such needs;

(*b*) the degree to which the needs of a basin State may be satisfied without causing substantial injury to a co-basin State;

(*c*) the past and existing utilization of the waters;

(*d*) the population dependent on the waters of the basin in each basin State;

(*e*) the availability of other water resources;

(*f*) the avoidance of unnecessary waste in the utilization of waters of the basin;

(*g*) the practicability of compensation to one or more of the co-basin States as a means of adjusting conflicts among uses;

(*h*) the geography of the basin;

(*i*) the hydrology of the basin;

(*j*) the climate affecting the basin.

Proposition IV

1. Every basin State shall act in good faith in the exercise of its rights on the waters of an international drainage basin in accordance with the principles governing good neighbourly relations.

2. A basin State may not therefore undertake works or utilizations of the waters of an international drainage basin which would cause substantial damage to another basin State unless such works or utilizations are approved by the States likely to be adversely affected by them or are otherwise authorized by a decision of a competent international court or arbitral commission.

Proposition V

In determining preferences among competing uses by different co-basin States of the waters of an international drainage basin, special weight should be given to uses which are the basis of life, such as the consumptive uses.

Proposition VI

A basin State may not be denied the present reasonable use of the waters of an international drainage basin to reserve for a co-basin State a future use of such waters.

Proposition VII

1. An existing reasonable use may continue in operation unless the factors justifying its continuance are outweighed by other factors leading to the conclusion that it might be modified or terminated so as to accommodate a competing *but more important* incompatible use.

2. (a) A use that is in fact operational is deemed to have been an existing use from the time of the initiation of construction directly related to the use or, where such construction is not required, the undertaking of comparable acts of actual implementation.

(b) Such a use continues to be an existing use until such time as it is discontinued with the intention that it be abandoned.

3. A use will not be deemed an existing use if at the time of becoming operational it is incompatible with an already existing reasonable use.

Proposition VIII

1. Consistent with the principle of equitable utilization of the waters of an international drainage basin a State must prevent any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial damage in the territory of a co-basin State, regardless, of whether or not such pollution originates within the territory of the State.

2. Water pollution, as used in this proposition, refers to any detrimental change resulting from human conduct in the natural composition, content or quality of the waters of an international drainage basin.

Proposition IX

Any act or omission on the part of a basin State in violation of the foregoing rules may give rise to state responsibility under international law. The State responsible shall be required to cease the wrongful conduct and compensate the injured co-basin State for the injury that has been caused to it, unless such injury is confined to a minor inconvenience compatible with good neighbourly relations.

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[232] See Asian-African Legal Consultative Committee, *Report of the Twelfth Session held in Colombo* (18–27 January 1971) (New Delhi), pp. 23–60.

[233] See *Yearbook . . . 1972*, vol. II, p. 217, document A/CN.4/262, paras. 16–18.

[234] Asian-African Legal Consultative Committee, *Report of the Thirteenth Session held in Lagos* (19–25 January 1972) (New Delhi), pp. 74–78.

[235] The question of the law of international rivers was not included on the agenda of the fifteenth session of the Asian-African Legal Consultative Committee, held in 1974.

Proposition X

A State which proposes a change of the previously existing uses of the waters of an international drainage basin that might seriously affect utilization of the waters by another co-basin State, must first consult with the other interested co-basin States. In case agreement is not reached through such consultation, the States concerned should seek the advice of a technical expert or commission. If this does not lead to agreement, resort should be had to the other peaceful methods provided for in Article 33 of the United Nations Charter, and in particular, to international arbitration and adjudication.[236]

2. Council of Europe

(a) *Report on fresh water pollution control in Europe, submitted to the Consultative Assembly in 1965*

368. In January 1963, the Consultative Assembly of the Council of Europe instructed its Cultural and Scientific Committee to investigate the question of fresh water pollution in Europe. A joint Working Party on Fresh Water Pollution Control was set up, composed of the Rapporteur of the Commission on Agriculture, the Rapporteur of the Social Committee and the Rapporteur of the Cultural and Scientific Committee. A comprehensive report on this question was prepared[237] and submitted to the Consultative Assembly on 1 October 1965.

369. This report, which explores possibilities for effective co-operation between member countries of the Council of Europe, is divided into three parts: part I presents the problem and, in an attempt to bring out the full extent of its gravity and complexity, covers its scientific, technical and economic aspects in the context of an industrial society. Part II describes national and international action to control water pollution, with special reference to the legal and administrative aspects. The activities of international organizations concerned with the problem are also discussed, as well as those of international pollution control commissions set up on a bilateral or multilateral basis. Part III contains what may be called the "doctrine" of fresh water pollution. In conclusion, the report proposes that the Council of Europe should take action on three fronts: propagation of ideas; improvement of the laws and administrative regulations necessary for waging a successful campaign against pollution; and science and technology, with special reference to work carried out within the framework of international organizations.

370. In its section devoted to the control of water pollution at international level, the report deals with the legal basis of such control. It raises the question whether there are any rules in international law which could be applied by analogy to international water pollution control. To reply to this question, the report deems it necessary to determine the starting points from which such rules might be drawn up. It indicates that the sources of international law which can be drawn on for this purpose are the following: conventions dealing with the utilization of watercourses common to two or more States; international customary laws; the general principles of international law; doctrine and jurisprudence in this field; recommendations adopted by the international organizations. Among those sources the report examines international doctrine, jurisprudence, legal associations and international conventions; the relevant paragraphs are reproduced below:

International doctrine

Most specialists who have studied the problem of the responsibility of a State in regard to the damage caused outside its territory conclude that international law does not allow any State to use its water in such a way as to cause substantial damage to a neighbouring country. Amongst the theories and principles most frequently quoted in support of this conclusion are the Roman Law maxim *sic utere tuo ut alienum non laedas* (a principle which has been widely recognised in the parallel field of radio broadcasting where jamming of certain types of broadcasts might be considered as a form of international "pollution"); the theory of the abuse of rights; and principle of neighbourship. Recently two other theories have been put forward: the "principle of coherence" according to which a drainage basin constitutes an indivisible unit from both the physical and the legal points of view, and the principle of peaceful co-existence.

Contrary to the above conclusions, according to the Harmon doctrine, which was propounded in 1895 in the United States and is still defended today by a number of American lawyers, a State has an absolute right over its own water so that, unless there is any Convention to the contrary, it is under no obligation to prevent the pollution of water which enters the territory of a neighbouring State.

This view seems indefensible, particularly at a time when all industrialised States are drawing up laws designed to combat pollution within their own territories.

Jurisprudence

No case in this field has yet been the subject of a judicial decision. Two judgements in parallel matters, however, contain points which confirm the opinion that in international water pollution the injured States may take action against the State on whose territory the pollution originates.

In the Trail Smelter Arbitral Decision (1941)[238] concerning air pollution caused within the territory of the United States by a foundry on Canadian territory, the tribunal concluded that:

> "Under the principle of international law as well as the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the property or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence" (33, *American Journal of International Law 182* (1941)).

In the Lake Lanoux case,[239] concerning a dispute between France and Spain over the utilisation of the water from the lake, the tribunal to which the case was submitted pointed out (1957) that Spain's claims would have been upheld if the water returned to the lake by France after use had been of such a chemical composition, temperature or other quality as to damage Spanish interests.

Legal Associations

At international level several organisations and associations deal with the problem of international water pollution. Two institutions in particular have considered the legal aspects of this problem. The first of these is the Institute of International Law, which as far back as 1911 adopted a resolution containing the rule that "any contamination of water, by means of the discharge therein of injurious matter, is forbidden". The second is the International Law Association, which since 1956 has been working to draw up—*de lege ferenda*—a code dealing with the responsibility of States for damage caused by international water pollution, and with enforcement measures which can be implemented to prevent it. One finds, on examining the reports and docu-

[236] For the text of the draft propositions and the Rapporteur's commentary, see Asian-African Legal Consultative Committee, *Report of the Fourteenth Session held at New Delhi* (10–18 January 1973) (New Delhi), pp. 7–14.

[237] Consultative Assembly of the Council of Europe, report on fresh water pollution control in Europe (Doc. 1965).

[238] United Nations, *Reports of International Arbitral Awards*, vol. III (United Nations publication, Sales No. 1949. V.2), p. 1905.

[239] *Ibid.*, vol. XII (United Nations publication, Sales No. 63.V.3), p. 281.

ments of these two institutions, that none of their members defends the principle of absolute territorial sovereignty whereby a State would be presumed to have an absolute right over the water which flows from its territory into that of another State.

At its Dubrovnik Conference in 1956 the International Law Association adopted a declaration of agreed principles of international law on the utilisation of international rivers.[240] Point VII reads:

> "Preventable pollution of water in one State, which does substantial injury to another State, renders the former State responsible for the damage done" (The International Law Association; Report of the 47th Conference, Dubrovnik 1956).

Meeting in 1958 at New York the International Law Association recommended that

> "Co-riparians should take immediate action to prevent further pollution and should study and put into effect all practical means of reducing to a less harmful degree present uses which lead to pollution",

thus recognizing the principle that a riparian is under a duty not to increase the level of pollution of a system of

> "international waters to the detriment of a co-riparian" (The International Law Association; Report of the 48th Conference, New York 1958).[241]

International Conventions

The last sources of international law in this field which remain to be considered are the international conventions concluded on the use of international watercourses, and more particularly, those containing provisions concerning pollution.

It has become apparent from research recently carried out that since 1860, i.e. since industrialization began, about forty conventions have been concluded in Europe with the direct or indirect aim of protecting international watercourses from pollution.

Amongst these conventions the first ten or so to be concluded dealt almost exclusively with measures to combat pollution in order to protect fishing interests. Next came a series of conventions, most of them dating from the 1920s onwards, concerning the use of international watercourses for various purposes; the pollution menace had already apparently become sufficiently serious for clauses on water pollution to be included in conventions. Finally, some bilateral and multilateral conventions, all of them concluded after the Second World War, set up international commissions to prevent water pollution. The comparative study of legislation existing at national and international level on water pollution—a task which has in fact been entrusted to the Secretariats of the United Nations Economic Commission for Europe and FAO—might bring to light certain factors common to these conventions. These, in turn, might provide a basis for establishing rules on the pollution of international watercourses.

In view of the foregoing it would clearly be dangerous to assert that there are in international law any precise and concrete rules as to the rights and obligations of States in regard to international water pollution. The most one can do is to note the existence of the principle that a State must not allow international water passing through its territory to be used without proper regard for the legitimate interests of neighbouring States.[242]

371. In part III, entitled "Components of a programme of action for pollution control", the report stresses the necessity for a water policy, which would consist of making surveys and compiling records of water resources and rationalizing their allocation and distribution. It discusses principles closely linked with the water pollution problem and submits in particular that "water is *res communis*". In that connexion, the report affirms that

> it is becoming increasingly difficult to accept the proposition that anyone is entitled to appropriate water for any purpose he thinks fit. Legally speaking, water is *res communis*. The law has so far been based on the assumption that supplies of water were inexhaustible. Consequently, legislation is usually fragmentary, unless it has been passed very recently, but in that case there has not been time to appreciate its effects. It must now be realized that the increasing scarcity of fresh water makes a new code a matter of urgency, bearing in mind that water is essential to life. The use made of it, and the methods by which it is treated, should henceforth be in conformity with the public interest, and this can be judged only by society.[243]

(b) *Recommendation 436 (1965) on Fresh Water Pollution Control in Europe*

372. On the basis of the report mentioned above, the Assembly adopted Recommendation 436 (1965) inviting member Governments of the Council of Europe to take joint action to control fresh water pollution. The recommendation contains "Guiding principles applicable to fresh water pollution control", which are also intended to "apply, *mutatis mutandis*, to deltaic and coastal water so long as special principles governing such water have not been formulated". It also contains, as an appendix, an "Outline of a Water Charter". The text of this recommendation contains the following provisions:

The Assembly

I

Adopts the following "Guiding principles on fresh water pollution control":

GUIDING PRINCIPLES APPLICABLE TO FRESH WATER POLLUTION CONTROL

Preamble

1. (*a*) Control of water pollution forms an integral part of water resource and water utilization policies;

(*b*) All problems concerning the rational utilization of water resources should be viewed in relation to the special features of each drainage area;

(*c*) Water pollution control constitutes a fundamental governmental responsibility and requires systematic international collaboration;

(*d*) It also requires the co-operation of the local communities and of all users of water.

2. The purpose of water pollution control is to preserve, to the maximum extent possible, the natural qualities of surface and underground waters in order to safeguard public health and to permit their use, in particular, for:

the production at a reasonable cost of drinking water of good quality;

the conservation of acquatic and other fauna and flora;

the production of water for industrial purposes, after such economically justified treatment as may be necessary;

irrigation and animal consumption;

recreational purposes, with due regard for health and aesthetic requirements.

3. Control of water being a governmental responsibility, Governments should adopt a long-term policy directed towards reduction of existing water pollution and its prevention in the future. To this end, all appropriate legal and administrative measures should be taken to implement, in particular, the principles laid down hereafter.

4. International co-operation in the field of water pollution control, in particular with regard to research, training of experts and exchange of information, should be strengthened with the help of the various international organizations concerned.

Part I. National aspects

5. Water pollution control requires the establishment of administrative agencies which might take the form of:

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[240] See p. 203 above, document A/5409, para. 1080.

[241] See p. 204 above, *ibid.*, para. 1082.

[242] Consultative Assembly of the Council of Europe, *op. cit.*, part II, chap. 2, pollution control in Europe (Doc. 1965).

[243] *Ibid.*, part III, chap. 1.

(*a*) a central body responsible to the Minister in charge or to the Head of Government, and vested with such administrative powers as are necessary to enforce the application of water pollution control legislation;

(*b*) in each draining area a body responsible for enforcing the application of regulations and for the adoption of water pollution control measures;

(*c*) joint advisory committees consisting of representatives of the public authorities, representatives of users, and independent experts to assist and advise the above-mentioned bodies;

6. Any discharge or deposit of waste directly or indirectly endangering human life should be forbidden.

7. Both for surface and for ground waters regulations should be established prohibiting the discharge or deposit, without prior administrative authorization, of any substance of a kind which pollutes such waters.

8. Applications for authorization to discharge such substances should be considered in the light of the following factors:

(*a*) the capacity of the receiving water to assimilate the materials to be discharged, taking into account the physical, chemical, biological, microbiological and radioactive characteristics of these materials;

(*b*) the evaluation of the economic, social and cultural advantages and disadvantages of possible methods of treatment and evacuation.

9. It is essential that legislation on water pollution control should be strictly applied and that, in case of violation, sufficiently severe administrative or penal sanctions should be imposed.

10. The construction of plants for treatment of refuse and of installations for the purification of municipal sewage and industrial effluents should be encouraged by the most appropriate means, such as non-discriminatory subsidies, low interest loans, tax advantages, government guaranteed loan issues, etc.

Part II. International aspects

11. States whose territories are separated or crossed by the same water course should reach agreement on the following points:

(*a*) whether up-stream countries are required to maintain surface waters which flow into down-stream countries at a quality equal to that maintained in waters which remain within their territory; and whether down-stream countries shall have the right to require that these waters be of such quality;

(*b*) whether down-stream countries benefiting from exceptional efforts of purification made by up-stream countries are liable on that account to make financial compensations therefor;

(*c*) whether any riparian country is responsible for substantial injuries which water pollution in its territory might cause to a co-riparian country and whether it is liable to indemnify the country suffering such injuries.

12. A special body for water pollution control should be set up for each international drainage area. In defining the tasks of such a body and in determining its administrative structure, account should be taken of the principles formulated in the report of the Assembly (Doc. 1965).

