

# **SOURCES OF INTERNATIONAL WATER LAW**

**Some General Conventions, Declarations, Resolutions and Decisions adopted by International Organizations, International Non-Governmental Institutions, International and Arbitral Tribunals, on International Water Resources**

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## FOREWORD

This Legislative Study constitutes a compendium of documents, often not easily available, on the law governing the development and management of international watercourses, i.e., rivers, lakes and underground aquifers, forming or traversed by the international border between or among sovereign States. It updates and replaces “The Law of International Water Resources” by Mr. D.A. Caponera, then Chief of the FAO Legislation Branch, published as FAO Legislative Study No. 23 in 1980.

In the preparation of this publication, only documents bearing a clear indication or reference to freshwaters which meet the standard illustrated at the outset of this Foreword, or to a particular body of freshwater also meeting the same standard, have been included in this publication. As a result, most, but not all, the material which featured in the Legislative Study No. 23 mentioned above has been included in this publication. In addition, where documents in draft form at that time had been included in that publication and have been since replaced by a new text, only the latter has been included in this publication. Many more documents which have made their appearance in the last nearly two decades have been added.

The present compendium is intended as a contribution to the better knowledge of the international law of freshwaters in general and, more specifically, as a source of ready reference and inspiration for policymakers and decisionmakers, legal practitioners and academics, and for Government legal advisors and negotiators, as they deal with the complex legal ramifications of developing and managing water resources shared across international borders and search for relevant applicable rules. The adoption by the United Nations General Assembly of a Convention on the Law of the Non-navigational Uses of International Watercourses at a specially convened session, in April 1997<sup>1</sup> adds to the urgency and usefulness of this publication. This complements three recent features in the Legislative Studies series, namely, the collections of the text of treaties and agreements on the non-navigational uses of international watercourses in Europe (Legislative Study No. 50 of 1993), Asia (Legislative Study No. 55 of 1995) and Africa (Legislative Study No. 61 of 1997).

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<sup>1</sup> U.N. doc. A/51/869 of 11 April 1997.

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**1. INTERNATIONAL CONVENTIONS**



**1.1 INTERNATIONAL CONVENTIONS OF UNIVERSAL APPLICATION**

1.1.1 General Treaty<sup>1</sup>  
Vienna, 9 June 1815

(Extract)

...

Article CVIII

The Powers whose states are separated, or crossed by the same navigable river, engage to regulate, by common consent, all that regards its navigation. For this purpose they will name Commissioners, who shall assemble, at latest, within six months after the termination of the Congress, and who shall adopt, as the basis of their proceedings, the principles established by the following Articles.

Article CIX

The navigation of the rivers, along their whole course, referred to in the preceding article, from the point where each of them becomes navigable, to its mouth, shall be entirely free, and shall not, in respect to commerce, be prohibited to any one; it being understood that the regulations established with regard to the police of this navigation, shall be respected; as they will be framed alike for all, and as favourable as possible to the commerce of all nations.

Article CX

The system that shall be established, both for the collection of the duties and for the maintenance of the police, shall be, as nearly as possible, the same along the whole course of the river; and shall also extend, unless particular circumstances prevent it, to those of its branches and junctions, which, in their navigable course, separate or traverse different states.

Article CXI

The duties on navigation shall be regulated in a uniform and settled manner, and with as little reference as possible to the different quality of the merchandize, in order that a minute examination of the cargo may be rendered unnecessary, except with a view to prevent fraud and evasion. The amount of the duties, which shall in no case exceed those now paid, shall be determined by local circumstances, which scarcely allow of a general rule in this respect. The tariff shall, however, be prepared in such a manner as to encourage commerce by facilitating navigation; for which purpose the duties established upon the Rhine, and now in force on that river, may serve as an approximating rule for its construction.

The tariff once settled, no increase shall take place therein, except by the common consent of the states bordering on the rivers; nor shall the navigation be burdened with any other duties than those fixed in the regulation.

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<sup>1</sup> Text in: HERTSLET, A collection of treaties and conventions between Great Britain and Foreign Powers, Vol. 1, p. 3.

Article CXII

The offices for the collection of duties, the number of which shall be reduced as much as possible, shall be determined upon in the above regulation, and no change shall afterwards be made, but by common consent, unless any of the States bordering on the Rivers should wish to diminish the number of those which exclusively belong to the same.

Article CXIII

Each State bordering on the Rivers is to be at the expense of keeping in good repair the towing paths which pass through its territory, and of maintaining the necessary works through the same extent in the channels of the river, in order that no obstacle may be experienced to the navigation.

The intended regulation shall determine the manner in which the States bordering on the Rivers are to participate in these latter works, where the opposite banks belong to different governments.

Article CXIV

There shall no where be established store-house, port, or forced harbour duties. Those already existing shall be preserved for such time only as the States bordering on Rivers (without regard to the local interest of the place or the country where they are established) shall find them necessary or useful to navigation and commerce in general.

Article CXV

The custom-houses belonging to the States bordering on Rivers shall not interfere in the duties of navigation. Regulations shall be established to prevent officers of the customs, in the exercise of their functions, throwing obstacles in the way of the navigation; but care shall be taken, by means of a strict police on the bank, to preclude every attempt of the inhabitants to smuggle goods, through the medium of boatmen.

Article CXVI

Everything expressed in the preceding Articles shall be settled by a general arrangement, in which there shall also be comprised whatever may need an ulterior determination.

The arrangement once settled, shall not be changed, but by and with the consent of all the States bordering on Rivers, and they shall take care to provide for its execution with due regard to circumstances and locality.

...

## 1.1.2 Convention and Statute on the Regime of Navigable Waterways of International Concern<sup>1</sup>

Barcelona, 20 April 1921

### 1.1.2.1 The Convention

Albania, Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Costa-Rica, Cuba, Denmark, the British Empire (with New Zealand and India), Spain, Estonia, Finland, France, Greece, Guatemala, Haiti, Honduras, Italy, Japan, Latvia, Lithuania, Luxembourg, Norway, Panama, Paraguay, the Netherlands, Persia, Poland, Portugal, Romania, the Serb-Croat-Slovene State, Sweden, Switzerland, Czecho-Slovakia, Uruguay and Venezuela:

Desirous of carrying further the development as regards the international regime of navigation on international waterways, which began more than a century ago, and which has been solemnly affirmed in numerous treaties,

Considering that General Conventions to which other Powers may accede at a later date constitute the best method of realising the purpose of article 23e of the Covenant of the League of Nations,

Recognising in particular that a fresh confirmation of the principle of Freedom of Navigation in a Statute elaborated by forty-one States belonging to the different portions of the world constitutes a new and significant stage towards the establishment of co-operation among States without in any way prejudicing their rights of sovereignty or authority,

Having accepted the invitation of the League of Nations to take part in a Conference at Barcelona which met on 10 March 1921, and having taken note of the final act of such Conference,

Anxious to bring into force forthwith the provisions of the Statute relating to the Regime of Navigable Waterways of International Concern which has there been adopted,

Wishing to conclude a Convention for this purpose the High Contracting Parties have appointed as their plenipotentiaries,

Who, after communicating their full powers found in good and due forms, have agreed as follows:

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<sup>1</sup> Text in: League of Nations, Treaty Series, Vol. VII, p. 37.

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 regime of navigable waterways of international concern, 1921, p. 373). The Convention came into force on 31 October 1922.

### Article 1

The High Contracting Parties declare that they accept the Statute on the Regime of Navigable Waterways of International Concern annexed hereto, adopted by the Barcelona Conference on 19 April 1921.

This Statute will be deemed to constitute an integral part of the present Convention. Consequently, they hereby declare that they accept the obligations and undertakings of the said Statute in conformity with the terms and in accordance with the conditions set out therein.

### Article 2

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on 28 June 1919, or out of the provisions of the other corresponding Treaties, in so far as they concern the powers which have signed, or which benefit by, such Treaties.

### Article 3

The present Convention, of which the French and English texts are both authentic, shall bear this day's date and shall be open for signature until 1 December 1921.

### Article 4

The present Convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who will notify the receipt of them to the other Members of the League and to States admitted to sign the Convention. The instruments of ratification shall be deposited in the archives of the secretariat.

In order to comply with the provisions of article 18 of the Convention of the League of Nations, the Secretary-General will register the present Convention upon the deposit of the first ratification.

### Article 5

Members of the League of Nations which have not signed the present Convention before 1 December 1921, may accede to it.

The same applies to States not Members of the League to which the Council of the League may decide officially to communicate the present Convention.

Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

### Article 6

The present Convention will not come into force until it has been ratified by five Powers. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-

General of the League of Nations of the fifth ratification. Thereafter the present convention will take effect in the case of each party ninety days after the receipt of its ratification or of the notification of its accession.

Upon the coming into force of the present Convention, the Secretary-General will address a certified copy of it to the Powers not Members of the League which are bound under the Treaties of Peace to accede to it.

#### Article 7

A special record shall be kept by the Secretary-General of the League of Nations, showing which of the parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times; it shall be published as often as possible in accordance with the directions of the council.

#### Article 8

Subject to the provisions of article 2 of the present Convention, the latter may be denounced by any party thereto after the expiration of five years from the date when it came into force in respect of that party. Denunciation shall be effected by notification in writing addressed to the Secretary-General of the League of Nations. Copies of such notification shall be transmitted forthwith by him to all the other parties, informing them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General and shall operate only in respect of the notifying Power. It shall not, in the absence of an agreement to the contrary, prejudice engagements entered into before the denunciation relating to a program of works.

#### Article 9

A request for the revision of the present Convention may be made at any time by one-third of the High Contracting Parties.

In faith whereof ..... Done at Barcelona, on April 20th, 1921.

1.1.2.2 The Statute

Article 1

In the application of the Statute, the following are declared to be navigable waterways of international concern:

1. All parts which are naturally navigable to and from the sea of a waterway which in its course, naturally navigable to and from the sea, separates or traverses different States, and also any part of any other waterway naturally navigable to and from the sea, which connects with the sea a waterway naturally navigable which separates or traverses different States.

It is understood that:

- a) transshipment from one vessel to another is not excluded by the words "navigable to and from the sea";
- b) any natural waterway or part of a natural waterway is termed "naturally navigable" if now used for ordinary commercial navigation, or capable by reason of its natural conditions of being so used; by "ordinary commercial navigation" is to be understood navigation which, in view of the economic condition of the riparian countries, is commercial and normally practicable;
- c) tributaries are to be considered as separate waterways;
- d) lateral canals constructed in order to remedy the defects of a waterway included in the above definition are assimilated thereto;
- e) the different States separated or traversed by a navigable waterway of international concern, including its tributaries of international concern, are deemed to be "riparian States".

2. Waterways, or parts of waterways, whether natural or artificial, expressly declared to be placed under the regime of the General Convention regarding navigable waterways of international concern either in unilateral Acts of the States under whose sovereignty or authority these waterways or parts of waterways are situated, or in agreements made with the consent, in particular, of such States.

Article 2

For the purpose of Articles 5, 10, 12 and 14 of this Statute, the following shall form a special category of navigable waterways of international concern:

- a) navigable waterways for which there are international Commissions upon which non-riparian States are represented;

- b) navigable waterways which may hereafter be placed in this category, either in pursuance of unilateral Acts of the States under whose sovereignty or authority they are situated, or in pursuance of agreements made with the consent, in particular, of such States.

### Article 3

Subject to the provisions contained in Articles 5 and 17, each of the Contracting States shall accord free exercise of navigation to the vessels flying the flag of any one of the other Contracting States on those parts of navigable waterways specified above which may be situated under its sovereignty or authority.

### Article 4

In the exercise of navigation referred to above, the nations, property and flags of all Contracting States shall be treated in all respects on a footing of perfect equality. No distinction shall be made between the nationals the property and the flags of the different riparian States, including the riparian State exercising sovereignty or authority over the portion of the navigable waterway in question; similarly, no distinction shall be made between the nationals, the property and the flags of riparian and non-riparian States. It is understood, in consequence, that no exclusive right of navigation shall be accorded on such navigable waterways to companies or to private persons.

No distinctions shall be made in the said exercise, by reason of the point of departure, of destination or of the direction of the traffic.

### Article 5

As an exception to the two preceding Articles, and in the absence of any Convention or obligation to the contrary:

1. A riparian State has the right of reserving for its own flag the transport of passengers and goods loaded at one port situated under its sovereignty or authority and unloaded at another port also situated under its sovereignty or authority. A State which does not reserve the above-mentioned transport to its own flag may, nevertheless, refuse the benefit of equality of treatment with regard to such transport to a co-riparian which does reserve it.

On the navigable waterways referred to in Article 2, the Act of Navigation shall only allow to riparian States the right of reserving the local transport of passengers or of goods which are of national origin or are nationalized. In every case, however, in which greater freedom of navigation may have been already established, in a previous Act of Navigation, this freedom shall not be reduced.

2. When a natural system of navigable waterways of international concern which does not include waterways of the kind referred to in Article 2 separates or traverses two States only, the latter have the right to reserve to their flags by mutual agreement the transport of passengers and goods loaded at one port of this system and unloaded at another port of the same system, unless this transport takes place between two ports which are not situated under the sovereignty or authority of the same State in the course of a voyage, effected without



transshipment on the territory of either of the said States, involving a sea-passage over a navigable waterway of international concern which does not belong to the said system.

#### Article 6

Each of the Contracting States maintains its existing right, on the navigable waterways or parts of navigable waterways referred to in Article 1 and situated under its sovereignty or authority, to enact the stipulations and to take the measures necessary for policing the territory and for applying the laws and regulations relating to customs, public health, precautions against the diseases of animals and plants, emigration or immigration, and to the import or export of prohibited goods, it being understood that such stipulations and measures must be reasonable, must be applied on a footing of absolute equality between the nationals, property and flags of any one of the Contracting States, including the State which is their author, and must not without good reason impede the freedom of navigation.

#### Article 7

No dues of any kind may be levied anywhere on the course or at the mouth of a navigable waterway of international concern, other than dues in the nature of payment for services rendered and intended solely to cover in an equitable manner the expenses of maintaining and improving the navigability of the waterway and its approaches, or to meet expenditure incurred in the interest of navigation. These dues shall be fixed in accordance with such expenses, and the tariff of dues shall be posted in the ports. These dues shall be levied in such a manner as to render unnecessary a detailed examination of the cargo, except in cases of suspected fraud or infringement of regulations, and so as to facilitate international traffic as much as possible, both as regards their rates and the method of their application.

#### Article 8

The transit of vessels and of passengers and goods on navigable waterways of international concern shall, so far as customs formalities are concerned, be governed by the conditions laid down in the Statute of Barcelona on Freedom of Transit. Whenever transit takes place without transshipment the following additional provisions shall be applicable:

- a) when both banks of a waterway of international concern are within one and the same State, the customs formalities imposed on goods in transit after they have been declared and subjected to a summary inspection shall be limited to placing them under seal or padlock or in the custody of customs officers;
- b) when a navigable waterway of international concern forms the frontier between two States, vessels, passengers and goods in transit shall while "en route" be exempt from any customs formality, except in cases in which there are valid reasons of a practical character for carrying out customs formalities at a place on the part of the river which forms the frontier, and this can be done without interfering with navigation facilities.

The transit of vessels and passengers, as well as the transit of goods without transshipment, on navigable waterways of international concern, must not give rise to the levying of any duties whatsoever, whether prohibited by the Statute of Barcelona on Freedom of Transit or authorized by Article 3 of that Statute. It is nevertheless understood that vessels in transit may

be made responsible for the board and lodging of any customs officers who are strictly required for supervision.

#### Article 9

Subject to the provisions of Articles 5 and 17, the nationals, property and flags of all the Contracting States shall, in all ports situated on a navigable waterway of international concern, enjoy, in all that concerns the use of the port, including port dues and charges, a treatment equal to that accorded to the nationals, property and flag of the riparian State under whose sovereignty or authority the port is situated. It is understood that the property to which the present paragraph relates is property originating in, coming from or destined for, one or other of the Contracting States.

The equipment of ports situated on a navigable waterway of international concern and the facilities afforded in these ports to navigation, must not be withheld from public use to an extent beyond what is reasonable and fully compatible with the free exercise of navigation.

In the application of customs or other analogous duties, local octroi or consumption duties, or incidental charges, levied on the occasion of the importation or exportation of goods through the aforesaid ports, no difference shall be made by reason of the flag of the vessel on which the transport has been or is to be accomplished, whether this flag be the national flag or that of any of the Contracting States.

The State under whose sovereignty or authority a port is situated may withdraw the benefits of the preceding paragraph from any vessel if it is proved that the owner of the vessel discriminates systematically against the nationals of that State, including companies controlled by such nationals.