II

Recommends the Committee of Ministers to urge Member Governments, in pursuance of Article 15 (*b*) of the Statute, to take joint action to control fresh water pollution and to this end:

1. to adopt as a basis for their policy in this field the above "Guiding principles on fresh water pollution control";

2. to provide for the training of qualified staff:

...

3. to promote scientific and technical research:

...

4. to promote the centralising and distribution of documentation:

...

5. to take steps to strengthen and continue the international co-operation in water pollution control begun by existing international organisations;

6. to ensure that delegations to the Group of Experts set up by the United Nations Economic Commission for Europe "to study the possibility of drafting a declaration of principles on water pollution control, setting forth the fundamental concepts which should be observed when planning and carrying out legislative and administrative water pollution control measures which would be submitted to Governments of Member countries of ECE"[244] are acquainted with this Recommendation and in particular with the "Guiding Principles" enunciated therein so that they may be guided by them in their future work.

III

Recommends that the Committee of Ministers give instructions to the:

1. *Committee of Experts for the Conservation of Nature and Landscape:*

(*a*) to intensify its programme of research into the ecological problems of pollution and to take action to protect the more seriously threatened biotopes;

(*b*) to draft a final text of a "Water Charter" based on the Report of the Assembly (see the outline of a "Water Charter" in the Appendix);

(*c*) to prepare publicity materials, including audiovisual materials, and see that they are distributed;

(*d*) to formulate and propose action to remedy instances of pollution damaging to wild flora and fauna and endangering natural preserves, national parks, humid zones, etc.;

(*e*) to propose that certain regions threatened by pollution should be set aside as preserves;

(*f*) to draw up a curriculum for study of the conservation of man's natural environment in co-operation with the Council for Cultural Co-operation;

2. *The Council for Cultural Co-operation:*

to seek, in collaboration with the Committee of Experts for the Conservation of Nature and Landscape, means to incorporate the study of the conservation of natural environment into all school curricula;

...[245]

(c) *European Water Charter, 1967*

373. Pursuant to the above-mentioned recommendation, the Committee of Ministers of the Council of Europe instructed the European Committee for the Conservation of Nature and Natural Resources to prepare a draft "Water Charter". The text of the Water Charter, which was adopted by the Consultative Assembly on 28 April 1967 (Recommendation 493 (1967)) and by the Committee of Ministers on 26 May 1967 (Resolution (67) 10),[246] reads as follows:

Preamble

The Committee of Ministers,

Having regard to Recommendation 436 (1965) of the Consultative Assembly on Fresh Water Pollution Control in Europe;

Bearing in mind resolution 10 (XXI) (1965) of the United Nations Economic Commission for Europe containing the ECE declaration of policy on water pollution control in Europe; and also the international standards for drinking water, particularly the European standards, established by the World Health Organization;

Persuaded that the advance of modern civilization leads in certain cases to an increasing deterioration in our natural heritage;

Conscious that water holds a place of prime importance in that natural heritage;

Considering that the demand for water is increasing, largely because of the rapid development of industrialization in the main urban centres

[244] See above, foot-note 217.

[245] Consultative Assembly of the Council of Europe, *op. cit.*, part III, recommendation 436.

[246] The European Water Charter was proclaimed in Strasbourg on 6 May 1968.

of Europe, and that steps must be taken for the qualitative and quantitative conservation of water resources;

Considering, furthermore, that collective action on a European scale on water problems is necessary and that a Water Charter constitutes an effective instrument for creating a better understanding of these problems;

Adopts and proclaims the principles of this Charter, prepared by the European Committee for the Conservation of Nature and Natural Resources of the Council of Europe, which reads as follows:

I. *There is no life without water. It is a treasure indispensable to all human activity*

Water falls from the atmosphere to the earth mainly in the form of rain and snow. Streams, rivers, glaciers and lakes are the principal channels of drainage towards the oceans. During its cycle, water is retained by the soil, vegetation and animals. It returns to the atmosphere principally by means of evaporation and plant transpiration. Water is the first need of man, animals and plants.

Water constitutes nearly two-thirds of man's weight and about nine-tenths of that of plants.

Man depends on it for drinking, food supplies and washing, as a source of energy, as an essential material for production, as a medium for transport, and as an outlet for recreation which modern life increasingly demands.

II. *Fresh water resources are not inexhaustible. It is essential to conserve, control, and wherever possible, to increase them*

The population explosion and the rapidly expanding needs of modern industry and agriculture are making increasing demands on water resources. It will be impossible to meet these demands and to achieve rising standards of living, unless each one of us regards water as a precious commodity to be preserved and used wisely.

III. *To pollute water is to harm man and other living creatures which are dependent on water*

Water in nature is a medium containing beneficial organisms which help to keep it clean. If we pollute the water, we risk destroying those organisms, disrupting this self-purification process, and perhaps modifying the living medium unfavourably and irrevocably.

Surface and underground waters should be preserved from pollution.

Any important reduction of quantity and deterioration of quality of water, whether running or still, may do harm to man and other living creatures.

IV. *The quality of water must be maintained at levels suitable for the use to be made of it and, in particular, must meet appropriate public health standards*

These quality levels may vary according to the different uses of water, namely food supplies, domestic, agricultural and industrial needs, fisheries and recreation. Nevertheless, since all life on earth in its infinite variety depends upon the manifold qualities of water, arrangements should be made to ensure as far as possible that water retains its natural properties.

V. *When used water is returned to a common source it must not impair the further uses, both public and private, to which the common source will be put*

Pollution is a change, generally man-made, in the quality of water which makes it unusable or dangerous for human consumption, industry, agriculture, fishing, recreation, domestic animals and wildlife.

The discharge of residue (wastage) or of used water which causes physical, chemical, organic, thermal or radioactive pollution, must not endanger public health and must take into account the capacity of the receiving waters to assimilate (by dilution or self-purification) any waste matter discharged. The social and economic aspects of water-treatment methods are of great importance in this connexion.

VI. *The maintenance of an adequate vegetation cover, preferably forest land, is imperative for the conservation of water resources*

It is necessary to conserve vegetation cover, preferably forests, and wherever it has disappeared to reconstitute it as quickly as possible.

The conservation of forests is a factor of major importance for the stabilization of drainage basins and their water régime. As well as their economic value, forests provide opportunities for recreation.

VII. *Water resources must be assessed*

Fresh water that can be put to good use represents less than one per cent of the water on our planet and it is distributed in very unequal fashion.

It is essential to know surface and underground water resources, bearing in mind the water cycle, the quality of water and its utilization.

Assessment, in this context, involves the survey, recording and appraisal of water resources.

VIII. *The wise husbandry of water resources must be planned by the appropriate authorities*

Water is a precious resource requiring planning which combines short- and long-term needs.

A viable water policy is needed, which should include various measures for the conservation, flow-control and distribution of water resources. Furthermore, maintenance of quality and quantity calls for development and improvement of utilization, recycling and purification techniques.

IX. *Conservation of water calls for intensified scientific research, training of specialists and public information services*

Research with regard to water in general and waste water in particular should be encouraged in every way possible. Means of providing information should be increased and international exchanges facilitated; at the same time, the technical and biological training of qualified personnel is necessary in the various fields of activity involved.

X. *Water is a common heritage, the value of which must be recognized by all. Everyone has the duty to use water carefully and economically*

Each human being is a consumer and user of water and is therefore responsible to other users. To use water thoughtlessly is to misuse our natural heritage.

XI. *The management of water resources should be based on their natural basins rather than on political and administrative boundaries*

Surface waters flow away down the steepest slopes, converging to form watercourses. A river and its tributaries are like a many-branched tree, and they serve an area known as a watershed or drainage basin.

Within a drainage basin, all uses of surface and underground waters are interdependent and should be managed bearing in mind their interrelationship.

XII. *Water knows no frontiers; as a common resource it demands international co-operation*

International problems arising from the use of water should be settled by mutual agreement between the States concerned, to conserve the quality and quantity of water.

(d) *Draft European convention on the protection of fresh water against pollution—Recommendation 555 (1969) of the Consultative Assembly*

374. Since the adoption of recommendation 436 (1965), organs of the Consultative Assembly have continued their work in the field of fresh water pollution control. The Joint Working Party composed of Rapporteurs of different committees, which later became an *ad hoc* Sub-Committee on Fresh Water Pollution Control of the Committee on Regional Planning and Local Authorities, started its work in 1966 with a view to preparing a draft European convention on the protection of fresh water against pollution. On the recommendation of the Committee on Regional Planning and Local Authorities,[247] the Consultative

[247] Council of Europe, Consultative Assembly, Committee on Regional Planning and Local Authorities, Report on a Draft European Convention on the Protection of Fresh Water against Pollution (Doc. 2561).

Assembly, on 12 May 1969, adopted Recommendation 555 (1969), by which it recommended "that the Committee of Ministers instruct a committee of governmental experts to prepare as rapidly as possible a European convention based on the following draft":[248]

DRAFT EUROPEAN CONVENTION ON THE PROTECTION OF FRESH WATER AGAINST POLLUTION

PREAMBLE

The member states of the Council of Europe, signatory hereto;

Considering that a sufficient supply of water of good quality is of growing economic importance;

Considering that the available water resources of Europe are limited and are subjected to increasing uses and demands, because of the increase in population and industrial development and the growing volume and diversity of pollutants;

Considering that water pollution constitutes a growing danger to the health and well-being of man, his environment, his economic and social activities and to the manifold uses of water;

Considering that many European countries have introduced measures to combat water pollution within their territories and that many treaties have been concluded between such countries relating to water pollution control;

Considering that these measures have not proved sufficiently effective in combating water pollution throughout Europe;

Considering that the cost of measures introduced to combat water pollution should be distributed as fairly as possible in order not to disturb the relative competitive positions of European industries;

Considering Recommendation 555 of the Consultative Assembly;

Considering the principles with regard to water pollution control adopted by the member governments of the United Nations Economic Commission for Europe by Resolution 10 (XXI) relating to the ECE Declaration of Policy on Water Pollution Control;[249]

Considering that it is a general principle of international law that no country is entitled to exploit its natural resources in a way that may cause substantial damage in a neighbouring country;

Convinced that the problem of water pollution can be solved only with the close co-operation and co-ordination among states;

Desirous of implementing the principle of the equitable utilization of the waters of international drainage basins;

Convinced of the need to secure similar legal provisions in the various European countries relating to liability for damage resulting from water pollution;

Considering also that it is a fundamental principle of law that any person who enjoys the use of property in common with other persons must not interfere with such enjoyment by other persons and is liable to pay compensation for any damage so caused;

Conscious of the difficult, if not impossible, position of a person who now suffers damage arising from the pollution of the waters of an international drainage basin, in establishing whether persons in a foreign country have caused or contributed to such pollution, and in obtaining an effective remedy against such persons under the relevant rules of private law which require proof of fault;

Desirous, in such cases, to secure a speedy remedy, for those who suffer damage resulting from water pollution in a neighbouring country, against the state in whose territory such water pollution arises, while placing equitable limits upon the extent of such a state's liability and affording to such a state every possible means of redress against those persons whose negligence or other wrongful acts or omissions have caused or contributed to such damage,

Have agreed as follows:

Chapter I

DEFINITIONS—RELATIONS BETWEEN STATES

Article 1

For the purpose of this Convention:

(*a*) "international drainage basin" means a geographical area extending over two or more contracting states determined by the watershed limits of the system of waters, flowing into a common terminus;

(*b*) "waters" means internal waters, whether on the surface or underground;

(*c*) "water pollution" means any detrimental change directly or indirectly resulting from the activities of man in the natural composition, content or quality of the waters;

(*d*) "person" means any natural or legal person excluding a state.

Article 2

1. Contracting states shall take measures to abate any existing pollution and to prevent any new form of water pollution or any increase in the degree of existing water pollution causing or likely to cause substantial injury or damage in the territory of any other contracting state. Such measures shall be designed to preserve, to the maximum extent possible, the qualities of the waters of international drainage basins in order to safeguard public health and to permit their use, after such economically justified treatment as may be necessary, in particular for:

(*a*) the production at a reasonable cost of drinking water of good quality;

(*b*) the conservation and development of aquatic resources, including both fauna and flora;

(*c*) the production of water for industrial purposes;

(*d*) irrigation;

(*e*) use by domestic animals and wild life;

(*f*) recreational amenities, with due regard to health and aesthetic requirements.

2. Contracting states shall for the purpose of effectively implementing the provisions of paragraph 1 of this Article:

(*a*) wherever possible, agree to establish and maintain standards of quality for the waters of an international drainage basin extending over their territories;

(*b*) where appropriate in the circumstances, establish joint commissions to regulate usage of such waters;

(*c*) inform the other contracting states about standards in force under paragraph (a);

(*d*) from time to time inform and consult with other contracting states concerned, about the usages of such waters;

(*e*) adopt legislative and administrative measures to implement this Convention within their respective territories.

Chapter II

SETTLEMENT OF DISPUTES BETWEEN STATES

Article 3

In the event of any dispute between any contracting states about their rights, interests or obligations under, or the interpretation of, any of the provisions of this Convention, they shall seek a solution by negotiation.

Article 4

If the contracting states concerned shall be unable to resolve any dispute by negotiation, they shall refer such dispute for determination:

(*a*) to the appropriate joint commission, if any, in respect of the particular international drainage basin concerned; or

[248] This draft, which was attached to the recommendation of the Committee on Regional Planning and Local Authorities, was accompanied by an explanatory memorandum submitted by the Rapporteur. The memorandum gives a brief account of the problems of water pollution control in Europe. It deals with the present state of public international law in the matter. In that connexion, it raises and discusses the following questions: the relevance of international law; doctrine and State conduct; and international cases and conventions. The memorandum then introduces the draft convention and refers to specific provisions to indicate the sources from which they are derived (*ibid.*, pp. 11–40).

[249] See above, foot-note 216.

(*b*) to such international tribunal, or organization, as may be agreed upon by the contracting states concerned, or

(*c*) in the absence of a joint commission, under sub-paragraph (*a*) and failing agreement pursuant to sub-paragraph (*b*) by reference of the dispute, at the application of any one or more of the contracting states concerned, to an *ad hoc* arbitral tribunal in accordance with Article 5.

Article 5

1. The Arbitral Tribunal shall be constituted for the determination of each dispute. Each contracting state party to such a dispute (in this Article referred to as the "state party") shall appoint one member to the Tribunal. The members shall nominate as President a national of a state other than a state party who shall be appointed by the governments of the states parties. The members shall be appointed within two months and the President within three months after any state party has informed the other states parties or state party, as the case may be, of its intention to refer such a dispute to the Tribunal for determination.

2. If the time limits set out in paragraph 1 are not observed, any state party may request the President for the time being of the European Court of Human Rights to make the necessary appointments. If the President of the Court is a national of any state party, or is otherwise unable to act in accordance with this Article, the Vice-President of the Court shall make such appointments. If the Vice-President is also a national of any state party, or is otherwise unable to act as aforesaid, the next member of the Court in order of precedence who is not such a national shall make such appointments.

3. The President and each member of the Tribunal shall have one vote and the decision of the Tribunal shall be made by majority vote, and, in the event that votes are cast equally, the President shall have the casting vote. The decision of the Tribunal shall be binding upon the states parties.

4. Each state party shall pay its own expenses and an equal share of the costs of the Tribunal unless the Tribunal shall otherwise decide.