In the absence of special circumstances justifying an exception on the ground of economic necessities, the customs duties must not be higher than those levied on the other customs frontiers of the State interested, on goods of the same kind, source and destination. All facilities accorded by the Contracting States to the importation or exportation of goods by other land or water routes, or in other ports, shall be equally accorded to importation or exportation under the same conditions over the navigable waterway and through the ports referred to above.

#### Article 10

1. 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.

2. If such navigation necessitates regular upkeep of the waterway, each of the riparian States is bound as towards the others to take such steps and to execute such works on its territory as are necessary for the purpose as quickly as possible, taking account at all times of the conditions of navigation, as well as of the economic state of the regions served by the navigable waterway.

In the absence of an agreement to the contrary, any riparian State will have the right, on valid reason being shown, to demand from the other riparians a reasonable contribution towards the cost of upkeep.

3. 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 not refuse to carry out works necessary for the improvement of the navigability which are asked for by another riparian State, if the latter State offers to pay the cost of the works and a fair share of the additional cost of upkeep. It is understood, however, that such works cannot be undertaken so long as the State of the territory on which they are to be carried out objects on the ground of vital interests.

4. In the absence of any agreement to the contrary, a State which is obliged to carry out works of upkeep is entitled to free itself from the obligation, if, with the consent of all the co-riparian States, one or more of them agree to carry out the works instead of it; as regards works for improvement, a State which is obliged to carry them out shall be freed from the obligation, if it authorizes the State which made the request to carry them out instead of it. The carrying out of works by States other than the State territorially interested, or the sharing by such States in the cost of works, shall be so arranged as not to prejudice the rights of the State territorially interested as regards the supervision and administrative control over the works, or its sovereignty and authority over the navigable waterway.

5. On the waterways referred to in Article 2, the provisions of the present Article are to be applied subject to the terms of the Treaties, Conventions, or Navigation Acts which determine the powers and responsibilities of the International Commission in respect of works.

Subject to any special provisions in the said Treaties, Conventions, or Navigation Acts, which exist or may be concluded:

- a) decisions in regard to works will be made by the Commission;
- b) the settlement, under the conditions laid down in Article 22 below, of any dispute which may arise as a result of these decisions, may always be demanded on the grounds that these decisions are *ultra vires*, or that they infringe international conventions governing navigable waterways. A request for a settlement under the aforesaid conditions based on any other grounds can only be put forward by the State which is territorially interested.

The decisions of this Commission shall be in conformity with the provisions of the present Article.

6. Notwithstanding the provisions of paragraph 1 of this Article, 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 referred to in Article 2.

As an exceptional case one of the riparian States of a navigable waterway of international concern not referred to in Article 2 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 under the conditions laid down in Article 22. If necessary, the judgement shall prescribe the conditions under which the closing to navigation may be carried into effect.

7. Should access to the sea be afforded by a navigable waterway of international interest through several branches, all of which are situated in the territory of one and the same State, the provisions of paragraphs 1, 2 and 3 of this Article shall apply only to the principal branches deemed necessary for providing free access to the sea.

#### Article 11

If on a waterway of international concern one or more of the riparian States are not Parties to this Statute, the financial obligations undertaken by each of the Contracting States in pursuance of Article 10 shall not exceed those to which they would have been subject if all the riparian States had been Parties.

#### Article 12

In the absence of contrary stipulations contained in a special Agreement or Treaty, for example, existing Conventions concerning customs and police measures and sanitary precautions, the administration of navigable waterways of international concern is exercised by each of the riparian States under whose sovereignty or authority the navigable waterway is situated. Each of such riparian States has, *inter alia*, the power and duty of publishing regulations for the navigation of such waterway and of seeing to their execution. These regulations must be framed and applied in such a way as to facilitate the free exercise of navigation under the conditions laid down in this Statute.

The rules of procedure dealing with such matters as ascertaining, prosecuting and punishing navigation offences must be such as to promote as speedy a settlement as possible

Nevertheless, the Contracting States recognize that it is highly desirable that the riparian States should come to an understanding with regard to the administration of the navigable waterway and, in particular, with regard to the adoption of navigation regulations of as uniform a character throughout the whole course of such navigable waterway as the diversity of local circumstances permits.

Public services of towage or other means of haulage may be established in the form of monopolies for the purpose of facilitating the exercise of navigation, subject to the unanimous agreement of the riparian States or the States represented on the International Commission in the case of navigable waterways referred to in Article 2.

### Article 13

Treaties, conventions or agreements in force relating to navigable waterways, concluded by the Contracting States before the coming into force of this Statute, are not, as a consequence of its coming into force, abrogated so far as concerns the States signatories to those treaties.

Nevertheless, the Contracting States undertake not to apply among themselves any provisions of such treaties, conventions or agreements which may conflict with the rules of the present Statute.

### Article 14

If any of the special agreements or treaties referred to in Article 12 has entrusted or shall hereafter entrust certain functions to an international Commission which includes representatives of States other than the riparian States, it shall be the duty of such Commission, subject to the provisions of Article 10, to have exclusive regard to the interests of navigation, and it shall be deemed to be one of the organizations referred to in Article 24 of the Covenant of the League of Nations. Consequently, it will exchange all useful information directly with the League and its organizations, and will submit an annual report to the League.

The powers and duties of the Commission referred to in the preceding paragraph shall be laid down in the Act of Navigation of each navigable waterway and shall at least include the following:

- a) the Commission shall be entitled to draw up such navigation regulations as it thinks necessary itself to draw up, and all other navigation regulations shall be communicated to it;
- b) it shall indicate to the riparian States the action advisable for the up-keep of works and the maintenance of navigability;
- c) it shall be furnished by each of the riparian States with official information as to all schemes for the improvement of the waterway;
- d) it shall be entitled, in cases in which the Act of Navigation does not include a special regulation with regard to the levying of dues, to approve of the levying of such dues and charges in accordance with the provisions of Article 7 of this Statute.

### Article 15

This Statute does not prescribe the rights and duties of belligerents and neutral in time of war. The Statute shall, however, continue in force in time of war so far as such rights and duties permit.

### Article 16

This Statute does not impose upon a Contracting State any obligation conflicting with its rights and duties as a Member of the League of Nations.

### Article 17

In the absence of any agreement to the contrary to which the State territorially interested is or may be a Party, this Statute has no reference to the navigation of vessels of war or of vessels performing police or administrative functions, or, in general, exercising any kind of public authority.

### Article 18

Each of the Contracting States undertakes not to grant, either by agreement or in any other way, to a non-Contracting State treatment with regard to navigation over a navigable waterway of international concern which, as between Contracting States, would be contrary to the provisions of this Statute.

### Article 19

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may, in exceptional cases and for a period as short as possible, involve a deviation from the provisions of the above Articles; it being understood that the principle of the freedom of navigation, and especially communication between the riparian States and the sea, must be maintained to the utmost possible extent.

### Article 20

This Statute does not entail in any way the withdrawal of existing greater facilities granted to the free exercise of navigation on any navigable waterway of international concern, under conditions consistent with the principle of equality laid down in this Statute, as regards the nationals, the goods and the flags of all the Contracting States; nor does it entail the prohibition of such grant of greater facilities in the future.

### Article 21

In conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting State which can establish a good case against the application of any provisions of this Statute in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision, it being understood that the principle of freedom of navigation must be observed as far as possible.

### Article 22

Without prejudice to the provisions of paragraph 5 of Article 10, any dispute between States as to the interpretation or application of this Statute which is not settled directly between them shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly to submit such disputes for an opinion to any 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. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for free navigation which existed before the act or occurrence which gave rise to the dispute.

#### Article 23

A navigable waterway shall not be considered as of international concern on the sole ground that it traverses or delimits zones or enclaves, the extent and population of which are small as compared with those of the territories which it traverses, and which form detached portions or establishments belonging to a State other than that to which the said river belongs, with this exception, throughout its navigable course.

#### Article 24

This Statute shall not be applicable to a navigable waterway of international concern which has only two riparian States, and which separated for a considerable distance, a Contracting State from a non-Contracting State whose Government is not recognized by the former at the time of the signing of this Statute, until an agreement has been concluded between them establishing, for the waterway in question, an administrative and customs regime which affords suitable safeguards to the Contracting State.

#### Article 25

It is understood that this Statute must not be interpreted as regulating in any way rights and obligations inter se of territories forming part, or placed under the protection, of the same sovereign State, whether or not these territories are individually Members of the League of Nations.