Article 6

The settlement of any dispute under the provisions of this chapter shall take into account the following considerations:

(*a*) the geography and hydrology of the particular international drainage basin;

(*b*) the usage by the contracting states concerned, of the waters of the particular international drainage basin;

(*c*) economic and social needs of the contracting states concerned;

(*d*) the avoidance of unnecessary waste in the utilisation of such waters;

(*e*) whether the payment of monetary compensation would constitute just reparation for a contracting state which has suffered or is likely to suffer damage from water pollution;

(*f*) any relevant monetary compensation or other remedy already obtained under Chapter III of this Convention;

(*g*) the cost and effectiveness of existing and alternative measures to abate or eliminate existing water pollution or to prevent future water pollution;

(*h*) the extent to which the contracting states concerned benefit or would be likely to benefit from such measures; and

(*i*) the extent to which a contracting state would be likely to benefit or suffer damage from the measures contemplated by the settlement of the dispute.

Chapter III

COMPENSATION FOR DAMAGE TO PERSONS

Article 7

1. Any person who suffers damage in any contracting state arising from water pollution in any other contracting state shall be entitled to compensation in accordance with the provisions of this chapter, provided that, where standards of water quality have been adopted under paragraph 2 (*a*) of Article 2 for the international drainage basin concerned, compensation shall be recoverable only in respect of such damage as shall be caused in contravention of such standards.

2. Any compensation obtained by a contracting state for any person in respect of such damage shall be deducted from such compensation as would otherwise be awarded to such person in respect thereof under this chapter.

3. Nothing in this Convention shall affect the right to bring any proceedings in any contracting state, whether civil or criminal, which might have been brought if this Convention had not entered into force.

Article 8

The liability for compensation contemplated by Article 7 shall attach to the contracting state in whose territory any water pollution arises whether wholly or in part (hereinafter referred to as "the responsible state").

Article 9

1. A state which would otherwise be liable under the provisions of this chapter shall not be liable if it proves that the damage was caused solely by the negligence or other wrongful act or omission by the claimant or by any other person in the territory where the damage was caused.

2. If the responsible state proves that the damage was contributed to by the negligence or other wrongful act or omission of the claimant or of any other person committed in the territory of the state where the damage was caused, the compensation shall be reduced accordingly.

Article 10

1. Notwithstanding any other provisions of this chapter, the responsible state shall be entitled to obtain such remedies as are available under its internal law against any person who has caused or contributed to water pollution by a negligence or other wrongful act or omission in the territory of such state.

2. Subject to any monetary compensation or other remedy already obtained, the responsible state shall be entitled, as against any person who has contributed to water pollution by his negligent or other wrongful act or omission committed in the territory of any contracting state (other than the state where the relevant damage was suffered), to obtain such remedies as are available under the internal law of such state.

Article 11

1. Actions under the provisions of this chapter may be brought only in the courts of the responsible state. Contracting states shall notify the Secretary General of the Council of Europe of the courts within their respective territories having jurisdiction to hear and determine actions which may be brought under the provisions of this chapter.

2. Any action under this chapter must be brought within two years from the date upon which the claimant first knew or ought to have known that he had suffered the damage the subject of such action.

Article 12

1. The responsible state shall not be entitled to invoke any jurisdictional immunity in the court competent under the provisions of this chapter.

2. Contracting states shall, as far as possible, facilitate payment of compensation in the currency of the state where damage has occurred.

...

375. Recommendation 555 (1969) on a draft European Convention on the Protection of Fresh Water against Pollution was transmitted to the Committee of Ministers, which invited the *Ad Hoc* Study Group on Water Pollution to express its opinion on this draft. In the light of this opinion, the Committee of Ministers adopted the following reply to the Consultative Assembly:

The Committee of Ministers has given careful consideration to recommendation 555 concerning a draft European convention on the protection of fresh water against pollution.

It came to the conclusion, in so doing, that concerted action in the Council of Europe on the pollution of fresh water was justified and even indispensable: the draft Convention could not, however, in its present form, provide a suitable basis for such action, for the following reasons:

(i) The Draft is almost exclusively concerned with finding a solution which would impose the liability for damages—in practice unlimited—on the States concerned, whereas the problem calls in the first place for collective preventive action to combat the root causes of pollution.

(ii) There are grave objections to the principle of State liability as laid down in the draft Convention. There is, as yet, no comparable example in international law and, moreover, the State liability proposed goes even further than the "Helsinki Rules" referred to in Doc. 2561. In fact, the legal problems raised by State liability of the kind envisaged would impair water protection rather than promote it.

(iii) The draft Convention creates an inequality between downstream States and upstream States with regard to the burdens following from water pollution, the upstream States alone bearing the consequences (especially financial) of any pollution in the majority of cases.

(iv) In addition to a certain number of other detailed criticisms of the text which might be raised, it should be pointed out that the system of arbitration provided for in the draft Convention for settling differences between States is inadequate both as to the law applicable (article 2) and as regards the composition of the Arbitral Tribunal (article 5), particularly in cases where several States are defending an identical interest before such a tribunal against a single State.

The Committee of Ministers therefore considers it necessary to look for a new basis for concerted action by member States of the Council of Europe in the control of fresh water pollution. It has accordingly taken steps to enable a legal instrument reflecting the aims set forth by the Assembly in recommendation 555 to be drawn up as speedily as possible.[250]

(e) *Draft European convention for the protection of international watercourses against pollution*

376. As a result of the above-mentioned conclusions, the Committee of Ministers instructed the Secretariat to elaborate, with the assistance of consulting experts, legal principles which could serve as a basis for drawing up an appropriate instrument in the field covered by Recommendation 555 (1969) and which could enable the Study Group on Water Conservation to prepare a final draft text. A preliminary draft convention was prepared by the Directorate of Legal Affairs of the Secretariat General.[251]

377. In 1970, the Committee of Ministers established an *Ad Hoc* Committee of Experts to prepare a European Convention on the Protection of International Fresh Waters against Pollution. The *Ad Hoc* Committee proceeded to an examination of the preliminary convention. At the second meeting of the Committee, held in Strasbourg from 5 to 8 July 1971 "a general agreement was reached on a number of important points both technical and legal".[252] At its fourth meeting, held in Strasbourg from 13 to 16 December 1972, the *Ad Hoc* Committee, which proceeded to a new examination of the preliminary draft convention, decided to set up a drafting committee to prepare a new text to be examined at the next meeting of the *Ad Hoc* Committee.[253] At its February 1974 meeting, the *Ad Hoc* Committee prepared the following draft convention:

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unit between its Members;

Considering that protection of the environment, an important factor in the conditions of human life, demands closer co-operation between governments;

Considering that water resources are threatened by increasing pollution;

Convinced of the urgent need for general and simultaneous action on the part of States and for co-operation between them with a view to protecting all water resources against pollution, especially watercourses forming part of an international hydrographic basin;

Being of the opinion that the protection of international watercourses against pollution constitutes only one important step towards the achievement of that objective and that this action must be complemented by the conclusion of conventions for the prevention of marine pollution from land-based sources, in order to ensure that the present Convention is fully effective;

Have agreed as follows:

Article 1

For the purposes of this Convention:

(*a*) "international watercourse" means any watercourse, canal or lake which separates or passes through the territories of two or more States;

(*b*) "estuary" means the part of a watercourse between the freshwater limit and the baseline of the territorial sea;

(*c*) "freshwater limit" means the place in the watercourse where, at low tide and in a period of low freshwater flow, there is an appreciable increase in salinity due to the presence of sea water;

(*d*) "water pollution" means any impairment of the composition or state of water, resulting directly or indirectly from human agency, in particular to the detriment of:

its use for human and animal consumption;

its use in industry and agriculture;

the conservation of the natural environment, particularly of aquatic flora and fauna.

Article 2

Each Contracting Party shall endeavour to take, in respect of all surface waters in its territory, all measures appropriate for the reduction of existing water pollution and for the prevention of new forms of such pollution.

Article 3

1. Each Contracting Party undertakes, with regard to international watercourses, to take:

(*a*) all measures required to prevent new forms of water pollution or any increase in the degree of existing water pollution;

(*b*) measures aiming at the gradual reduction of existing water pollution.

2. This Convention is not to lead to the replacement of existing measures by measures giving rise to increased pollution.

Article 4

1. Each Contracting Party shall take all measures appropriate for maintaining the quality of the waters of international watercourses at, or for raising it to, a level not lower than:

(*a*) the specific standards referred to in Article 15, paragraph 2; or

(*b*) in the absence of such specific standards, the minimum standards laid down in Appendix I to this Convention, subject to any derogation provided for in paragraph 2 of the present Article.

2. The minimum standards laid down in Appendix I shall be applied:

(*a*) in the case of freshwater standards, at the freshwater limit and at each point upstream from this limit where the watercourse is crossed by a frontier between States;

(*b*) in the case of brackish water standards, at the baseline of the territorial sea and at the points where the estuary is crossed by a frontier between States.

3. Derogations to the application of Appendix I at the points fixed by the previous paragraph are authorized for the watercourses

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[250] Council of Europe, Committee of Ministers, doc. CM(70) 134.

[251] *Ibid.*

[252] Consultative Assembly of the Council of Europe, Statutory Report, Communication on the activities of the Committee of Ministers, 10 May–22 September 1971, Doc. 2995, p. 49.

[253] *Id.*, Doc. 3239, p. 39.

and the parameters listed in Appendix IV to this Convention. The Contracting Parties riparian to such a watercourse shall co-operate with each other in accordance with the provisions of Article 10.

Article 5

1. The discharge into the waters of international hydrographic basins of any of the dangerous or harmful substances listed in Appendix II to this Convention shall be prohibited or restricted under the conditions provided for in that Appendix.

2. In so far as a Contracting Party cannot immediately give effect to the provisions of the preceding paragraph, it shall take steps to comply with them in a reasonable time.

Article 6

1. The provisions of Articles 3 and 4 may not be invoked against a Contracting Party to the extent that the latter is prevented, as a result of water pollution having its origin in the territory of a non-Contracting State, from ensuring their full application.

2. However, the said Contracting Party shall endeavour to co-operate with the non-Contracting State so as to make possible the full application of these provisions.

Article 7

1. Each Contracting Party shall communicate to the Secretary General of the Council of Europe every five years a written statement of the measures which it has taken to implement Articles 2 to 5 inclusive and of the results achieved.

2. The Secretary General shall notify the other Contracting Parties of the information received from each of them and shall forward such information to the Committee of Ministers of the Council of Europe.

Article 8

The Contracting Parties undertake to co-operate with each other with a view to achieving the aims of this Convention.

Article 9

The Contracting Parties riparian to an international watercourse to which the minimum standards laid down in Appendix I to this Convention are to be applied and the waters of which do not yet meet the level of these standards shall advise each other of the measures they have taken with a view to reaching, within a fixed time-limit, this level at the points fixed by Article 4, paragraph 2.

Article 10

1. The Contracting Parties situated either upstream or downstream of a point on an international watercourse at which the derogations provided for in Article 4, paragraph 3, apply shall carry out, in consultation with each other and before the end of the first year after this Convention enters into force in respect of them, an inquiry with a view to establishing the quality of the waters at this point as regards the parameters covered by the derogation.

2. The Contracting Parties riparian to such a watercourse shall jointly establish a programme designed to achieve, within a fixed time-limit, certain objectives for reducing pollution at the point referred to in the preceding paragraph. This programme may envisage various stages each reaching intermediate objectives. A comparison shall be effected between the objectives envisaged and the results obtained at the expiration of the fixed time-limits.

3. If the inquiry or the results mentioned in the preceding paragraphs show that it is no longer necessary to maintain the derogation as regards one of the parameters, the Contracting Party which requested the derogation shall notify the Secretary General of the Council of Europe of its suppression as regards that parameter.

Article 11

As soon as a sudden increase in pollution is recorded, the Contracting Parties riparian to the same watercourse shall immediately warn each other, and shall take unilaterally or jointly all measures in their power to avert injurious consequences or to limit the extent thereof, having recourse to the early warning system envisaged in Article 15, paragraph 1 (*c*), if any.

Article 12

1. The Contracting Parties whose territories the same international watercourse separates or passes through, hereinafter called "the interested Contracting Parties", undertake to enter into negotiations with each other, if one of them so requests, with a view to concluding a co-operation agreement or to adapting existing co-operation agreements to the provisions of this Convention.

2. When the interested Contracting Parties admit expressly or tacitly that the contribution of one of them to the pollution of the international watercourse can be deemed negligible, the latter Contracting Party is not bound to enter into negotiations in comformity with the preceding paragraph. Likewise, when the pollution of one section of an international watercourse by another section situated upstream on the same watercourse can be deemed negligible, the Contracting Parties riparian to one or the other of these two sections are not bound to enter into negotiations with regard to the watercourse as a whole.

Article 13

If an interested Contracting Party does not enter into negotiations within a reasonable time, any interested Contracting Party may inform the Committee of Ministers of the Council of Europe which shall then hold itself at the disposal of the interested Contracting Parties in order to find a procedure for reaching a satisfactory solution. The same shall apply if the negotiations, once begun, do not reach a positive conclusion within a reasonable time.

Article 14

1. The co-operation agreement referred to in Article 12 of this Convention shall, unless the interested Contracting Parties decide otherwise, provide for the establishment of an international commission and lay down its organization, its modes of operating and, if necessary, the rules for financing it.

2. The co-operation agreement shall, where appropriate, provide that any existing commission or commissions shall be assigned the functions provided for in Article 15.

3. Where two or more international commissions exist for the protection against pollution of the waters of the international watercourses of the same hydrographic basin, the interested Contracting Parties undertake to co-ordinate their activities in order to improve the protection of the waters of this basin.

Article 15

1. Each international commission for water protection shall have *inter alia* the following functions:

(*a*) to collect and to verify at regular intervals data concerning the quality of the water of the international watercourse;

(*b*) to propose, if necessary, that the interested Contracting Parties carry out or have carried out any additional investigation to establish the nature, degree and source of pollution; the commission may also decide to undertake certain studies itself;

(*c*) to propose to the interested Contracting Parties that an early warning system be set up for serious accidental pollution;

(*d*) to propose to the interested Contracting Parties any additional measures that it considers useful;

(*e*) to study, at the request of the interested Contracting Parties, the advisability and, if necessary, the methods of jointly financing large-scale projects concerning water pollution control;

(*f*) to propose to the interested Contracting Parties the inquiries and the programmes and objectives for reducing pollution mentioned in Article 10 concerning the international watercourses for which a derogation has been made pursuant to Article 4, paragraph 3.

2. In compliance with the general aims defined in Articles 2, 3, 4 and 5, each international commission shall, if it deems it necessary, propose to the interested Contracting Parties the assignment of the international watercourse under its authority, or one or more of its sections, to one or more of the possible uses of the watercourse. According to these uses and in conformity with the provisions of Article 17, the commission shall elaborate specific standards of water quality as well as the ways and means of applying them, and shall propose these for adoption by the interested Contracting Parties.

Article 16

1. Each interested Contracting Party shall have one vote in any international commission of which it is a member, unless the co-operation agreement provides otherwise.

2. The co-operation agreement may provide that a proposal adopted by a unanimous decision of the commission shall be binding on each member State, unless it informs the commission within a period to be fixed by the latter that it does not approve of the proposal or is unable to express an opinion thereon.

Article 17

1. The specific standards referred to in Article 15, paragraph 2 shall be adapted to the various possible uses of the international watercourse, such as:

(*a*) production of drinking water for human consumption;

(*b*) consumption by domestic and wild animals;

(*c*) conservation of wild life, both flora and fauna, and securing conditions in which they thrive, and the conservation of the self-purifying capacity of water;

(*d*) fishing;

(*e*) recreational amenities, with due regard to health and aesthetic requirements;

(*f*) the application of freshwater directly or indirectly to land for agricultural purposes;

(*g*) production of water for industrial purposes;

(*h*) the need to preserve an acceptable quality of sea water.

2. These specific standards shall be determined taking into account the quality limits for each use as set out in Appendix III to this Convention, and in particular must be at a level which ensures that the quality of the water of the watercourse or of the section thereof which has been assigned to the use is of a level at least equal to that of those quality limits in Appendix III which are of an imperative nature.