### 1.1.2.3 Additional Protocol

The States signatories of the Convention on the Regime of Navigable Waterways of International Concern, signed at Barcelona on 20 April 1921, whose duly authorised representatives have affixed their signatures to the present Protocol, hereby declare that, in addition to the Freedom of Communications which they have conceded by virtue of the Convention on Navigable Waterways considered as of international concern, they further concede, on condition of reciprocity, without prejudice to their rights of sovereignty, and in time of peace:

- a) on all navigable waterways;
- b) on all naturally navigable waterways;

which are placed under their sovereignty or authority, and which, not being considered as of international concern, are accessible to ordinary commercial navigation to and from the sea, and also in all the ports situated on these waterways, perfect equality of treatment for the flags of any State signatory of this Protocol as regards the transport of imports and exports without transshipment.

At the time of signing, the signatory States must declare whether they accept the obligation to the full extent indicated under paragraph a) above, or only to the more limited extent defined by paragraph b).

It is understood that States which have accepted paragraph a) are not bound as regards those which have accepted paragraph b), except under the conditions resulting from the latter paragraph.

It is also understood that those States which possess a large number of ports (situated on navigable waterways) which have hitherto remained closed to international commerce, may, at the time of the signing of the present Protocol, exclude from its application one or more of the navigable waterways referred to above.

The signatory States may declare that their acceptance of the present Protocol does not include any or all of the colonies, overseas possessions or protectorates under their sovereignty or authority, and they may subsequently adhere separately on behalf of any colony, overseas possession or protectorate so excluded in their declaration. They may also denounce the Protocol separately in accordance with its provisions, in respect of any colony, overseas possession or protectorate under their sovereignty or authority.

The present Protocol shall be ratified. Each Power shall send its ratification to the Secretary-General of the League of Nations, who shall cause notice of such ratification to be given to all the other signatory Powers; these ratifications shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall remain open for the signature or adherence of the States which have signed the above-mentioned Convention or have given their adherence to it.



It shall come into force after the Secretary-General of the League of Nations has received the ratification of two States; provided, however, that the said Convention has come into force by that time.

It may be denounced at any time after the expiration of a period of two years dating from the time of the reception by the Secretary-General of the League of Nations of the ratification of the denouncing State. The denunciation shall not take effect until one year after it has been received by the Secretary-General of the League of Nations. A denunciation of the Convention on the Regime of Navigable Waterways of International Concern shall be considered as including a denunciation of the present Protocol.

Done at Barcelona, the twentieth day of April, nineteen hundred and twenty-one, in single copy, of which the French and English texts shall be authentic.

#### 1.1.2.4 Declaration recognising the Right to a Flag of States having no Sea-coast

The undersigned, duly authorised for the purpose, declare that the States which they represent recognise the flag flown by the vessels of any State having no sea-coast which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels.

Barcelona, 20 April 1921, done in a single copy of which the English and French texts shall be authentic.

### 1.1.3 Convention relating to the Development of Hydraulic Power affecting more than one State and Protocol of Signature<sup>1</sup>

Geneva, 9 December 1923

#### 1.1.3.1 The Convention

Austria, Belgium, The British Empire (with New Zealand), Bulgaria, Chile, Denmark, The Free City of Danzig, France, Greece, Hungary, Italy, Lithuania, Poland, Kingdom of the Serbs, Croats and Slovenes, Siam and Uruguay:

Desirous of promoting international agreement for the purpose of facilitating the exploitation and increasing the yield of hydraulic power,

Having accepted the invitation of the League of Nations to take part in the Conference which met at Geneva on 15 November 1923,

Wishing to conclude a General Convention for the above purpose,

The High Contracting Parties have appointed as their plenipotentiaries, who, after communicating their full powers, found in good and due form, have agreed as follows:

#### Article 1

The present Convention 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.

#### Article 2

Should reasonable development of hydraulic power involve international investigation, the Contracting States concerned shall agree to such 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 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, under the conditions laid down in the preceding paragraph.

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<sup>1</sup> Text in: League of Nations, Treaty Series, Vol. XXXVI, p. 77.  
The Convention was adopted by the Second Conference on Communication and Transit by 24 votes to 3, with 6 abstentions (see League of Nations, Second General Conference on Communications and Transit, Records and Texts, 1921 (C.30.M.16.1924.VIII), Annex I, p. 76).

No State shall be obliged to carry out a programme of development unless it has formally accepted the obligation to do so.

#### Article 3

If a Contracting 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, the States concerned shall enter into negotiations with a view to the conclusion of agreements which will allow such operations to be executed.

#### Article 4

If a Contracting State desires to carry out operations for the development of hydraulic power which might cause serious prejudice to any other Contracting State, the States concerned shall enter into negotiations with a view to the conclusion of agreements which will allow such operations to be executed.

#### Article 5

The technical methods adopted in the agreements referred to in the foregoing articles 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.

#### Article 6

The agreements contemplated in the foregoing articles may provide, amongst 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 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.

Article 7

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.

Article 8

So far as international waterways are concerned which, under the terms of the general Convention on the Regime of Navigable Waterways of International Concern, are contemplated as subject to the provisions of that Convention, all rights and obligations which may be derived from agreements concluded in conformity with the present Convention 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.

Article 9

This Convention does not prescribe the rights and duties of belligerents and neutrals in time of war. The Convention shall, however, continue in force in time of war so far as such rights and duties permit.

Article 10

This Convention does not entail in any way the withdrawal of facilities which are greater than those provided for in the Statute and which have been granted to international traffic by rail under conditions consistent with its principles. This Convention also entails no prohibition of such grant of greater facilities in the future.

Article 11

The present Convention does not in any way affect the rights and obligations of the Contracting State arising out of former conventions or treaties on the subject matter of the present Convention, or out of the provisions on the same subject-matter in general treaties, including the Treaties of Versailles, Trianon and other treaties which ended the war of 1914-18.

Article 12

If a dispute arises between Contracting States as to the application or interpretation of the present Statute, and if such 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.

The provisions of the preceding paragraph 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.

#### Article 13

It is understood that this Convention must not be interpreted as regulating in any way rights and obligations inter se of territories forming part of or placed under the protection of the same sovereign State, whether or not these territories are individually Contracting States.

#### Article 14

Nothing in the preceding articles is to be construed as affecting in any way the rights or duties of a Contracting State as Member of the League of Nations.

#### Article 15

The present Convention, of which the French and English texts are both authentic, shall bear this day's date, and shall be open for signature until October 31, 1924, by any State represented at the Conference of Geneva, by any Member of the League of Nations and by any States to which the Council of the League of Nations shall have communicated a copy of the Convention for this purpose.

#### Article 16

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the League of Nations, who shall notify their receipt to every State signatory of or acceding to the Convention.

#### Article 17

On and after November 1, 1924, the present Convention may be acceded to by any State represented at the Conference of Geneva, by any Member of the League of Nations, or by any State to which the Council of the League of Nations shall have communicated a copy of the Convention for this purpose.

Accession shall be effected by an instrument communicated to the Secretary-General of the League of Nations to be deposited in the archives of the Secretariat. The Secretary-General shall at once notify such deposit to every State signatory of or acceding to the Convention.

#### Article 18

The present Convention will not come into force until it has been ratified in the name of three States. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the League of Nations of the third ratification. Thereafter, the present Convention will take effect in the case of each Party ninety days after the receipt of its ratification or of the notification of its accession.

In compliance with the provisions of Article 18 of the Convention of the League of Nations, the Secretary-General will register the present Convention upon the day of its coming into force.

#### Article 19

A special record shall be kept by the Secretary-General of the League of Nations showing, with due regard to the provisions of Article 21, which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times; it shall be published as often as possible, in accordance with the directions of the Council.

#### Article 20

Subject to the provisions of Article 11 above, the present Convention may be denounced by any Party thereto after the expiration of five years from the date when it came into force in respect of that Party. Denunciation shall be effected by notification in writing addressed to the Secretary-General of the League of Nations. Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received.

A denunciation shall take effect one year after the date on which the notification thereof was received by the Secretary-General and shall operate only in respect of the notifying State.

#### Article 21

Any State signing or adhering to the present Convention may declare, at the moment either of its signature, ratification or accession, that its acceptance of the present Convention does not include any or all of its colonies, overseas possessions, protectorates, or overseas territories, under its sovereignty or authority, and may subsequently accede, in conformity with the provisions of Article 17, on behalf of any such colony, overseas possession, protectorate or territory excluded by such declaration.

Denunciation may also be made separately in respect of any such colony, overseas possession, protectorate or territory, and the provisions of Article 20 shall apply to any such denunciation.