Article 18

Each interested Contracting Party undertakes to furnish to the international commissions of which it is a member the necessary facilities for the accomplishment of their tasks.

Article 19

1. Each interested Contracting Party shall take all legislative and administrative measures necessary for the implementation of the undertakings which it has accepted under co-operation agreements.

2. Such undertakings may in no case be interpreted to prevent a Contracting Party from taking, as far as it is concerned, stricter or more effective measures.

Article 20

The co-operation agreement may make provision for a procedure which, set in motion at the request of any Contracting State, would permit a satisfactory solution to be reached when:

(*a*) the international commission has not reached agreement on the adoption of a proposal;

(*b*) a Contracting State has not approved, within a reasonable time, a proposal submitted to it by the international commission of which it is a member.

Article 21

The provisions of this Convention shall not affect the rules applicable under general international law to any liability of States for damage caused by water pollution.

Article 22

1. Any dispute between Contracting Parties concerning the interpretation or application of this Convention or of a co-operation agreement referred to in Articles 12 to 20 thereof, including an act made in execution of such an agreement and binding upon the Parties, shall, if it has not been possible to settle it through negotiations between the parties to the dispute and unless these parties decide otherwise, be submitted, on the application of one of them, to arbitration as provided for in Appendix A to this Convention.

2. The provisions of the preceding paragraph shall not affect the undertakings by which the parties to the dispute have agreed or may agree, under a co-operation agreement, upon another procedure for the settlement of disputes concerning the interpretation or application of this agreement or of acts made in execution of it and binding upon the parties. However, if provision is not made in such procedure for a binding decision and if, once set in motion, such procedure does not lead to the settlement of the dispute within nine months, one or other of the parties to the dispute may have recourse to the arbitral procedure provided for in Appendix A to this Convention.

...

APPENDIX I

Minimum standards for international watercourses referred to in Article 4, paragraph 1 (b)

[Not reproduced]

APPENDIX II

Dangerous or harmful substances referred to in Article 5

[Not reproduced]

APPENDIX III

Quality limits for international watercourses according to their possible uses, as referred to in Article 17, paragraph 2

[Not reproduced]

List of watercourses for which derogations to the undertakings under Article 4, paragraph 1 (b) *are permissible*

[Not reproduced]

APPENDIX A

ARBITRATION

Article 1

Unless the parties to the dispute decide otherwise, the arbitral procedure shall be in accordance with the provisions of this Appendix.

Article 2

1. Upon an application addressed by one Contracting Party to another Contracting Party in accordance with Article 22 of the Convention, an arbitral tribunal shall be set up. The application for arbitration shall state the subject-matter of the application and shall be accompanied by proposals for the settlement of the dispute as well as any supporting documents.

2. If the dispute relates to the Convention, the party making the application shall inform the Secretary General of the Council of Europe of the fact that it has asked for an arbitral tribunal to be set up, of the name of the other party to the dispute and of the articles of the Convention the interpretation or application of which are, in its opinion, the subject-matter of the dispute. The Secretary General shall transmit the information so received to all the Contracting Parties to the Convention.

Article 3

The arbitral tribunal shall consist of three members: each of the parties to the dispute shall appoint one arbitrator; the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his usual place of residence in the territory of one of these parties, nor be employed by one of them, nor have dealt with the case in another capacity.

Article 4

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the President of the European Court of Human Rights shall, at the request of either party, designate him within a further two months' period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the application, the other party may refer the matter to the President of the European Court of Human Rights, who shall designate the chairman of the arbitral tribunal within a further two months' period. As soon as designated, the chairman of

the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. After this period has expired, he shall refer the matter to the President of the European Court of Human Rights, who shall make this appointment within a further two months' period.

3. If in the cases envisaged in the preceding paragraphs, the President of the European Court of Human Rights is unable to act or is a national of one of the parties to the dispute, the chairman of the arbitral tribunal shall be designated or the arbitrator appointed by the Vice-President of the Court or by the most senior member of the Court who is not unable to act and is not a national of one of the parties to the dispute.

4. The above provisions shall apply, as the case may be, in order to fill any vacancy.

Article 5

1. The arbitral tribunal shall decide according to the rules of international law and, in particular, those of this Convention and of the co-operation agreement binding upon the parties to the dispute, including the acts made in execution of this agreement and binding upon these parties.

2. Any arbitral tribunal constituted under the provisions of this Appendix shall draw up its own rules of procedure.

Article 6

1. The decisions of the arbitral tribunal, both on questions of procedure and of substance, shall be taken by majority vote of its members; the absence or abstention of a member for whose appointment one of the parties to the dispute was responsible shall not prevent the tribunal from reaching a decision.

2. The tribunal may take all appropriate measures in order to establish the facts. If two or more arbitral tribunals set up under the provisions of this Appendix are seized of applications with identical or analogous subject-matter, they may inform themselves of the proceedings relating to the establishment of the facts and take them into account as far as possible.

3. The parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.

4. The absence or default of a party to the dispute shall not prevent the operation of the proceedings.

Article 7

1. The award of the arbitral tribunal shall be supported by a statement of reasons. It shall be final and binding upon the parties to the dispute.

2. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another arbitral tribunal set up for this purpose in the same manner as the first.

(f) *Recommendation 629 (1971) of the Consultative Assembly, on the pollution of the Rhine valley water-table*

378. On this more specific subject, the Consultative Assembly, on 22 January 1971, adopted, on the recommendation of the Committee on Regional Planning and Local Authorities,[254] recommendation 629 (1971) on the pollution of the Rhine valley water-table, the text of which reads as follows:

The Assembly,

1. Having regard to the report on the pollution of the Rhine valley water-table presented by its Committee on Regional Planning and Local Authorities (Doc. 2904);

2. Recalling its earlier views on fresh water pollution control, in particular Recommendation 436 (1965) calling for a Water Charter and Recommendation 555 (1969) on the conclusion of a draft European Convention on the protection of fresh water against pollution;

3. Welcoming the adoption by the Committee of Ministers of Resolution (70) 30 on 24 October 1970, on planning of the management of water resources, while regretting that this resolution makes no mention of the problems peculiar to water-tables;

4. Considering that the efficacity of fresh water pollution control depends on the acceptance of certain principles by as many countries as possible, and at least by the countries of Western Europe, and in general calls for concerted action within a given drainage basin in accordance with the eleventh principle of the European Water Charter;

5. Reaffirming that most environment problems, including water pollution, are of an international character;

6. Noting in this connection that the Rhine valley-water-table is not only the most important fresh water reservoir in Europe but also the indivisible asset of a number of European countries;

7. Noting that, although it is not immediately apparent to the public, pollution increasingly threatens this vital fresh water reserve;

8. Noting further that the management of this water reserve and its safeguarding against pollution are tasks whose effective accomplishment can only be ensured jointly by all the countries bordering on it: Germany, France, Switzerland, Luxembourg and the Netherlands;

9. Emphasising the urgent need for such co-operation, which is a proof of both the solidarity existing between frontier regions and the practical nature of the problems calling for common action.

10. Recommends that the Committee of Ministers:

(*a*) invite the governments concerned to institute such co-operation in regard to the Rhine valley water-table and to refer the question to the European Conference of Ministers responsible for Regional Planning through their Committee of Senior Officials, in accordance with the Bonn resolution which urges, *inter alia*, co-ordinated action in frontier areas with a view to "the tracing of courses of pollution whose effects extend beyond the frontier";

(*b*) initiate concrete action on their own Resolution (68) 36 concerning studies on groundwater deposits, adopted in November 1968 by taking the following decisions, which are calculated to promote international co-operation in regard to research into pollution control and to lead to joint management of the Rhine valley water-table:

(i) to invite the governments directly concerned to initiate such co-operation among themselves and to entrust the *Institut de mécanique des fluides* in Strasbourg with the task of co-ordinating research work;

(ii) to authorise the Secretary-General of the Council of Europe to grant his patronage and administrative aid to such an international institute for co-ordination and research in regard to the Rhine valley water-table, as a first step towards co-operation between the Council of Europe and technical bodies specialising in research into surface and underground water resources;

(iii) to instruct the Secretary-General of the Council of Europe to seek ways and means of co-operating with the International Commission for the Protection of the Rhine against Pollution;

(iv) to transmit this recommendation and the report of the Committee on Regional Planning and Local Authorities (Doc. 2904) to:

the Committee on Co-operation in Municipal and Regional Matters, with the request that it be taken into account by the latter body in its study of transfrontier co-operation, a subject included in its work programme;

the European Committee for the Conservation of Nature and Natural Resources, for the attention of its *Ad Hoc* Study Group on Water Pollution;

the European Ministerial Conference on the Environment which will be held in Vienna in 1972.

3. Organization of American States

(a) *Draft convention on the industrial and agricultural use of international rivers and lakes, prepared by the Inter-American Juridical Committee in 1965*

379. In 1959, the Inter-American Juridical Committee

[254] *Id.*, Report on the pollution of the Rhine Valley water-table, Doc. 2904.

decided, within the framework of its activities relating to the development and codification of public international law and of private international law, and uniformity of the legislation of the American States, to take up the question of international rivers. In 1962, it requested the General Secretariat of the Organization of American States to prepare a document on the industrial or agricultural use of international rivers. This document was published in 1963 under the title *Ríos internacionales (Utilización para fines industriales o agrícolas)*.[255] In 1963, the Committee adopted a draft convention on the industrial and agricultural use of international rivers and lakes,[256] which was transmitted to member States for comments.[257] In 1965, the Committee prepared a revised draft convention on the industrial and agricultural use of international rivers and lakes, which reads as follows:

Whereas:

The American States have co-operated for many generations in the realization of important common undertakings;

The utilization of waters in accordance with modern technological methods contributes decisively to the economic development of their peoples; and

It is the common desire of the Contracting Parties to ensure the development of those resources so that they may benefit the well-being of their peoples;

The Governments of the member States of the Organization of American States have agreed as follows:

Article 1

This convention establishes the general standards concerning the utilization of the waters of international rivers and lakes for industrial and agricultural purposes.

Article 2

The provisions of this convention shall not imply the total or partial revocation of regional or bilateral agreements in effect between the High Contracting Parties.

Article 3

The terms mentioned below have the following meanings:

(*a*) An international river is one that flows through or separates two or more States. The former shall be called successive, and the latter continguous.

(*b*) An international lake is one whose banks belong to more than one State.

(*c*) Agricultural use is the utilization of the waters for irrigation or other agricultural uses.

(*d*) Industrial use is the utilization of the water for the production of electric power or for other industrial purposes.

(*e*) A notification is a written communication stating that it is planned to utilize the waters or to build works that may modify the existing regimen.

(*f*) An interested State is one that has jurisdiction over some part of an international river or lake.

Article 4

The right of a State to industrial or agricultural utilization of the waters of an international river or lake that are under its sovereignty does not imply non-recognition of the eventual right of the other riparian States.

Article 5

The utilization of the waters of an international river or lake for industrial or agricultural purposes must not prejudice the free navigation thereof in accordance with the applicable legal rules, or cause substantial injury, according to international law, to the riparian States or alterations to their boundaries.

Article 6

In cases in which the utilization of an international river or lake results or may result in damage or injury to another interested State, the consent of that interested State shall be required, as well as the payment or indemnification for any damage or harm done, when such is claimed.

Article 7

No State may utilize or authorize the utilization of an international river under conditions that are less strict than those to which the utilization of domestic rivers is subjected by law, custom, or usage.

A State may, however, demand that greater precautions or requisites be adopted when those that govern in another of the interested States are inferior to those that are generally or prevalently in force for international waters.

Article 8

A State that plans to build works for utilization of an international river or lake must first notify the other interested States. The notification shall be in writing and shall be accompanied by the necessary technical documents in order that the other interested States may have sufficient basis for determining and judging the scope of the works. Along with the notification, the names of the technical expert or experts who are to have charge of the first international phase of the matter should also be supplied.

Article 9

The reply to the notification must be given within six months and no postponements of any kind may be allowed, unless the requested State asks for supplementary information in addition to the documents that were originally provided, which request may be made only within thirty days following the date of the said notification and must set forth in specific terms the background information that is desired. In such case, the term of six months shall be counted from the date on which the aforesaid supplementary information is provided.

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If no reply is received within the aforesaid period, it shall be understood that the State or States that were notified have no objections to the work that is being planned and that, consequently, the notifying State may proceed to execute its plans in accordance with the project that was presented. No later claim by the notified State shall be valid.

II

If observations of a technical nature or relating to foreseeable damage or injury are made in the reply to the notification, this document should indicate the nature and estimate of these and the name of the technical expert or experts who together with those mentioned in the notification will form a Joint Commission that will proceed to study the matter. The reply should also include an indication of the place and date for the meeting of the Joint Commission thus formed.

If the reply does not meet the foregoing requirements, it shall be considered that this procedure has not been executed.

The Joint Commission shall carry out its mandate of seeking a solution, both with respect to the best way of executing and taking advantage of the works that are planned in common benefit, and, when appropriate, with respect to indemnification for the damage and injury caused, all within the period of six months from the date of the reply to the notification.

Article 10

For the purposes of this convention, the High Contracting Parties shall settle the disputes that may arise with respect to the industrial

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[255] OEA/SER.I/VI,CIJ-75 (Washington, D.C., Pan American Union, 1964).

[256] See *Industrial and agricultural use of international rivers and lakes*, OEA/Ser.I/VI/2, CIJ-67 (Washington, D.C., Pan American Union, 1964), p. 24.

[257] See *Actas y Documentos de la Quinta Reunión del Consejo Interamericano de Jurisconsultos*, vol. I (OEA/Ser. I/VI, CIJ-84) (Washington, D.C., Unión Pan Americana, 1964), pp. 77–126.

or agricultural use of international rivers and lakes in accordance with the peaceful procedures established by the inter-American system.

...[258,259]

(b) *Resolution on "Control and economic utilization of hydrographic basins and streams in Latin America" adopted by the Inter-American Economic and Social Council in 1966*

380. The Inter-American Economic and Social Council, at its fourth annual session, held in Buenos Aires in 1966, adopted resolution 24-M/66 entitled "Control and economic utilization of hydrographic basins and streams in Latin America", which reads as follows:

Whereas:

Control and better utilization of the hydrographic basins and streams that, in various regions of Latin America, make up a part of the common patrimony of the member countries of the Alliance for Progress will help to speed up the integration and multiply the potential capacity for development of those countries.

The Fourth Annual Meeting of the Inter-American Economic and Social Council at the Ministerial Level

Recommends:

To the member countries of the Alliance for Progress that, with the technical and financial assistance of international agencies, they begin or continue joint studies looking toward the control and economic utilization of the hydrographic basins and streams of the region of which they are a part, for the purpose of promoting, through multinational projects, their utilization for the common good, in transportation, the production of electric power, irrigation works, and other uses, and particularly in order to control and prevent damage such as periodically occurs as the result of rises in the level of their waters and consequent floods.[260]

(c) *Proposed special conference on international rivers and lakes*

381. In 1963, the Brazilian Government proposed, before the Council of OAS, convening a special conference with a view to examining the question relating to the use of waters of international rivers and adopting appropriate measures on the subject. The proposal was favourably received and was placed on the agenda of the Second Special Inter-American Conference held at Rio de Janeiro in 1965. The Conference adopted Resolution X, by which it decided, *inter alia*, to convene a special conference[261] at a date and place to be fixed by the Council of the Organization with the following objectives:

a. To study matters related to the use of international rivers and lakes for agricultural and industrial purposes, and to sign an international instrument or instruments containing general standards on the subject;

b. To study matters related to the commercial use of international rivers and lakes, formulate the recommendations that may be called for, and possibly to sign an international instrument or instruments containing general standards on the subject.[262]

B. Multipartite and Bipartite Commissions established for specific watercourses

1. Danube Commission[263]

(a) *Decision concerning measures by the Danubian countries to protect the waters of the Danube against pollution, adopted by the Danube Commission on 27 January 1960*

382. At its eighteenth session, at the plenary meeting held on 27 January 1960, the Danube Commission took a decision in which it noted that the Danubian States were taking action to protect the waters of the Danube against pollution. It also affirmed that water pollution caused by navigation accounted for only a small part of pollution and was mainly confined to areas around oil ports and unloading docks. It recommended that the Danubian States should continue to study the control of water pollution in the Danube caused by navigation and should take the necessary effective measures.[264]

(b) *Decision concerning the draft provisions on the control of water pollution in the Danube caused by wastes of oil products discharged from vessels, adopted by the Danube Commission on 27 January 1961*

383. At its nineteenth session, at the plenary meeting held on 27 January 1961, the Danube Commission, having considered the draft provisions on the control of water pollution in the Danube caused by wastes of oil products discharged by vessels and the report of the draft by the working group on maritime questions, decided to take the following measures:

1. To adopt the following provisions on the control of water pollution in the Danube caused by oil products discharged from vessels, to be contained in article 75/bis of chapter VI of the Fundamental Provisions concerning Navigation on the Danube:

Vessels, afloat or in port, shall be prohibited from discharging into the river wastes or residues of oil products, in any form whatsoever, or oil-contaminated water.

Wastes and residues of oil products, and oil-contaminated water, shall be discharged either on the river bank at the points indicated by the competent authorities or at special facilities on land or floating.

2. To recommend that the Danubian States and Special River Administrations should introduce the measures adopted in their national regulations as soon as possible and inform the Danube Commission when they do so.

3. To recommend that the Danubian States should construct facilities, floating or on land, in their ports, for the discharge of wastes and residues of oil products and oil-contaminated water.

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[258] *Report of the Inter-American Juridical Committee on the work accomplished during its 1965 meeting* (OEA/Ser.1/VI.1, CIJ-83) (Washington, D.C. Panamerican Union, 1966), pp. 7–10. Spanish text in *Rios y Lagos Internacionales ... (op. cit.)*, p. 131.

[259] As of January 1974, no further action had been taken in connexion with the draft convention.

[260] *Final report of the Fourth Annual Meetings of the Inter-American Economic and Social Council*, vol. I (OEA/Ser.H/XII-11) (Washington, D.C., Panamerican Union, 1966), p. 48.

[261] To date, this conference has not been convened.

[262] Second Special Inter-American Conference, Rio de Janeiro, Brazil, 17–30 November 1965, *Final Act* (OEA/Ser.C/I-13) (Washington, D.C., Panamerican Union, 1965), p. 25. Reproduced in *Rios y Lagos Internacionales ... (op. cit.)*, p. 145.

[263] Established by the Convention regarding the régime of navigation on the Danube, signed at Belgrade on 18 August 1948 (see p. 115 above, document A/5409, paras. 470–473).

[264] *Procès-verbaux de la Commission du Danube*, vol. 18 (Budapest, 1960), p. 322, CD/SES 18/24.

4. To instruct the Commission secretariat to draw up an inventory of existing facilities in the ports of the Danubian States for the discharge of wastes and residues of oil products and oil-contaminated water, and to publish it as a manual for seamen.

5. To approve the report of the working group on maritime questions on agenda item 12 (document CD/SES 19/25, part II).[265]

(c) *Recommendations concerning the unification of the regulations governing the protection of fauna and flora in the Danube*

384. These recommendations, adopted at the sixteenth session, include a paragraph 15 reading as follows:

It is prohibited to dump animal carcasses, animal litter or fodder wastes into the river, or to open hatchways to dump refuse.

On arrival in port, carcasses and wastes shall be burned or buried in accordance with the health and veterinary regulations in force in the State concerned.[266]

(d) *Recommendations concerning the unification of the health regulations relating to the Danube, adopted by the Danube Commission on 2 February 1962*

385. At its twentieth session, at the plenary meeting held on 2 February 1962, the Danube Commission decided to adopt the "Recommendations concerning the unification of health regulations relating to the Danube".[267] These recommendations include an article 20 which reads as follows:

It is prohibited to dump into the river the corpses of persons who have died on board.

The corpses of persons who died from a disease requiring quarantine or from any other communicable disease shall be buried in the nearest port, in accordance with the health regulations of the State concerned.[268]

(e) *Fundamental Provisions concerning Navigation on the Danube, adopted by the Danube Commission on 9 June 1967*

386. At its twenty-fifth session, at the plenary meeting held on 9 June 1967, the Danube Commission decided to adopt the "Fundamental Provisions concerning Navigation on the Danube", including article 1.15 which reads as follows:[269]

1. Vessels shall be prohibited from dumping, discharging or releasing into the fairway objects or substances which may constitute a hazard or a danger to navigation or which may pollute the water of the fairway.

2. Oil wastes in any form whatsoever and oil-contaminated water shall not be dumped, discharged or released into the fairway.

3. If any of the objects or substances referred to in paragraphs 1 and 2 are accidentally discharged or released into the fairway, the steersman must immediately inform the nearest competent authorities and indicate as accurately as possible the place where the accident occurred.[270]

(f) *Inventory prepared by the Danube Commission secretariat in 1971 of places and facilities provided in ports in the Danubian countries for dumping wastes and residues of oil products and oil-contaminated water*

387. The programme of work of the Danube Commission for the period from March 1970 to March 1971 instructed the Commission secretariat to obtain information on places and facilities provided in ports in the Danubian countries for dumping wastes and residues of oil products and oil-contaminated water and to prepare an inventory for consideration at the twenty-ninth session. The information obtained as at 10 February 1971 from the competent authorities of the Danubian countries indicated that "in order to prevent water pollution in the Danube, most countries have constructed special installations for wastes and residues of oil products and oil-contaminated water".[271]

2. Intergovernmental Co-ordinating Committee of the River Plate Basin[272]

Recommendations of the Group of Experts on Water Resources, approved by the Intergovernmental Co-ordinating Committee of the River Plate Basin on 20 April 1972

388. The Group of Experts on Water Resources, created by the Intergovernmental Co-ordinating Committee on the recommendation of the Foreign Ministers of the River Plate Basin States,[273] submitted the following suggestions, which were approved by the Co-ordinating Committee on 20 April 1972:

The Group of Experts

Considering

That the Second Meeting of the Group of Experts, Brasilia, 1970, regarded as a very valuable contribution to the study of the technical aspects of water pollution the conclusions of the Sixth Meeting of Ministers of Public Health of the River Plate Basin countries and of the Seminar on "Water Quality of the River Plate Basin", held at Rio de Janeiro in 1968, as well as the conclusions of the Second Meeting of the Group of Experts on Water Resources held in Brasilia in May 1970,

Suggests to the Intergovernmental Co-ordinating Committee:

...

2. That it should request States to submit information as soon as possible on the anti-pollution legislation in force and the administrative structures of the anti-pollution agencies in each country, indicating the scope and working methods employed;

3. That, once it has the information referred to in paragraphs 1 and 2, a careful analysis should be made by an appropriate body so that a brief report can be submitted enabling the Group of Experts to make a comparative assessment of the technical, legal and administrative positions in the countries of the River Basin as regards water pollution control policy;

4. That it should request each State to submit data for the information of the other States on Research Centres responsible for studying

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[265] *Ibid.*, vol. 19 (Budapest, 1961), p. 345, CD/SES 19/28.

[266] *Ibid.*, vol. 16 (Budapest, 1958), p. 314, CD 16/35.

[267] *Ibid.*, vol. 20 (Budapest, 1962), p. 395, CD/SES 20/33.

[268] *Ibid.*, p. 501, CD/SES 20/34.

[269] *Ibid.*, vol. 25 (Budapest, 1967), p. 241, CD/SES 25/24.

[270] *Dispositions fondamentales relatives à la navigation sur le Danube et Recommendations spéciales portant sur l'application des Dispositions fondamentales relatives à la navigation sur le Danube par les autorités compétentes des Etats danubiens* (Budapest, Commission du Danube, 1968), pp. 12 and 13.

[271] *Procès-verbaux de la Commission du Danube*, vol. 29 (Budapest, 1971), p. 157, CD/SES 29/8.

[272] Established in 1967 by a joint Declaration of the Foreign Ministers of the States of the River Plate Basin (see para. 323 and foot-note 182 above).

[273] The recommendation is contained in the Act of Brasilia which the Foreign Ministers adopted at the Regular Meeting they held in April 1969 (see para. 325 and foot-note 186 above).

and improving the methods of treatment of household and industrial effluents, on staff training, work programmes and possibilities of exchanges of technical experts;

5. That it should request each State to provide information on the development of water pollution control programmes and educational programmes for the conservation of water resources in the areas of the River Basin within its jurisdiction, for the information of the other States;

6. That in view of the substantial financial resources required to build the household and industrial sewage treatment plants which are essential for an effective water pollution control programme for the River Basin, States should seek financing from international financing agencies with the support of ICC, in accordance with the terms of the Treaty of the River Plate Basin, when it is in the interest of more than one State to improve the quality of the Basin waters;

...

9. That ICC should transmit to States the reports they request at least 60 days before the next meeting of the Group of Experts on Water Resources, so that the experts may have the necessary data and time to make recommendations on:

...

(*e*) Compatible legislation, if possible taking into consideration the comparative study of existing legislation and administrative structures (national, state, provincial and municipal) dealing with water pollution in the various countries of the Basin.

...

11. That a recommendation should be made to States immediately to adopt effective water pollution control measures on the reaches within their jurisdiction, in accordance with agreements previously concluded between the States.[274]

3. International Commission for the Protection of the Moselle against Pollution[275]

389. On 20 December 1961, the Governments of the Federal Republic of Germany, the French Republic and the Grand Duchy of Luxembourg signed the Protocol[276] establishing the International Commission for the Protection of the Moselle against Pollution. This Commission has just prepared a memorandum on the quality of the Moselle waters. The memorandum states that "after extensive preparatory work, the Commission established some standards for the quality of the Moselle waters to be applied in relation to a standard flow rate. The Commission based the standards mainly on the natural conditions in the Moselle basin and on household and industrial utilization of water". The memorandum also states that, in establishing standards for the quality of the Moselle waters, the Commission cited the fourth principle of the European Water Charter,[277] which reads as follows: "The quality of water must be maintained at levels suitable for the use to be made of it and, in particular, must meet appropriate public health standards". In conclusion, the memorandum states that "between 1964 and 1970 the established standards were surpassed on various occasions, even at flow rates higher than the standard flow. The Commission realizes that it will be costly for each country to reach these standards, but it feels that they are indispensable in the interests of all. That is why the established standards should be regarded as objectives to be reached gradually. The future work of the Commission will consist mainly in making specific proposals on how to attain this objective." In this connexion, it draws attention to the fifth principle of the European Water Charter, which states: "When used water is returned to a common source it must not impair the further uses, both public and private, to which the common source will be put".

4. Lake Chad Basin Commission[278]

390. In a letter dated 10 January 1973, the Lake Chad Basin Commission provided the following information on the question of the protection of international watercourses against pollution:

At the present time there seems to be no pollution caused by the discharging of toxic residues into the international rivers and lakes of the Lake Chad Basin Commission.

There is a possibility that the textile plants and breweries of Chad along the Chari and the Logone, rivers flowing into Lake Chad, might have a minimal localized effect on the waters; but we have no detailed information on this.

However, a problem might arise if any member country of our organization established a paper-making plant using the subaquatic vegetation in Lake Chad, or a leather tanning plant; such factories would need large quantities of water, and they would also discharge large amounts of wastes which would be very harmful to the aquatic fauna.

In southern Chad and northern Cameroon, some peasants fish using local plant-based poisons or chemical poisons, originally intended for agricultural use; this has very serious consequences for the aquatic fauna, which is completely destroyed, and also for the consumers, who are slowly being poisoned.

In one of its recommendations, the Lake Chad Basin Commission proposed that the use of synthetic poisons should be prohibited in fishing. It would seem impossible to prohibit the use of local poisons for fishing, because of the lack of personnel and financial resources to enforce the prohibition.

The pesticides used to control fowl-pest in the area of the Lake Chad Basin affect only the immediate surroundings; they could, however, have definite undesirable effects on the aquatic fauna, if they are sprayed over water surfaces.

In Chad, a Nature Protection Committee has been established to deal with various aspects of water pollution and means of preventing it, although such problems will not arise for some time.

We can thus conclude that pollution of international waters does not at the present time constitute a serious problem for the Lake Chad Basin Commission.

5. International Joint Commission, Canada and the United States of America[279]

391. In 1909, the Boundary Waters Treaty between Canada and the United States of America[280] came into force. Its stated purpose was to prevent disputes regarding the use of boundary waters and to make provision for the adjustment and settlement of all problems arising between the two countries along their common frontier—including the rights, obligations and interests of either in relation to the other. The Treaty provided for the establishment

[274] Text provided by the Argentine Government.

[275] Information provided by the Ministry of Foreign Affairs of Luxembourg.

[276] See paras. 134–137 above.

[277] See para. 373 above.

[278] Established by the Convention relating to the Development of the Chad Basin, signed at Fort Lamy on 22 May 1964 (see paras. 51–56 above).

[279] Information provided by the Canadian Government.

[280] See above p. 72, document A/5409, paras. 154–167.

of the International Joint Commission (set up in 1911) to settle such disputes, defined its jurisdiction and authority, and enunciated the principles by which it was to be governed. By 1912, the International Joint Commission had its full complement of Commissioners, three from Canada and three from the United States.

392. In recent years, the work of the International Joint Commission has acquired a new importance because of the responsibilities it has assumed in environmental matters. Of particular note has been the Commission's study of pollution of the Lower Great Lakes, on which it reported to the Canadian and United States Governments in late 1970.[281] The present Canada–United States Agreement[282] is based largely on the recommendations of the International Joint Commission Report.

393. *Powers of the International Joint Commission.* The powers of the Commission include: (1) passing on any project involving any change in the natural level or flow of boundary waters, or other waters crossing the boundary; (2) an investigative and recommendatory role in relation to specific questions arising along the boundary, referred to the Commission by the two Governments. It is normal practice for the Commission to conduct public hearings in the locality affected by the problem under study. Following conclusion of the public hearing, the Commission, in a case involving a change in the water levels or flows, issues an order approving the change, subject to such conditions as it considers appropriate to ensure protection and indemnity of interests that might be injured. In such cases, it also usually appoints an international board of control to ensure that the applicant complies with all the terms of the order of approval. In cases involving its investigative and recommendatory role the Commission submits its report to the two Governments, including its recommendations.

Where the Commission reports recommendations to Governments, these recommendations are not binding on the Governments. However, they often serve to shape the ultimate settlement of the problem under consideration. Also, the ultimate settlement of the problem often involves having the Commission maintain a surveillance function so as to enable Governments to be informed as to how the terms of the settlement are being implemented.

394. *Investigatory role.* The investigatory function of the Commission is being relied upon more and more by Governments because of the flexibility it provides. However, when acting in this role, the Commission must necessarily rely upon Governments to implement its recommendations and upon the public to spur and encourage Governments to do this. The Commission when acting in an investigatory capacity is not endowed with any specific powers of enforcement, rather, it is and was deliberately designed as a body that would have recourse to public opinion as an integral part of its operation. The significance of its appeal to the public is that this is, in fact, its real power.