#### Article 22

A request for the revision of the present Convention may be made at any time by one-third of the Contracting States.

#### 1.1.3.2 Protocol of Signature

At the moment of signing the Convention of to-day's date relating to the development of hydraulic power affecting more than one State, the undersigned, duly authorised, have agreed as follows:

The provisions of the Convention do 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.

The present Protocol will have the same force, effect and duration as the Convention of to-day's date, of which it is to be considered as an integral part.

In faith whereof the above-named Plenipotentiaries have signed the present Protocol.

Done at Geneva, the ninth day of December one thousand nine hundred and twenty-three, in a single copy, which will remain deposited in the archives of the Secretariat of the League of Nations; certified copies will be transmitted to all the States represented at the Conference.

1.1.4 Convention to Combat Desertification<sup>1</sup>

Paris, 17 June 1994

(Extract)

...

Part IIIAction programmes, scientific and technical co-operation and supporting measuresArticle 11Sub-regional and regional action programmes

Affected country Parties shall consult and cooperate to prepare, as appropriate, in accordance with relevant regional implementation annexes, sub-regional and/or regional action programmes to harmonize, complement and increase the efficiency of national programmes. The provisions of article 10<sup>2</sup> shall apply *mutatis mutandis* to sub-regional and regional programmes. Such co-operation may include agreed joint programmes for the sustainable management of transboundary natural resources, scientific and technical co-operation, and strengthening of relevant institutions.

Annex IRegional implementation Annex for AfricaArticle 11Content and preparation of sub-regional action programmes

Sub-regional action programmes shall focus on issues that are better addressed at the sub-regional level. They shall establish, where necessary, mechanisms for the management of shared natural resources. Such mechanisms shall effectively handle transboundary problems associated with desertification and/or drought and shall provide support for the harmonious implementation of national action programmes. Priority areas for sub-regional action programmes shall, as appropriate, focus on:

- (a) joint programmes for the sustainable management of transboundary natural resources through bilateral and multilateral mechanisms, as appropriate;

...

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<sup>1</sup> Text in: Convention to Combat Desertification (CCD) Web Page, Internet (<http://www.unccd.ch>).  
The Convention entered into force on 26 December 1996.

<sup>2</sup> National Action Programmes.



- (e) scientific and technical co-operation, particularly in the climatological, meteorological and hydrological fields, including networking for data collection and assessment, information sharing and project monitoring, and co-ordination and prioritization of research and development activities;

...

Annex II

Regional implementation Annex for Asia

Article 5

Sub-regional and joint action programmes

...

3. Sub-regional or joint action programmes may include agreed joint programmes for the sustainable management of transboundary natural resources relating to desertification, priorities for co-ordination and other activities in the fields of capacity building, scientific and technical co-operation, particularly drought early warning systems and information sharing, and means of strengthening the relevant sub-regional and other organizations or institutions.

1.1.5 Convention on the Law of the Non-navigational Uses of International Watercourses<sup>1</sup>New York, 21 May 1997<sup>2</sup>

The Parties to the present Convention,

Conscious of the importance of international watercourses and the non-navigational uses thereof in many regions of the world,

Having in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Considering that successful codification and progressive development of rules of international law regarding non-navigational uses of international watercourses would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Taking into account the problems affecting many international watercourses resulting from, among other things, increasing demands and pollution,

Expressing the conviction that a framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations,

Affirming the importance of international co-operation and good neighbourliness in this field,

Aware of the special situation and needs of developing countries,

Recalling the principles and recommendations adopted by the United Nations Conference on Environment and Development of 1992 in the Rio Declaration and Agenda 21,

Recalling also the existing bilateral and multilateral agreements regarding the non-navigational uses of international watercourses,

Mindful of the valuable contribution of international organizations, both governmental and non-governmental, to the codification and progressive development of international law in this field,

Appreciative of the work carried out by the International Law Commission on the law of the non-navigational uses of international watercourses,

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<sup>1</sup> Text in: UN Document A/51/869 of 11 April 1997. The Convention was adopted by UN General Assembly Resolution 51/229 of 21 May 1997 and opened to signature on the same day.

<sup>2</sup> UN Document A/51/L.72.

Bearing in mind United Nations General Assembly resolution 49/52 of 9 December 1994,

Have agreed as follows:

## Part I. Introduction

### Article 1

#### Scope of the present Convention

1. The present Convention applies to uses of international watercourses and of their waters for purposes other than navigation and to measures of protection, preservation and management related to the uses of those watercourses and their waters.
2. The uses of international watercourses for navigation is not within the scope of the present Convention except insofar as other uses affect navigation or are affected by navigation.

### Article 2

#### Use of terms

For the purposes of the present Convention:

"Watercourse" means a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;

"International watercourse" means a watercourse, parts of which are situated in different States;

"Watercourse State" means a State Party to the present Convention in whose territory part of an international watercourse is situated, or a Party that is a regional economic integration organization, in the territory of one or more of whose Member States part of an international watercourse is situated;

"Regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

### Article 3

#### Watercourse agreements

In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention.

Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may, where necessary, consider harmonizing such agreements with the basic principles of the present Convention.

Watercourse States may enter into one or more agreements, hereinafter referred to as "watercourse agreements" which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof.

Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or any part thereof or a particular project programme or use except insofar as the agreement adversely affects, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse, without their express consent.

Where a watercourse State considers that adjustment and application of the provisions of the present Convention is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements.

Where some but not all watercourse States to a particular international watercourse are parties to an agreement, nothing in such agreement shall affect the rights or obligations under the present Convention of watercourse States that are not parties to such an agreement.

#### Article 4

##### Parties to watercourse agreements

1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire international watercourse, as well as to participate in any relevant consultations.
2. A watercourse State whose use of an international watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, to the extent that its use is thereby affected.

### Part II. General principles

#### Article 5

##### Equitable and reasonable utilization and participation

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.
2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes

both the right to utilize the watercourse and the duty to co-operate in the protection and development thereof, as provided in the present Convention.

Article 6  
Factors relevant to equitable and reasonable utilization

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

- (a) geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
- (b) the social and economic needs of the watercourse States concerned;
- (c) the population dependent on the watercourse in each watercourse State;
- (d) the effects of the use or uses of the watercourses in one watercourse State on other watercourse States;
- (e) existing and potential uses of the watercourse;
- (f) conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;
- (g) the availability of alternatives, of comparable value, to a particular planned or existing use.

2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of co-operation.

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 use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

Article 7  
Obligation not to cause significant harm

1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.

2. Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.

Article 8  
General obligation to co-operate

1. Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.

In determining the manner of such co-operation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate co-operation on relevant measures and procedures in the light of experience gained through co-operation in existing joint mechanisms and commissions in various regions.

Article 9  
Regular exchange of data and information

1. Pursuant to article 8, watercourse States shall on a regular basis exchange readily available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature and related to the water quality as well as related forecasts.

2. If a watercourse State is requested by another watercourse State to provide data or information that is not readily available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.

3. Watercourse States shall employ their best efforts to collect and, where appropriate, to process data and information in a manner which facilitates its utilization by the other watercourse States to which it is communicated.

Article 10  
Relationship between different kinds of uses

1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses.

2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs.

Part III. Planned measures

Article 11  
Information concerning planned measures

Watercourse States shall exchange information and consult each other and, if necessary, negotiate on the possible effects of planned measures on the condition of an international watercourse.

Article 12Notification concerning planned measures with possible adverse effects

Before a watercourse State implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.

Article 13Period for reply to notification

Unless otherwise agreed:

- (a) a watercourse State providing a notification under article 12 shall allow the notified States a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate the findings to it;
- (b) this period shall, at the request of a notified State for which the evaluation of the planned measures poses special difficulty, be extended for a period of six months.

Article 14Obligations of the notifying State during the period for reply

During the period referred to in article 13, the notifying State:

- (a) shall cooperate with the notified States by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation; and
- (b) shall not implement or permit the implementation of the planned measures without the consent of the notified States.

Article 15Reply to notification

The notified States shall communicate their findings to the notifying State as early as possible within the period applicable pursuant to article 13. If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, it shall attach to its finding a documented explanation setting forth the reasons for the finding.

Article 16Absence of reply to notification

1. If, within the period applicable pursuant to article 13, the notifying State receives no communication under article 15, it may, subject to its obligations under articles 5 and 7,

proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.