The variety and scope of the cases which have come before the Commission since 1912 are almost as broad as the international boundary along which they have arisen. Matters referred by the Governments for investigation and report have ranged all the way from the international tidal-power potential of Passamaquoddy Bay on the east coast, to the water resources of the Columbia River in the west, and from preservation of the scenic splendour of the falls at Niagara to the emission of smoke by ships on the Detroit River. "Orders of approval" have been issued by the Commission relating to such diverse works as log-booms on the Rainy River and the works required for the development of hydroelectric power in the international section of the St. Lawrence River. This application was directly related to the development of the St. Lawrence Seaway.

The main challenge facing the Commission at present concerns Canada–United States environmental problems. An important element in these problems relates to the arresting of the threat from the increasing air and water pollution that is occurring along the boundary. Actually, the only provision in the Boundary Waters Treaty itself on pollution is contained in the last paragraph of article IV, which provides that "boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other".

395. *Fifty years experience.* Acting under its investigatory role, the International Joint Commission has had experience in pollution matters extending back over 50 years, dating from 1912, when the two federal Governments sent the Commission a wide-ranging reference to examine and report "to what extent and by what causes and in what localities have the boundary waters . . . been polluted . . .". The Commission's given object was to find "in what way or manner . . . is it possible and advisable to remedy or prevent the pollution of these waters . . .". In this first instance, investigations covered a number of lakes and rivers located mainly, though not wholly, in the Great Lakes region, as well as portions of the Great Lakes themselves. This first reference was the result of the prevalence in the area of typhoid fever in 1912. In 1918, a report containing the findings of the Commission pointed out conditions as it found them in vigorous language: ". . . situation along the frontier which is generally chaotic, everywhere perilous and in some cases disgraceful". In addition, it presented recommendations for remedying and preventing pollution in the areas examined. Its first experience in this field, however, was an unsatisfactory one, for no action was taken upon the Commission's recommendations by either Government. That neglect was mainly the result of the advent of chlorination of municipal water supplies, which eliminated the incidence of typhoid, and of the general belief that there was an inexhaustible supply of clean, fresh water. The Commission then tended, with one notable exception, to turn away from matters in the pollution field for quite a number of years. That exception was its examination in 1928, upon

[281] International Joint Commission—Canada and the United States of America, *Report on Pollution of Lake Erie, Lake Ontario and the International Section of St. Lawrence River* (Washington, D.C., U.S. Government Printing Office, 1970).

[282] Agreement on the Great Lakes Water Quality. For a summary, see paras. 106–114 above.

referral by the two Federal Governments, of the effect and extent of the smelter fumes at Trail, British Columbia, in the neighbouring state of Washington. The International Joint Commission recommended damages be paid and measures taken to reduce emission of fumes. When the two Governments found that they were unable to reach a decision based on the International Joint Commission recommendations, an arbitral tribunal was set up jointly in 1935 and the case was finally decided on the basis of its decision.[283]

396. *Renewed attention to pollution.* It was not until 1946 that the Commission came back to the consideration of water pollution matters, with a reference from the two Governments to cover the St. Clair River, Lake St. Clair and Detroit River pollution problems. That reference was further extended in 1948 to include the Niagara River. The Commission recommended "objectives" for maintaining the quality of the boundary waters concerned, which were approved by the two Governments. The Commission set up advisory boards to maintain continuing supervision of these waters. From this study, the International Joint Commission moved to an important investigation in 1949 of air pollution in the Detroit–Windsor region, and from that time on has become increasingly involved in important pollution studies.

397. *Major pollution assignment.* The major assignment in pollution studies thus far has been the 1964 reference by the two Federal Governments requesting the International Joint Commission to investigate the state of pollution in Lake Erie, Lake Ontario, and the international section of the St. Lawrence River and to recommend appropriate remedial measures. This study, which extended over the period between 1964 and 1970 was the most extensive pollution study undertaken to date anywhere in the world. It provided the basis for the Agreement between Canada and the United States on Great Lakes Water Quality.

To conduct a general study of these problems the Commission appointed two advisory boards—the International Lake Erie Water Pollution Board and the International Lake Ontario–St. Lawrence River Water Pollution Board. These boards undertook extensive studies regarding the source, extent, effects, dispersal and assimilation of pollutants, appropriate parameters for water quality, the cycle of eutrophication and its effect on aquatic life and water quality, and more effective means of treating municipal wastes. After having submitted three interim reports to the Governments, the Commission submitted its final report in January 1971. In this report, the Commission indicated that the lower Great Lakes were being seriously polluted, mainly by municipal and industrial wastes, and the report provided the basis for concrete remedial action on the part of the Federal, State and Provincial Governments concerned. This action included recommending that Governments enter into an agreement for the carrying out of water-pollution abatement programmes and of measures and schedules to achieve them. The report went on to recommend that the Commission be given the authority, responsibility and means for co-ordinating and ensuring the necessary surveillance and monitoring of water quality and of the effectiveness of pollution-abatement programmes. It further recommended that the reference of October 1964 be extended to authorize it to investigate pollution in the remaining boundary waters in the Great Lakes system and waters flowing into it.

This report and full response by Governments dramatically illustrates the increasingly important role that the Commission is playing in dealing with environmental questions along the Canada–United States boundary.

Currently, the Commission is investigating the serious problem of transboundary air pollution in the Windsor–Detroit and Sarnia–Port Huron boundary areas; the feasibility of regulating the levels of all the Great Lakes; and the possibility of preserving and enhancing the beauty of the American Falls at Niagara. In addition, it reported in 1971 upon the environmental effects of increasing the height of Rose Lake Dam in B.C.'s Skagit River Valley. This environmental study would appear to be a harbinger of the kind of study in which the International Joint Commission may become more and more involved in the future.

398. The anticipated tremendous increase in growth in Canada and the United States over the next decade will lead to a variety of new transboundary problems as well as an expansion of many existing ones. Present indications suggest that the two Governments will be turning to the Commission for advice and assistance in meeting many of these problems. The wealth of experience gained by the Commission over the past 50 years in dealing with transboundary questions makes it uniquely qualified to discharge effectively the greatly enlarged responsibilities the two Governments are in the process of assigning to it under the Agreement on Great Lakes Water Quality and are likely to assign to it in years ahead.

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[283] See United Nations, *Reports of International Arbitral Awards*, vol. III *(op. cit.)*, p. 1905.

Part Four

Survey of Studies made or being made by international non-governmental organizations concerned with International Law

A. Institute of International Law[284]

399. At its session held in Edinburgh in 1969, the Institute of International Law decided to establish a commission to study the subject "River and lake pollution and international law".[285] The composition of this commission was decided by the Institute at its session held at Zagreb in 1971.[286]

B. Inter-American Bar Association[287]

400. At its Fourteenth Conference held at San Juan, Porto Rico, in 1965, the Inter-American Bar Association adopted a resolution in which it stressed the importance of the studies and projects on the use of the waters of international rivers undertaken by OAS. It also supported a proposal for convening, at the earliest possible date, a special conference on this matter and expressed its desire than an inter-American instrument be worked out as soon as possible embodying the general rules on the use of the waters of international rivers and lakes which would secure their utilization for the common benefit of the American peoples.[288]

401. At its Fifteenth Conference held at San José in April 1967, the Association adopted a number of resolutions on international rivers and lakes. By one of these resolutions, it requested the Permanent Committee on Use of International Rivers and Lakes, which it had created at the Buenos Aires Conference of 1957, to pursue its studies on the use of these waters for industrial, agricultural, commercial and other purposes, and to report to the Sixteenth Conference. The full text of the resolution is as follows:

Whereas:

1. International developments show, especially during the recent years, the permanent and gradual improvement of the laws governing the use of international rivers and lakes;

2. The above-mentioned improvement requires a continued study of the facts, of the agreements entered into and the attempts to establish general principles for the common use;

3. International waters have for America unique importance to the extent that it is difficult to imagine a social and economic development and integration of the continent without an equitable and adequate usage of such waters, in achieving which the law has a substantial function;

4. The "Permanent Committee on Use of International Rivers and Lakes", created at the X Conference in Buenos Aires, has produced important reports up to this present Conference, about studies in America and the Western Hemisphere on this subject;

Resolves

That the Permanent Committee on Use of International Rivers and Lakes continue its studies on the use of such waters for industrial, agricultural, commercial and other purposes and inform the XVI Conference as to the result of such studies,[289]

402. By another resolution, the Association recommended to OAS to hold, at the earliest possible date, a specialized conference on the use of international rivers and lakes for industrial, agricultural and commercial purposes, as called for by resolution X of the Second Extraordinary Conference held at Rio de Janeiro in 1965.[290] The resolution reads as follows:

Whereas:

1. The work carried out by the Organization of American States in studying the juridical régime for the use of international rivers and lakes is worthy of prominence, and likewise made use of by statesmen, lawyers, or professors interested in the juridical problems and issues raised by the use of these rivers and lakes;

2. The task which the Organization of American States proposes to undertake in this connection has an extraordinary importance as it proposes to equip the American countries with adequate legal instruments for the solution of issues arising from the use of those waters;

Resolves

1. To suggest to the Organization of American States to call a Specialized Conference on the use of international rivers and lakes for industrial, agricultural and commercial purposes, at the earliest possible date, as called for by Resolution X of the Second Special Conference held in Rio de Janeiro in 1965.

2. To express the desire that the General Secretariat of the OAS continue the studies on the use of international rivers and lakes with the above-mentioned purposes, and that it publish up-to-date editions of the studies already prepared.[291]

403. At the Sixteenth Conference, held at Caracas from 1 to 8 November 1969, the Inter-American Bar Association adopted a resolution on the legal aspects of the problem of contamination of waters of international rivers and lakes. The resolution reads as follows:

Whereas:

The industrial and agricultural use of international rivers and lakes can contaminate the waters of the same, causing damages and harm to the riparian States;

The increasing development of the countries of the Western Hemisphere will cause an increase in the industrial and agricultural utilization of international rivers and lakes, as well as of the underground waters related to them;

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[284] For the relevant work done by the Institute at previous sessions, see p. 199 above, document A/5409, paras. 1069–1076.

[285] *Annuaire de l'Institut de droit international*, vol. 53, t. II (Basle, 1969), p. 345.

[286] *Ibid.*, vol. 54, t. II (Basle, 1971), p. 607.

[287] For the relevant work done by the Inter-American Bar Association at previous conferences, see p. 208 above, document A/5409, paras. 1092–1096.

[288] *Rios y Lagos Internacionales . . . (op. cit.)*, p. 99.

[289] See Inter-American Bar Association, *Resolutions, Recommendations and Declarations approved by the XV Conference*, San José, Costa Rica, 10–15 April 1967, pp. 1–2.

[290] See para. 381 above.

[291] Inter-American Bar Association, *op. cit.*

Said use will create social and economic problems in the affected countries, with serious repercussions on the health of human beings and animals, as well as on the productivity of the land;

The solution of these problems should be within the framework of the law, taking into consideration both the general principles and the standards that have been applied in regulating the utilization of said waters by the riparian States, and

The Inter-American Bar Association, concerned about this matter, established as early as 1957 a Permanent Committee on the use of international rivers and lakes in America,

Resolves

1. To recommend that the laws of the American countries on the industrial and agricultural utilization of rivers and lakes be unified or harmonized in order to avoid international controversies.

2. To recommend that in the law schools of the various universities of America there be established courses on comparative water law, especially in those countries which have rivers and lakes in common interest with others, so that better knowledge and comparison of existing legislation will result, with a view to obtaining in the near future the unification or harmonization of legislation.

3. To urge the American States to avoid the contamination of waters of international rivers and lakes, because this affects the health and economy of riparian states, and the avoidance of such contamination is indispensable for a peaceful international life.

4. To make this resolution known to the Organization of American States, to the Latin American Free Trade Association, and to the Secretariat of the Central American Common Market, suggesting to them that it be taken into consideration when said international organizations make studies on the subject.[292]

C. International Law Association[293]

1. The Helsinki Rules on the Uses of the Waters of International Rivers, adopted by the International Law Association at its fifty-second Conference held at Helskini in 1966

404. Continuing its work on the matter, the Committee on the Uses of the Waters of International Rivers submitted an interim report[294] to the fifty-first Conference of the International Law Association held at Tokyo in 1964. Although the Committee had planned to submit a final report at that Conference, it was unable to complete the chapter on equitable sharing of uses. The Committee's interim report consisted of four chapters: navigational uses of international rivers and lakes; timber floating; pollution of waters of an international drainage basin; and prevention and settlement of disputes. The Conference accepted provisionally the text and commentary contained in the four chapters in question, subject to any changes that might be necessitated by the remaining chapter on the equitable sharing of uses.[295]

405. The final report of the Committee on the Uses of the Waters of International Rivers[296] was submitted to the fifty-second Conference of the Association held at Helsinki in 1966; it contained the text of articles as well as comments on each article. The Committee recommended the adoption of the articles by the Conference as "a statement of existing rules of international law".[297] As recommended, the articles were adopted by the Conference, which decided that "these rules shall be known as the Helsinki Rules on the Uses of the Waters of International Rivers".[298] The text of the Rules is in part as follows:

THE HELSINKI RULES ON THE USES OF THE WATERS OF INTERNATIONAL RIVERS

Chapter 1

GENERAL

Article I

The general rules of international law as set forth in these chapters are applicable to the use of the waters on an international drainage basin except as may be provided otherwise by convention, agreement or binding custom among the basin States.

Article II

An international drainage basin is a geographical area extending over two or more States determined by the watershed limits of the system of waters, including surface and underground waters, flowing into a common terminus.

Article III

A "basin State" is a State the territory of which includes a portion of an international drainage basin.

Chapter 2

EQUITABLE UTILIZATION OF THE WATERS OF AN INTERNATIONAL DRAINAGE BASIN

Article IV

Each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin.

Article V

(1) What is a reasonable and equitable share within the meaning of Article IV is to be determined in the light of all the relevant factors in each particular case.

(2) Relevant factors which are to be considered include, but are not limited to:

(*a*) the geography of the basin, including in particular the extent of the drainage area in the territory of each basin State;

(*b*) the hydrology of the basin, including in particular the contribution of water by each basin State;

(*c*) the climate affecting the basin;

(*d*) the past utilization of the waters of the basin, including in particular existing utilization;

(*e*) the economic and social needs of each basin State;

(*f*) the population dependent on the waters of the basin in each basin State;

(*g*) the comparative costs of alternative means of satisfying the economic and social needs of each basin State;

(*h*) the availability of other resources;

(*i*) the avoidance of unnecessary waste in the utilization of waters of the basin;

(*j*) the practicability of compensation to one or more of the co-basin States as a means of adjusting conflicts among uses; and

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[292] Inter-American Bar Association, *Resolutions, Recommendations and Declarations approved by the XVI Conference*, Caracas, Venezuela, 1–8 November 1969.

[293] See p. 202 above, document A/5409, paras. 1077–1090.

[294] International Law Association, *Report of the Fifty-first Conference, Tokyo, 1964* (London, 1965), pp. 163–202.

[295] *Ibid.*, p. xxx, resolution VIII.

[296] International Law Association, *Report of the Fifty-second Conference, Helsinki, 1966* (London, 1967), pp. 478–533.

[297] *Ibid.*, pp. 482–483.

[298] *Ibid.*, p. xi, resolution I.

(*k*) the degree to which the needs of a basin State may be satisfied, without causing substantial injury to a co-basin State;

(3) The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable share, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

Article VI

A use or category of uses is not entitled to any inherent preference over any other use or category of uses.

Article VII

A basin State may not be denied the present reasonable use of the waters of an international drainage basin to reserve for a co-basin State a future use of such waters.

Article VIII

1. An existing reasonable use may continue in operation unless the factors justifying its continuance are outweighed by other factors leading to the conclusion that it be modified or terminated so as to accommodate a competing incompatible use.