2. Any claim to compensation by a notified State which has failed to reply within the period applicable pursuant to article 13 may be offset by the costs incurred by the notifying State for action undertaken after the expiration of the time for a reply which would not have been undertaken if the notified State had objected within that period.

#### Article 17

##### Consultations and negotiations concerning planned measures

1. If a communication is made under article 15 that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, the notifying State and the State making the communication shall enter into consultations and, if necessary, negotiations with a view to arriving at an equitable resolution of the situation.

2. The consultations and negotiations shall be conducted on the basis that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other State.

3. During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period of six months unless otherwise agreed.

#### Article 18

##### Procedures in the absence of notification

1. If a watercourse State has reasonable grounds to believe that another watercourse State is planning measures that may have a significant adverse effect upon it, the former State may request the latter to apply the provisions of article 12. The request shall be accompanied by a documented explanation setting forth its grounds.

2. In the event that the State planning the measures nevertheless finds that it is not under an obligation to provide a notification under article 12, it shall so inform the other State, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner indicated in paragraphs 1 and 2 of article 17.

3. During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or permitting the implementation of those measures for a period of six months unless otherwise agreed.

#### Article 19

##### Urgent implementation of planned measures

1. In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning



the measures may, subject to articles 5 and 7, immediately proceed to implementation, notwithstanding the provisions of article 14 and paragraph 3 of article 17.

2. In such case, a formal declaration of the urgency of the measures shall be communicated without delay to the other watercourse States referred to in article 12 together with the relevant data and information.

3. The State planning the measures shall, at the request of any of the States referred to in paragraph 2, promptly enter into consultations and negotiations with it in the manner indicated in paragraphs 1 and 2 of article 17.

#### Part IV. Protection, preservation and management

##### Article 20

##### Protection and preservation of ecosystems

Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.

##### Article 21

##### Prevention, reduction and control of pollution

1. For the purpose of this article, "pollution of an international watercourse" means any detrimental alteration in the composition or quality of the waters of an international watercourse which results directly or indirectly from human conduct.

2. Watercourse States shall, individually and, where appropriate, jointly, prevent, reduce and control the pollution of an international watercourse that may cause significant harm to other watercourse States or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse. Watercourse States shall take steps to harmonize their policies in this connection.

Watercourse States shall, at the request of any of them, consult with a view to arriving at mutually agreeable measures and methods to prevent, reduce and control pollution of an international watercourse, such as:

- (a) setting joint water quality objectives and criteria;
- (b) establishing techniques and practices to address pollution from point and non-point sources;
- (c) establishing lists of substances the introduction of which into the waters of an international watercourse is to be prohibited, limited, investigated or monitored.

Article 22  
Introduction of alien or new species

Watercourse States shall take all measures necessary to prevent the introduction of species, alien or new, into an international watercourse which may have effects detrimental to the ecosystem of the watercourse resulting in significant harm to other watercourse States.

Article 23  
Protection and preservation of the marine environment

Watercourse States shall, individually and, where appropriate, in co-operation with other States, take all measures with respect to an international watercourse that are necessary to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards.

Article 24  
Management

1. Watercourse States shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism.
2. For the purposes of this article, "management" refers, in particular, to:
  - (a) planning the sustainable development of an international watercourse and providing for the implementation of any plans adopted; and
  - (b) otherwise promoting the rational and optimal utilization, protection and control of the watercourse.

Article 25  
Regulation

1. Watercourse States shall cooperate, where appropriate, to respond to needs or opportunities for regulation of the flow of the waters of an international watercourse.
2. Unless otherwise agreed, watercourse States shall participate on an equitable basis in the construction and maintenance or defrayal of the costs of such regulation works as they may have agreed to undertake.
3. For the purposes of this article, "regulation" means the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of the waters of an international watercourse.

Article 26  
Installations

1. Watercourse States shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to an international watercourse.
2. Watercourse States shall, at the request of any of them which has reasonable grounds to believe that it may suffer significant adverse effects, enter into consultations with regard to:
  - (a) the safe operation and maintenance of installations, facilities or other works related to an international watercourse; and
  - (b) the protection of installations, facilities or other works from wilful or negligent acts or the forces of nature.

Part V. Harmful conditions and emergency situations

Article 27  
Prevention and mitigation of harmful conditions

Watercourse States shall, individually and, where appropriate, jointly, take all appropriate measures to prevent or mitigate conditions related to an international watercourse that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification.

Article 28  
Emergency situations

1. For the purposes of this article, "emergency" means a situation that causes, or poses an imminent threat of causing, serious harm to watercourse States or other States and that results suddenly from natural causes, such as floods, the breaking up of ice, landslides or earthquakes, or from human conduct, such as industrial accidents.
2. A watercourse State shall, without delay and by the most expeditious means available, notify other potentially affected States and competent international organizations of any emergency originating within its territory.
3. A watercourse State within whose territory an emergency originates shall, in co-operation with potentially affected States and, where appropriate, competent international organizations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of the emergency.
4. When necessary, watercourse States shall jointly develop contingency plans for responding to emergencies, in co-operation, where appropriate, with other potentially affected States and competent international organizations.

## Part VI. Miscellaneous provisions

### Article 29

#### International watercourses and installations in time of armed conflict

International watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.

### Article 30

#### Indirect procedures

In cases where there are serious obstacles to direct contacts between watercourse States, the States concerned shall fulfil their obligations of co-operation provided for in the present Convention, including exchange of data and information, notification, communication, consultations and negotiations, through any indirect procedure accepted by them.

### Article 31

#### Data and information vital to national defense or security

Nothing in the present Convention obliges a watercourse State to provide data or information vital to its national defense or security. Nevertheless, that State shall cooperate in good faith with the other watercourse States with a view to providing as much information as possible under the circumstances.

### Article 32

#### Non-discrimination

Unless the watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse, a watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory.

### Article 33

#### Settlement of disputes

1. In the event of a dispute between two or more Parties concerning the interpretation or application of the present Convention, the Parties concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions.

2. If the Parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been

established by them or agree to submit the dispute to arbitration or to the International Court of Justice.

3. Subject to the operation of paragraph 10, if after six months from the time of the request for negotiations referred to in paragraph 2, the Parties concerned have not been able to settle their dispute through negotiation or any other means referred to in paragraph 2, the dispute shall be submitted, at the request of any of the parties to the dispute, to impartial fact-finding in accordance with paragraphs 4 to 9, unless the Parties otherwise agree.

A Fact-finding Commission shall be established, composed of one member nominated by each Party concerned and in addition a member not having the nationality of any of the Parties concerned chosen by the nominated members who shall serve as Chairman.

5. If the members nominated by the Parties are unable to agree on a Chairman within three months of the request for the establishment of the Commission, any Party concerned may request the Secretary-General of the United Nations to appoint the Chairman who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. If one of the Parties fails to nominate a member within three months of the initial request pursuant to paragraph 3, any other Party concerned may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. The person so appointed shall constitute a single-member Commission.

6. The Commission shall determine its own procedure.

7. The Parties concerned have the obligation to provide the Commission with such information as it may require and, on request, to permit the Commission to have access to their respective territory and to inspect any facilities, plant, equipment, construction or natural feature relevant for the purpose of its inquiry.

8. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the Parties concerned setting forth its findings and the reasons therefor and such recommendations as it deems appropriate for an equitable solution of the dispute, which the Parties concerned shall consider in good faith.

9. The expenses of the Commission shall be borne equally by the Parties concerned.

10. When ratifying, accepting, approving or acceding to the present Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute not resolved in accordance with paragraph 2, it recognizes as compulsory *ipso facto* and without special agreement in relation to any Party accepting the same obligation:

- (a) submission of the dispute to the International Court of Justice; and/or
- (b) arbitration by an arbitral tribunal established and operating, unless the parties to the dispute otherwise agreed, in accordance with the procedure laid down in the Annex to the present Convention.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with subparagraph (b).

## Part VII. Final clauses

### Article 34

#### Signature

The present Convention shall be open for signature by all States and by regional economic integration organizations from ... until ... at United Nations Headquarters in New York.

### Article 35

#### Ratification, acceptance, approval or accession

1. The present Convention is subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.
2. Any regional economic integration organization which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.
3. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Secretary-General of the United Nations of any substantial modification in the extent of their competence.

### Article 36

#### Entry into force

1. The present Convention shall enter into force on the ninetieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional those deposited by States.

Article 37  
Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto, have signed this Convention.

DONE at New York, this \_\_\_\_\_ day of one thousand nine hundred and ninety-seven.

Annex  
Arbitration

Article 1

Unless the parties to the dispute otherwise agree, the arbitration pursuant to article 33 of the Convention shall take place in accordance with articles 2 to 14 of the present Annex.

Article 2

The claimant party shall notify the respondent party that it is referring a dispute to arbitration pursuant to article 33 of the Convention. The notification shall state the subject matter of arbitration and include, in particular, the articles of the Convention, the interpretation or application of which are at issue. If the parties do not agree on the subject matter of the dispute, the arbitral tribunal shall determine the subject matter.

Article 3

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and 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 or of any riparian State of the watercourse concerned, nor have his or her usual place of residence in the territory of one of these parties or such riparian State, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

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 International Court of Justice shall, at the request of a party, designate the Chairman within a further two-month period.
2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the President of the International Court of Justice, who shall make the designation within a further two-month period.

Article 5

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

Article 6

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 7

The arbitral tribunal may, at the request of one of the Parties, recommend essential interim measures of protection.

Article 8

1. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:
  - (a) provide it with all relevant documents, information and facilities; and
  - (b) enable it, when necessary, to call witnesses or experts and receive their evidence.
2. The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 10

Any Party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.



Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

1. The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time limit for a period which should not exceed five more months.
2. The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.
3. The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.
4. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

## **1.2 INTERNATIONAL CONVENTIONS OF REGIONAL APPLICATION**

## 1.2.1 Africa

1.2.1.1 African Convention on the Conservation of Nature and Natural Resources<sup>1</sup> - Algiers,  
15 September 1968

(Extracts)

...

Article II  
Fundamental Principle

The Contracting States shall undertake to adopt the measures necessary to ensure conservation, utilization and development of soil, water, flora and fauna resources in accordance with scientific principles and with due regard to the best interests of the people.

...

Article V  
Water

1. The Contracting States shall establish policies for conservation, utilization and development of underground and surface water, and shall endeavour to guarantee for their populations a sufficient and continuous supply of suitable water, taking appropriate measures with due regard to:

- (i) the study of water cycles and the investigation of each catchment area;
- (ii) the co-ordination and planning of water resources development projects;
- (iii) the administration and control of all water utilization; and
- (iv) prevention and control of water pollution.

2. Where surface or underground water resources are shared by two or more of the Contracting States, the latter shall act in consultation, and if the need arises, set up inter-State Commissions to study and resolve problems arising from the joint use of these resources, and for the joint development and conservation thereof.

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<sup>1</sup> Text in: African Convention on the Conservation of Nature and Natural Resources, published by the Organization of African Unity - General Secretariat OAU, CM/232.  
Entry into force on 9 October 1969.

## 1.2.2 Americas

1.2.2.1 Organization of American States: Draft Convention on the Industrial and Agricultural Use of International Rivers and Lakes<sup>1</sup> - Rio de Janeiro, 1 September 1965

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 contiguous;
- (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;

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<sup>1</sup> Text in: 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. Pan-American Union, 1966), pp. 7-10.

- (e) a notification is 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 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.

No 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.

I. 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 the 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 or agricultural use of international rivers and lakes in accordance with the peaceful procedures established by the inter-American system.

#### Article 11

This Convention shall be ratified in accordance with the constitutional procedures of the respective countries. It shall enter into force for them at the time that notification of ratification is communicated to the Secretary-General of the Organization of American States.

#### Article 12

This Convention may be denounced in writing to the Pan American Union by any of the High Contracting Parties.

The Pan American Union shall in each case inform the other Member States of the Organization of the denunciation received, which shall take effect six months after the parties have been informed.

1.2.2.2 Act of Asunción on the Use of International Rivers<sup>1</sup> - 3 June 1971

(Extract)

...

Resolution No. 25Declaration 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 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.

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<sup>1</sup> Text in: Rios y lagos internacionales (Utilización para fines agrícolas e industriales) 4 ed. rev., OEA/Ser. I/VI, CIJ-75 rev. 2 (Wash., D.C., Organization of American States), 1971 pp. 183-186. English version in Legal Problems relating to the non-navigational uses of international watercourses, A/CN.4/274 - Supplementary Report by the Secretary-General, United Nations Yearbook of the International Law Commission, 1974, Vol. II (Part two), p. 324.

Parties: Argentina, Bolivia, Brazil, Paraguay, Uruguay.

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.



## 1.2.3 Europe

1.2.3.1 Council of Europe: Draft European Convention for the Protection of International Watercourses against Pollution<sup>1</sup> - Strasbourg, February 1974

(Extracts)

...

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;

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<sup>1</sup> Text in: Legal Problems relating to the non-navigational uses of international watercourses, Supplementary Report by the Secretary General, doc. A/CN. 4/274, United Nations, Yearbook of International Law Commission, 1974, Vol. II (part two), pp. 346-349.

- (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 or 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 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. Insofar 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 provision of Articles 3 and 4 may not be invoked against a Contracting Party to the extent that this 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 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 conformity 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).

...

#### Appendix II

Dangerous or harmful substances referred to in Article 5.

...

Appendix III

Quality limits for international watercourses according to their possible uses, as referred to in Article 17, paragraph 2.

...

List of watercourses for which derogations to the undertakings under Article 4, paragraph 1(b) are permissible.

...

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.



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 his 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.

1.2.3.2 Convention on Environmental Impact Assessment in a Transboundary Context<sup>1</sup> -  
Espoo, 25 February 1991

(Extract)

...

Article 2  
General provisions

1. The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.
2. Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in Appendix I that are likely to cause significant adverse transboundary impact, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Appendix II.
3. The Party of origin shall ensure that in accordance with the provisions of this Convention an environmental impact assessment is undertaken prior to a decision to authorize or undertake a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.
4. The Party of origin shall, consistent with the provisions of this Convention, ensure that affected Parties are notified of a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.
5. Concerned Parties shall, at the initiative of any such Party, enter into discussions on whether one or more proposed activities not listed in Appendix I is or are likely to cause a significant adverse transboundary impact and thus should be treated as if it or they were so listed. Where those Parties so agree, the activity or activities shall be thus treated. General guidance for identifying criteria to determine significant adverse impact is set forth in Appendix III.
6. The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.
7. Environmental impact assessments as required by this Convention shall, as a minimum requirement, be undertaken at the project level of the proposed activity. To the extent

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<sup>1</sup> Text in: ECE Web Page, Internet.  
The Convention has not yet entered into force.

appropriate, the Parties shall endeavour to apply the principles of environmental impact assessment to policies, plans and programmes.

8. The provisions of this Convention shall not affect the right of Parties to implement national laws, regulations, administrative provisions or accepted legal practices protecting information the supply of which would be prejudicial to industrial and commercial secrecy or national security.

9. The provisions of this Convention shall not affect the right of particular Parties to implement, by bilateral or multilateral agreement where appropriate, more stringent measures than those of this Convention.

10. The provisions of this Convention shall not prejudice any obligations of the Parties under international law with regard to activities having or likely to have a transboundary impact.

...

Appendix I  
List of activities

...

9. Trading ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes.

...

11. Large dams and reservoirs.

12. Groundwater abstraction activities in cases where the annual volume of water to be abstracted amounts to 10 million cubic metres or more.

...

### 1.2.3.3 Convention on the Protection and Use of Transboundary Watercourses and International Lakes<sup>1</sup> - 18 March 1992

#### Preamble

The Parties to this Convention,

Mindful that the protection and use of transboundary watercourses and international lakes are important and urgent tasks, the effective accomplishment of which can only be ensured by enhanced co-operation,

Concerned over the existence and threats of adverse effects, in the short or long term, of changes in the conditions of transboundary watercourses and international lakes on the environment, economies and well-being of the member countries of the Economic Commission for Europe (ECE),

Emphasizing the need for strengthened national and international measures to prevent, control and reduce the release of hazardous substances into the aquatic environment and to abate eutrophication and acidification, as well as pollution of the marine environment, in particular coastal areas, from land-based sources,

Commending the efforts already undertaken by the ECE Governments to strengthen co-operation, on bilateral and multilateral levels, for the prevention, control and reduction of transboundary pollution, sustainable water management, conservation of water resources and environmental protection,

Recalling the pertinent provisions and principles of the Declaration of the Stockholm Conference on the Human Environment, the Final Act of the Conference on Security and Co-operation in Europe (CSCE), the Concluding Documents of the Madrid and Vienna Meetings of Representatives of the Participating States of the CSCE, and the Regional Strategy for Environmental Protection and Rational Use of Natural Resources in ECE Member Countries covering the Period up to the Year 2000 and Beyond,

Conscious of the role of the United Nations Economic Commission for Europe in promoting international co-operation for the prevention, control and reduction of transboundary water pollution and sustainable use of transboundary waters, and in this regard recalling the ECE Declaration of Policy on Prevention and Control of Water Pollution, including Transboundary Pollution; the ECE Declaration of Policy on the Rational Use of Water; the ECE Principles Regarding Co-operation in the Field of Transboundary Waters; the ECE Charter on Groundwater Management; and the Code of Conduct on Accidental Pollution of Transboundary Inland Waters,

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<sup>1</sup> Text in: Separate Publication of the United Nations Economic Commission for Europe (UN/ECE). The Convention came into force on 6 October 1996.