2. (*a*) A use that is in fact operational is deemed to have been an existing use from the time of the initiation of construction directly related to the use or, where such construction is not required, the undertaking of comparable acts of actual implementation.

(*b*) Such a use continues to be an existing use until such time as it is discontinued with the intention that it be abandoned.

3. A use will not be deemed an existing use if at the time of becoming operational it is incompatible with an already existing reasonable use.

Chapter 3

POLLUTION

Article IX

As used in this Chapter, the term "water pollution" refers to any detrimental change resulting from human conduct in the natural composition, content, or quality of the waters of an international drainage basin.

Article X

1. Consistent with the principle of equitable utilization of the waters of an international drainage basin, a State

(*a*) must prevent any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial injury in the territory of a co-basin State, and

(*b*) should take all reasonable measures to abate existing water pollution in an international drainage basin to such an extent that no substantial damage is caused in the territory of a co-basin State.

2. The rule stated in paragraph 1 of this Article applies to water pollution originating:

(*a*) within a territory of the State, or

(*b*) outside the territory of the State, if it is caused by the State's conduct.

Article XI

1. In the case of a violation of the rule stated in paragraph 1(*a*) of Article X of this Chapter, the State responsible shall be required to cease the wrongful conduct and compensate the injured co-basin State for the injury that has been caused to it.

2. In a case falling under the rule stated in paragraph 1(*b*) of Article X, if a State fails to take reasonable measures, it shall be required promptly to enter into negotiations with the injured State with a view toward reaching a settlement equitable under the circumstances.

Chapter 4

NAVIGATION

...

Chapter 5

TIMBER FLOATING

Article XXI

The floating of timber on a watercourse which flows through or between the territories of two or more States is governed by the following Articles except in cases in which floating is governed by rules of navigation according to applicable law or custom binding upon the riparians.

Article XXII

The States riparian to an international watercourse utilized for navigation may determine by common consent whether and under what conditions timber floating may be permitted upon the watercourse.

Article XXIII

1. It is recommended that each State riparian to an international watercourse not used for navigation should, with due regard to other uses of the watercourse, authorize the co-riparian States to use the watercourse and its banks within the territory of each riparian State for the floating of timber.

2. This authorization should extend to all necessary work along the banks by the floating crew and to the installation of such facilities as may be required for the timber floating.

Article XXIV

If a riparian State requires permanent installation for floating inside a territory of a co-riparian State or if it is necessary to regulate the flow of the watercourse, all questions connected with these installations and measures should be determined by agreement between the States concerned.

Article XXV

Co-riparian States of a watercourse which is, or is to be used for floating timber should negotiate in order to come to an agreement governing the administrative régime of floating, and if necessary to establish a joint agency or commission in order to facilitate the regulation of floating in all aspects.

Chapter 6

PROCEDURES FOR THE PREVENTION AND SETTLEMENT OF DISPUTES

Article XXVI

This Chapter relates to procedures for the prevention and settlement of international disputes as to the legal rights or other interests of basin States and of other States in the waters of an international drainage basin.

Article XXVII

1. Consistently with the Charter of the United Nations, States are under an obligation to settle international disputes as to their legal rights or other interests by peaceful means in such a manner that international peace and security, and justice are not endangered.

2. It is recommended that States resort progressively to the means of prevention and settlement of disputes stipulated in Articles XXIX to XXXIV of this Chapter.

Article XXVIII

1. States are under a primary obligation to resort to means of prevention and settlement of disputes stipulated in the applicable treaties binding upon them.

2. States are limited to the means of prevention and settlement of disputes stipulated in treaties binding upon them only to the extent provided by the applicable treaties.

Article XXIX

1. With a view to preventing disputes from arising between basin States as to their legal rights or other interest, it is recommended

that each basin State furnish relevant and reasonably available information to the other basin States concerning the waters of a drainage basin within its territory and its use of, and activities with respect to, such waters.

2. A State, regardless of its location in a drainage basin, should in particular furnish to any other basin State, the interests of which may be substantially affected, notice of any proposed construction or installation which would alter the régime of the basin in a way which might give rise to a dispute as defined in Article XXVI. The notice should include such essential facts as will permit the recipient to make an assessment of the probable effect of the proposed alteration.

3. A State providing the notice referred to in paragraph 2 of this Article should afford to the recipient a reasonable period of time to make an assessment of the probable effect of the proposed construction or installation and to submit its views thereon to the State furnishing the notice.

4. If a State has failed to give the notice referred to in paragraph 2 of this Article, the alteration by the State in the régime of the drainage basin shall not be given the weight normally accorded to temporal priority in use in the event of a determination of what is a reasonable and equitable share of the waters of the basin.

Article XXX

In case of a dispute between States as to their legal rights or other interests, as defined in Article XXVI, they should seek a solution by negotiation.

Article XXXI

1. If a question or dispute arises which relates to the present or future utilization of the waters of an international drainage basin, it is recommended that the basin States refer the question or dispute to a joint agency and that they request the agency to survey the international drainage basin and to formulate plans or recommendations for the fullest and most efficient use thereof in the interests of all such States.

2. It is recommended that the joint agency be instructed to submit reports on all matters within its competence to the appropriate authorities of the member States concerned.

3. It is recommended that the member States of the joint agency in appropriate cases invite non-basin States which by treaty enjoy a right in the use of the waters and an international drainage basin to associate themselves with the work of the joint agency or that they be permitted to appear before the agency.

Article XXXII

If a question or a dispute is one which is considered by the States concerned to be incapable of resolution in the manner set forth in Article XXXI, it is recommended that they seek the good offices, or jointly request the mediation of a third State, of a qualified international organization or of a qualified person.

Article XXXIII

1. If the States concerned have not been able to resolve their dispute through negotiation or have been unable to agree on the measures described in Article XXXI and XXXII, it is recommended that they form a commission of inquiry, or an *ad hoc* conciliation commission, which shall endeavour to find a solution, likely to be accepted by the States concerned, of any dispute as to their legal rights.

2. It is recommended that the conciliation commission be constituted in the manner set forth in the Annex.

Article XXXIV

It is recommended that the States concerned agree to submit their legal disputes to an *ad hoc* arbitral tribunal, to a permanent arbitral tribunal or to the International Court of Justice if:

(*a*) A commission has not been formed as provided in Article XXXIII, or

(*b*) The commission has not been able to find a solution to be recommended, or

(*c*) A solution recommended has not been accepted by the States concerned, and

(*d*) An agreement has not been otherwise arrived at.

Article XXXV

It is recommended that in the event of arbitration the States concerned have recourse to the Model Rules on Arbitral Procedure prepared by the International Law Commission of the United Nations at its tenth session in 1958.

Article XXXVI

Recourse to arbitration implies the undertaking by the States concerned to consider the award to be given as final and to submit in good faith to its execution.

Article XXXVII

The means of settlement referred to in the preceding Articles of this Chapter are without prejudice to the utilization of means of settlement recommended to, or required of, members of regional arrangements or agencies and of other international organizations.[299]

2. Programme of work of the Committee on International Water Resources Law

406. The Helsinki Conference of the International Law Association, aware of the numerous theoretical and practical problems still awaiting international legal regulation, recommended that the Committee on the Uses of the Waters of International Rivers be reconstituted as a Committee on International Water Resources Law and that the newly constituted Committee be instructed to:

> . . . carry on a programme of codification and study of certain selected aspects of water resources law, of which the following topics are illustrative: underground waters; the relationship of water to other natural resources; domestic uses of water; hydraulic uses of water, including the generation of power and irrigation; flood control siltation; regulation of water flow; detailed rules on the navigation of rivers; and further consideration of the subject of pollution of coastal areas and enclosed seas;...[300]

One of the reasons why the International Law Association considered the further study of these problems important and necessary lay

in the fact that the International Law Commission of the United Nations, to which the subject of the Law of International Rivers has frequently been suggested for incorporation in its work programme, has not, because of its many other important tasks, been able to give this matter the priority needed.[301]

407. The Committee on International Water Resources Law held two meetings between 1967 and 1968, mainly to analyse relevant problems and to agree upon its programme of work in the future. It created six working groups, the terms of reference for five of which are as follows:

...

2. *Working group on Underground Waters*

The group shall study and formulate rules and/or recommendations on the development and conservation of ground waters of international concern, including *inter alia*:

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[299] For the full text of the Helsinki Rules, with comments, see International Law Association, *Report of the Fifty-second Conference . . . (op. cit.)*, pp. 484–532.

[300] *Ibid.*, p. xi, resolution I.

[301] International Law Association, *Report of the Fifty-third Conference, Buenos Aires, 1968* (London, 1969), p. 521.

(*a*) use of all kinds of underground waters, including underground streams, reservoirs, basins, etc.;

(*b*) interference with, and relation to, surface and atmospheric water and to other natural resources (oils, minerals, etc.);

(*c*) storage and charging of underground aquifers;

(*d*) pollution of underground waters (including seawater-intrusion and salinization); and

(*e*) administration and management.

3. *Working group on Pollution of Coastal Areas and Enclosed Seas*

The group shall study the pollution of the waters of coastal areas where it may affect the interests of more than one State.

Pollution, actual or potential, of continental origin, should be studied first and that originating on the high seas thereafter.

4. *Working group on the Relationship between Water and other Natural Resources*

The group shall study and formulate rules and/or recommendations on the optimum use of water-resources in relation to other natural resources (land, atmosphere, mineral deposits, flora and fauna, energy and recreation) taking into account their physical and economic interdependence.

5. *Working group on Uses of International Water Resources*

The group shall study international water-resources and formulate rules and/or recommendations concerning power-generation, irrigation, flood control, storage and other uses of international water-resources. The working group shall also consider further problems connected with the conflicting interests and the protection against harmful effects of waters.

6. *Working group on Management of International Water Resources*

The group shall study and formulate rules and/or recommendations with respect to the management of international water-resources, including *inter alia*:

(*a*) the setting up of Commissions or other arrangements;

(*b*) possible functions, power and composition of such bodies; and

(*c*) legal aspects of economic and financial problems arising from such management.[302]

408. Each working group, during the meetings it held, focused its attention mainly on the interpretation and elaboration of its own terms of reference and on consideration of the work programme best suited to the accomplishment of the task. The following preliminary statements were reported to the Association's Buenos Aires Conference of 1968:

...

Working group on Underground Waters

The working group will undertake the following tasks, in the order stated:

1. Compilation of a comprehensive bibliography on the topic of the development and use of underground waters, including related materials in the economic, hydrographic and engineering fields. Inasmuch as there are at present few, if any international law rules dealing specifically with the subject of underground waters the substantive contribution the group desires to make must be built on the experience of those national legal orders that have dealt with the matter and must endeavour to comprehend the technical and economic problems involved as well. In this respect the experience of international organizations has proved especially pertinent.

2. Preparation of a collection of the texts, in translation where necessary, of relevant legislation, court cases, administrative regulations and decisions, etc., with appropriate analytical summaries.

3. Determination, after due deliberation, of the most fruitful, ultimate form of the group's substantive work. Under consideration as alternatives are model clauses for a draft treaty, a set of recommended principles and rules, a series of short monographs, an integrated monograph on the entire subject or some combination of these.

4. The systematic accomplishment of the intermediate tasks necessary to development and formal preparation of the product or products decided upon under 3 above.

5. Preparation of the final Report, including discussions in the full Committee.

The following topics, within the field of underground waters, have been explored in a preliminary manner and each has been identified as possessing a significant legal aspect to which the group must devote attention irrespective of the form the group's final product may take. This list is not to be regarded as exhaustive nor is it arranged in any order of priority:

1. Definitions of Underground Waters and related terms;
2. Exploration Rights (including surveys, drilling and testing);
3. Exploitation Rights;
4. Allocation of Shares;
5. Control or Prevention of Overpumping (development *v.* conservation);
6. Protection of Existing Uses (including isolation of aquifers and identification of Special Zones);
7. Relationship to Surface Waters;
8. Pollution Abatement;
9. Priority of Uses (if any);
10. Works Administration (planning, financing, construction, operation and maintenance); and
11. Maximization of Benefits:
    (*a*) General International Law Framework.
    (*b*) Particular International Underground Waters Occurrences (consultation; data collection and exchange; policy basis, including treaty; uniform legislation and parallel executive organization; and management).

Working group on Pollution of Coastal Areas and Enclosed Seas

1. After a preliminary general discussion, the working group has commenced its work with the study of questions related to pollution of coastal waters originating from continental sources. The conclusion was arrived at that the text of the Helsinki Rules dealing with fresh water pollution could serve for this purpose and that the principles could be maintained although a fair number of modifications would be necessary.

2. Among the problems arising in this respect, mention can be made of the following:

(*a*) definition of the waters to which the new rules are to be applied;

(*b*) definition of pollution, taking into account pollution originating from continental sources and from sources on the high seas;

(*c*) the desirability to enlarge the definition of pollution in order to create an obligation for a State to co-operate with other States to prevent pollution not caused by human conduct; and

(*d*) whether, with respect to pollution of the sea, the concept of the Helsinki Rules could be maintained whereby obligations of a State differ with regard to existing and new pollution.

3. A draft set of articles mainly concerning pollution of continental origin has been elaborated for further study and discussion. As to pollution of maritime origin, some consideration has been given to the legal aspects of pollution caused by escape of dangerous or noxious cargoes.

Working group on the Relationship between Water and Other Natural Resources

1. To fulfil its mission, the working group will assemble, compile, and analyse the legal considerations arising from its task from the following documents:

(*a*) multilateral international agreements;

(*b*) bilateral international treaties;

(*c*) interstate compacts and treaties (within federal countries);

(*d*) national, provincial and State legislation;

(*e*) writings of the publicists; and

(*f*) court decisions, national and international.

[302] *Ibid.*, pp. 522–523.

2. The documents listed under (*b*), (*c*) and (*d*) should be studied in reference to individual countries. Attention must be drawn to the fact that research should not be limited to Water Laws only but should also cover laws governing the other natural resources as mentioned in the terms of reference in so far as they influence water resources. The legal rules to be found in national and local laws shall be studied for the identification of existing practical problems and as a source of recommendations "*de lege ferenda*".

3. Two classes of priorities can be adopted simultaneously to determine the task of the working group:

(*a*) by categories of documents, in the order given above; and

(*b*) by the type of natural resources connected with water use.

For this purpose physical relations could be studied in the following order: 1. water/earth; 2. water/flora (forests and pastures); 3. water/atmosphere (and its contents); 4. water/fauna (aquatic, amphibious, terrestrial); 5. water/mineral deposits; 6. water/power resources (mineral, solar, botaeolian, nuclear, etc.); and 7. water/scenic-recreation.

4. The influence of the different physical states of water resources could also be examined from the point of view of legal regulations; meteoric waters (clouds, rain, snowfall, atmospheric vapour)—on surface water; surface water—on underground water; surface water—on meteoric water and *vice versa*.

A document dealing with the physical and economic aspects of the problems, prepared by the Rapporteur of the working group is attached . . .

Working group on General Uses of Water

The working group will undertake to study, within the framework of the Helsinki Rules, problems of international water resources and to formulate guidelines and/or recommendations concerning methods and procedures in the fields of power generation, irrigation, flood control, storage and regulation for water supply, and other uses of international water resources; it will also consider problems connected with conflicting interests and the protection against various harmful effects of waters.

The working group also considers it desirable to formulate general principles on topics which are not yet covered by the Helsinki Rules, for instance, problems connected with treaty interpretation, *jus cogens* and other problems.

The working group will further undertake special studies relating to water resources, for example, the problem of classification of waters particularly taking into account the difference between countries with planned economy as well as public property, and countries with other systems.

Working group on Management of International Waters

The working group will undertake and continue the study of administrative and legal aspects of international waters according to its terms of reference, starting from the Helsinki Rules as well as from the work of the International Rivers Committee. It will later on take into consideration the specific recommendations with respect to administration of the other working groups in its study.

The working group will also undertake the study of some, if not all, of the legal aspects connected with the management of international waters on the basis of the following working scheme:

1. Obligation (if any) to establish international administration.

A question which arises is to see whether, under general principles of international law, State practice and judicial (international) decisions and awards, co-basin States are under a duty, if any, to establish joint agencies, international administration or other administrative arrangements, either on a universal basis or on a regional basis, to perform different functions.

2. Functions of international management.

Parallel with the study of point 1 above, the working group will consider the functions that any international body could be called upon to perform. These may be sub-divided tentatively into three categories, namely:

(*a*) for the *exchange of data*, consultation, and communication of projects, and procedures for notification thereof, as well as for the presentation of objections and obligation (if any) to be considered by another co-basin State;

(*b*) for the *planning* on a joint and/or separate basis of the various water resources projects, taking into consideration the integrated development by river basins;

(*c*) for the *construction* on a joint and/or separate basis of the required works either on the main international stream or on its national tributaries or distributaries;

(*d*) for the joint and/or separate *operation and maintenance* of the construction works located on an international mainstream and/or on its national tributaries or distributaries;

(*e*) for the *control of one or more beneficial uses* of water (domestic, agricultural, hydro-power production, industrial, navigation, transportation, floating, fishing, etc.) and one or more harmful effects of water (soil erosion, floods, salinization, waterlogging, health hazards, pollution, etc.); and

(*f*) for the *area of management*: a whole river basin, a part thereof or only a single project, as component of a larger scheme.

3. Powers of international management.

The study should consider the various powers that any international management might possess. According to State practice, these might come under any of the following categories: political, executive, legislative and judicial.

4. Composition of international management.

The composition of any management of international water could depend upon the functions and powers that might be entrusted to it. Such composition may, therefore, include high level political representatives of the co-basin States, technicians and economists, lawyers, etc., or most or all of them at different levels.

5. Economic and financial problems of international management.

The legal considerations to be studied under this item would include those relating to the following aspects:

(*a*) sharing of expenses in organizing international management between co-basin States and determination of each co-basin State's share in such financing; factors affecting such determination;

(*b*) promotion and development of joint financial participation for the construction, operation and maintenance of the projects; sharing of costs and legal basis for the economic evaluation and justification of projects as well as procedures thereto;

(*c*) form or forms of such joint financial participation and policies: Government's direct or indirect contributions, international financing, powers to float boards and obligations, national or international companies, etc.; and

(*d*) reimbursement policies: these include the determination of factors affecting the reimbursement of costs and the sharing of benefits accruing to co-basin States from jointly undertaken projects, as well as procedures for the assessment of water rates and fees, their collection and sharing among the beneficiary co-basin States.

6. Other questions of international management.

As a consequence of international management of water, many other questions may arise for which legal principles could be evolved. Some of them are outlined here below:

(*a*) constitutional requirements of co-basin States to accept the binding force of the decisions of international management;

(*b*) national water legislation of the co-basin States with respect to the use of water under international management;

(*c*) staffing problems and legal means to facilitate them; and

(*d*) any other questions to be considered or arising from the study of the working group.[303]

3. Draft articles on flood control, approved by the International Law Association at its fifty-fifth conference held in New York in 1972

409. At its meetings held in Montreal in 1971 and Stockholm in 1972, the Committee on International Water

[303] *Ibid.*, pp. 524–530.

Resources Law dealt mainly with flood control and marine pollution of continental origin. At the Stockholm meeting, the Committee adopted draft articles on both items,[304] which were approved by the International Law Association at its fifty-fifth Conference held in New York in 1972. The text of the draft articles on flood control reads as follows:

Article 1

In the context of the following Articles,

1. "Floods" means the rising of water levels which would have detrimental effects on life and property in co-basin States.

2. "Flood control" means the taking of all appropriate steps to protect land areas from floods or to minimize damage therefrom.

Article 2

Basin States shall co-operate in measures of flood control in a spirit of good neighbourliness, having due regard to their interests and well-being as co-basin States.

Article 3

Co-operation with respect to flood control may, by agreement between basin States, include among others:

(*a*) collection and exchange of relevant data;

(*b*) preparation of surveys, investigations and studies and their mutual exchange;

(*c*) planning and designing of relevant measures;

(*d*) execution of flood control measures;

(*e*) operation and maintenance of works;

(*f*) flood forecasting and communication of flood warnings;

(*g*) setting up of a regular information service charged to transmit the height of water levels and the discharge quantities.

Article 4

1. Basin States should communicate amongst themselves as soon as possible on any occasion such as heavy rainfalls, sudden melting of snow or other events likely to create floods and of dangerous rises of water levels in their territory.

2. Basin States should set up an effective system of transmission in order to fulfil the provisions contained in para. 1, and should ensure priority to the communication of flood warnings in emergency cases. If necessary a special system of translation should be built up between the basin States.

Article 5

1. The use of the channel of rivers and lakes for the discharge of excess waters shall be free and not subject to any limitation provided this is not incompatible with the object of flood control.

2. Basin States should maintain in good order their portions of water courses including works for flood control.

3. No basin State shall be prevented from undertaking schemes of drainage, river draining, conservation of soil against erosion and dredging, or from removal of stones, gravel or sand from the beds of its portions of water-courses provided that, in executing any of these schemes, it avoids any unreasonable interference with the object of flood control, and provided that such schemes are not contrary to any legal restrictions which may exist otherwise.

4. Basin States should ensure the prompt execution of repairs or other emergency measures for minimization of damage by flooding during periods of high waters.

Article 6

1. Expenses for collection and exchange of relevant data, for preparation of surveys, investigations and studies, for flood forecasting and communication of flood warnings, as well as for the setting-up of a regular information service shall be borne jointly by the basin States co-operating in such matters.

2. Expenses for special works undertaken by agreement in the territory of one basin State at the request of another basin State shall be borne by the requesting State, unless the cost is distributed otherwise under the agreement.

Article 7

A basin State is not liable to pay compensation for damage caused to another basin State by floods originating in that basin State unless it has acted contrary to what could be reasonably expected under the circumstances, and unless the damage caused is substantial.

Article 8

In case of dispute, articles XXX to XXXVII of the Helsinki rules are, so far as may be, applicable.

[304] For the text of the draft articles on flood control and the draft articles on marine pollution of continental origin, together with the commentaries, see the report of the Committee on International Water Resources Law (International Law Association, *Report of the Fifty-fifth Conference, New York, 1972* (London, 1973), pp. 40–106). The Committee is now preparing drafts on "Protection of Water Resources and Water Installations in Times of International Conflicts" and "Management and Administration of International Watercourses".

ANNEX

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A/CONF.48/14/Rev.1	*Report of the United Nations Conference on the Human Environment Stockholm, 5–16 June 1972*	United Nations publication, Sales No. E.73.II.A.14
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E/C.7/10	*Idem.* Future activities of the United Nations—Plans for the future non-operational activities of the Resources and Transport Division: note by the Secretary-General (section V, "Water resources")	Mimeographed
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ST/ECA/154	*Abstraction and Use of Water: a Comparison of Legal Régimes*	United Nations publication, Sales No. E.72.II.A.10
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NOTE. This list includes all United Nations documents identified in the text by their symbols for which no detailed reference is given in a foot-note.

Document	*Title*	*Observations and references*
A/AC.38/L.69	Statement made by the President of the Trusteeship Council at the 73rd meeting of the *Ad hoc* Political Committee held on 7 December 1950	Mimeographed
A/AC.131/10 and Add.1–10	United Nations Council for Namibia—Question oft ravel documents: report of the Secretary-General	*Idem.*
A/AC.131/20	*Idem.* Report of the Council's mission to Africa, 1970	*Idem.*
A/AC.131/L.4	*Idem.* Cables and letters relating to the question of Namibian representation and participation in the organizational meeting of the International Commission on Southeast Atlantic Fisheries held in Rome from 24 to 29 April 1972 as decided in the meetings of the Council for Namibia	*Idem.*
A/CN.4/L.161 and Add.1 and 2	Question of treaties concluded between States and international organizations or between two or more international organizations: Working paper submitted by the Secretary-General, containing a short bibliography, a historical survey of the question and a preliminary list of the relevant treaties published in the United Nations *Treaty Series*	*Idem.*
E/C.7/2/Add.6	Committee on Natural Resources: Issues of international water resources development: report of the Secretary-General	*Idem.*
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E/C.7/31	*Idem.* Developments in the field of natural resources—water, energy and minerals—United Nations Water Conference: report of the Inter-Governmental Panel of specialists [on the United Nations Water Conference]	*Idem.*
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E/CN.11/475	ECAFE, fourteenth session—Report of the Committee for Co-ordination of Investigations of the Lower Mekong Basin	*Idem.*
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E/CN.11/513	ECAFE, sixteenth session—*idem.*	*Idem.*
E/CN.11/557	ECAFE, seventeenth session—*idem.*	*Idem.*
E/ECE/311	ECE, thirteenth session—A study on water pollution control in Europe: prefatory note	*Idem.*
E/ECE/EP/98	ECE, Committee on Electric Power: Legal aspects of the hydroelectric development of rivers and lakes of common interest	*Idem.*
E/ECE/EP/98/Rev.1	*Idem.* Revised text	*Idem.*
E/ECE/EP/117	ECE, Committee on Electric Power: Hydroelectric development of contiguous rivers and lakes—recommendation No. 2	*Idem.*
E/ECE/EP/147	*Idem.* Hydroelectric development of successive rivers—recommendation No. 4	*Idem.*
E/ECE/WATER/7	ECE, Committee on Water Problems, report of the second session	*Idem.*
E/ECE/WATER/9	*Idem.* Report of the third session	*Idem.*
ST/ECE/WATER/6/ Add.1	Report of the Seminar on certain problems concerning water in southern Europe, organized by the ECE Committee on Water Problems with the assistance of UNDP (Zagreb, 4–11 October 1971)—addendum: Conclusions and recommendations	*Idem.*
WATER POLL./ CONF.1 and Add.1	ECE: Water pollution control problems in Europe—note by the Secretariat	*Idem.*
WATER POLL./ CONF.1/Add.2	*Idem.*	*Idem.*
WATER POLL./ CONF.3	*Idem.* Establishment of a list of experts—note by the Secretariat	*Idem.*
WATER POLL./ CONF.17	*Idem.* Possibilities for the promotion of international exchanges of information in the field of water pollution control in Europe—note by the ECE Secretariat	*Idem.*

CHECK LIST OF DOCUMENTS OF THE TWENTY-SIXTH SESSION NOT REPRODUCED IN VOLUME II

Document	*Title*	*Observations and references*
A/CN.4/273 and Rev.1	Provisional agenda	Mimeographed. For the agenda as adopted, see p. 161 above (A/9610/Rev.1, para. 10)
A/CN.4/275 and Add.1–2	Observations of Member States on the draft articles on succession of States in respect of treaties adopted by the Commission at its twenty-fourth session	Reproduced in A/9610/Rev., annex I (see p. 313 above)
A/CN.4/276/Add.1	Filling of casual vacancies: Addendum to the note by the Secretariat—nomination and *curriculum vitae*	Mimeographed
A/CN.4/283	Report of the Sub-Committee on the Law of the Non-Navigational uses of International Watercourses	Reproduced in A/9610/Rev.1, chap. V, annex (see p. 301 above)
A/CN.4/L.205	Observations of Member States on the draft articles on succession of States in respect of treaties adopted by the Commission at its twenty-fourth session: observations of Ethiopia	Reproduced in A/9610/Rev.1, annex I (see p. 314 above)
A/CN.4/L.207	Draft articles on State responsibility: texts adopted by the Drafting Committee—title of chap. II and articles 7–9	Texts reproduced in the summary record of the 1278th meeting (vol. I)
A/CN.4/L.208	*Idem*. Text for article 9, proposed by Mr. Ushakov	Withdrawn. See the summary record of the 1278th meeting (vol. I), para. 32
A/CN.4/L.209 and Add.1, Add.2 and Corr.1 and Add.3–5	Draft articles on succession of States in respect of treaties: texts adopted by the Drafting Committee—titles of parts I, II, III (sects. 1–5), IV, and VI, and arts. 1–6, 6 *bis*, 7–26, 26 *bis*, 26 *ter*, 27, 28, 28 *bis*, 28 *ter*, 29, 30, 30 *bis*, 31, 31 *bis* and 31 *ter*	Texts reproduced in the summary records of the 1285th, 1286th, 1290th and 1293rd to 1296th meetings (vol. I)
A/CN.4/L.210	Draft articles on treaties concluded between States and international organizations or between two or more international organizations: texts adopted by the Drafting Committee—titles of the draft articles and of parts I and II (and of sect. 1) and arts. 1–4 and 6	*Idem*., 1291st meeting (vol. I)
A/CN.4/L.211	Draft report of the International Law Commission on the work of its twenty-sixth session (chap. IV)	Mimeographed. For the final text, see A/9610/Rev.1 (p. 290 above)
A/CN.4/L.212	Draft articles on succession of States in respect of treaties: text of article 32 proposed by Mr. Kearney	Replaced by A/CN.4/L.221. See 1296th meeting (vol. I), para. 87
A/CN.4/L.213	Succession of States in respect of treaties: note by the Secretariat transmitting a letter dated 2 July 1974 from the Legal Adviser of the International Labour Office to the Chairman of the Commission	Mimeographed
A/CN.4/L.215 and Corr.2	Draft articles on succession of States in respect of treaties: article 12 *bis* (with new paragraph for insertion in article 2) proposed by Mr. Ushakov	Mimeographed. Reproduced in A/9610/Rev.1, foot-note 57
A/CN.4/L.216 and Add.1, A/CN.4/L.217 and Corr.1 and Add.1–2, Add.3 and Corr.1, Add.4 and Corr.1, and Add.5–14, A/CN.4/L.218 and Add.1–3, A/CN.4/L.219, A/CN.4/L.220 and Add.1–2	Draft report of the International Law Commission on the work of its twenty-sixth session (chaps. I, II, III, V and VI)	Mimeographed. For the final text, see A/9610/Rev.1 (p. 157 above)
A/CN.4/L.221	Draft articles on succession of States in respect of treaties: text of article 32 proposed by Mr. Kearney	Text reproduced in the summary record of the 1296th meeting (vol. I). See also A/9610/Rev.1, foot-note 58 (p. 173 above)
A/CN.4/L.222	*Idem*. Texts adopted by the Drafting Committee—arts. 6 and 6 *bis*	Reproduced in the summary record of the 1296th meeting (vol. I)
A/CN.4/L.223 and Corr.1 and Add.1	*Idem*. Final text adopted by the Drafting Committee	Adopted by the Commission. See A/9610/Rev.1, chap. II, D (p. 174 above).
A/CN.4/L.224	Financial implications of extending the duration of the Commission's session from 10 weeks to 12 weeks: Note by the Secretary-General	Mimeographed
A/CN.4/L.225	Succession of States in respect of treaties: draft resolution submitted by Mr. El-Erian	Adopted. Reproduced in the summary record of the 1301st meeting (vol. I). See also A/9610/Rev.1, para. 85 (p. 174 above)

Document	*Title*	*Observations and references*
A/CN.4/SR.1250–1301	Provisional summary records of the 1250th to 1301st meetings of the International Law Commission	Mimeographed. For the final text, see vol. I.
ILC (XXVI)/Conf. Room doc.2	Draft articles on State responsibility: proposals by Mr. Kearney concerning articles 7, 8 and 11	Reproduced in the summary record of the 1258th meeting (vol. I), para. 11.

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