Referring to decisions I (42) and I (44) adopted by the Economic Commission for Europe at its forty-second and forty-fourth sessions, respectively, and the outcome of the CSCE Meeting on the Protection of the Environment (Sofia, Bulgaria, 16 October - 3 November 1989),

Emphasizing that co-operation between member countries in regard to the protection and use of transboundary waters shall be implemented primarily through the elaboration of agreements between countries bordering the same waters, especially where no such agreements have yet been reached,

have agreed as follows:

Article 1  
Definitions

For the purposes of this Convention,

1. "Transboundary waters" means any surface or ground waters which mark, cross or are located on boundaries between two or more States; wherever transboundary waters flow directly into the sea, these transboundary waters end at a straight line across their respective mouths between points on the low-water line of their banks;
2. "Transboundary impact" means any significant adverse effect on the environment resulting from a change in the conditions of transboundary waters caused by a human activity, the physical origin of which is situated wholly or in part within an area under the jurisdiction of a Party, within an area under the jurisdiction of another Party. Such effects on the environment include effects on human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; they also include effects on the cultural heritage or socio-economic conditions resulting from alterations to those factors;
3. "Party" means, unless the text otherwise indicates, a Contracting Party to this Convention;
4. "Riparian Parties" means the Parties bordering the same transboundary waters;
5. "Joint body" means any bilateral or multilateral commission or other appropriate institutional arrangements for co-operation between the Riparian Parties;
6. "Hazardous substances" means substances which are toxic, carcinogenic, mutagenic, teratogenic or bio-accumulative, especially when they are persistent;
7. "Best available technology" (the definition is contained in Annex I to this Convention).

PART I  
Provisions relating to all parties

Article 2  
General provisions

1. The Parties shall take all appropriate measures to prevent, control and reduce any transboundary impact.
2. The Parties shall, in particular, take all appropriate measures:
  - (a) to prevent, control and reduce pollution of waters causing or likely to cause transboundary impact;
  - (b) to ensure that transboundary waters are used with the aim of ecologically sound and rational water management, conservation of water resources and environmental protection;
  - (c) to ensure that transboundary waters are used in a reasonable and equitable way, taking into particular account their transboundary character, in the case of activities which cause or are likely to cause transboundary impact;
  - (d) to ensure conservation and, where necessary, restoration of ecosystems.
3. Measures for the prevention, control and reduction of water pollution shall be taken, where possible, at source.
4. These measures shall not directly or indirectly result in a transfer of pollution to other parts of the environment.
5. In taking the measures referred to in paragraphs 1 and 2 of this article, the Parties shall be guided by the following principles:
  - (a) the precautionary principle, by virtue of which action to avoid the potential transboundary impact of the release of hazardous substances shall not be postponed on the ground that scientific research has not fully proved a causal link between those substances, on the one hand, and the potential transboundary impact, on the other hand;
  - (b) the polluter-pays principle, by virtue of which costs of pollution prevention, control and reduction measures shall be borne by the polluter;
  - (c) water resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.
6. The Riparian Parties shall cooperate on the basis of equality and reciprocity, in particular through bilateral and multilateral agreements, in order to develop harmonized policies, programmes and strategies covering the relevant catchment areas, or parts thereof, aimed at the prevention, control and reduction of transboundary impact and aimed at the protection of

the environment of transboundary waters or the environment influenced by such waters, including the marine environment.

7. The application of this Convention shall not lead to the deterioration of environmental conditions nor lead to increased transboundary impact.

8. The provisions of this Convention shall not affect the right of Parties individually or jointly to adopt and implement more stringent measures than those set down in this Convention.

Article 3  
Prevention, control and reduction

1. To prevent, control and reduce transboundary impact, the Parties shall develop, adopt, implement and, as far as possible, render compatible relevant legal, administrative, economic, financial and technical measures, in order to ensure, *inter alia* that:

- (a) the emission of pollutants is prevented, controlled and reduced at source through the application of, *inter alia*, low- and non-waste technology;
- (b) transboundary waters are protected against pollution from point sources through the prior licensing of waste-water discharges by the competent national authorities, and that the authorized discharges are monitored and controlled;
- (c) limits for waste-water discharges stated in permits are based on the best available technology for discharges of hazardous substances;
- (d) stricter requirements, even leading to prohibition in individual cases, are imposed when the quality of the receiving water or the ecosystem so requires;
- (e) at least biological treatment or equivalent processes are applied to municipal waste water, where necessary in a step-by-step approach;
- (f) appropriate measures are taken, such as the application of the best available technology, in order to reduce nutrient inputs from industrial and municipal sources;
- (g) appropriate measures and best environmental practices are developed and implemented for the reduction of inputs of nutrients and hazardous substances from diffuse sources, especially where the main sources are from agriculture (guidelines for developing best environmental practices are given in Annex II to this Convention);
- (h) environmental impact assessment and other means of assessment are applied;
- (i) sustainable water-resources management, including the application of the ecosystems approach, is promoted;
- (j) contingency planning is developed;
- (k) additional specific measures are taken to prevent the pollution of groundwaters;



- (1) the risk of accidental pollution is minimized.
2. To this end, each Party shall set emission limits for discharges from point sources into surface waters based on the best available technology, which are specifically applicable to individual industrial sectors or industries from which hazardous substances derive. The appropriate measures mentioned in paragraph 1 of this article to prevent, control and reduce the input of hazardous substances from point and diffuse sources into waters, may, *inter alia*, include total or partial prohibition of the production or use of such substances. Existing lists of such industrial sectors or industries and of such hazardous substances in international conventions or regulations, which are applicable in the area covered by this Convention, shall be taken into account.
3. In addition, each Party shall define, where appropriate, water-quality objectives and adopt water-quality criteria for the purpose of preventing, controlling and reducing transboundary impact. General guidance for developing such objectives and criteria is given in Annex III to this Convention. When necessary, the Parties shall endeavour to update this Annex.

#### Article 4 Monitoring

The Parties shall establish programmes for monitoring the conditions of transboundary waters.

#### Article 5 Research and development

The Parties shall cooperate in the conduct of research into and development of effective techniques for the prevention, control and reduction of transboundary impact. To this effect, the Parties shall, on a bilateral and/or multilateral basis, taking into account research activities pursued in relevant international forums, endeavour to initiate or intensify specific research programmes, where necessary, aimed, *inter alia*, at:

- (a) methods for the assessment of the toxicity of hazardous substances and the noxiousness of pollutants;
- (b) improved knowledge on the occurrence, distribution and environmental effects of pollutants and the processes involved;
- (c) the development and application of environmentally sound technologies, production and consumption patterns;
- (d) the phasing out and/or substitution of substances likely to have transboundary impact;
- (e) environmentally sound methods of disposal of hazardous substances;
- (f) special methods for improving the conditions of transboundary waters;
- (g) the development of environmentally sound water-construction works and water-regulation techniques;

- (h) the physical and financial assessment of damage resulting from transboundary impact.

The results of these research programmes shall be exchanged among the Parties in accordance with article 6 of this Convention.

Article 6  
Exchange of information

The Parties shall provide for the widest exchange of information, as early as possible, on issues covered by the provisions of this Convention.

Article 7  
Responsibility and liability

The Parties shall support appropriate international efforts to elaborate rules, criteria and procedures in the field of responsibility and liability.

Article 8  
Protection of information

The provisions of this Convention shall not affect the rights or the obligations of Parties in accordance with their national legal systems and applicable supranational regulations to protect information related to industrial and commercial secrecy, including intellectual property, or national security.

PART II  
Provisions relating to riparian parties

Article 9  
Bilateral and multilateral co-operation

1. The Riparian Parties shall on the basis of equality and reciprocity enter into bilateral or multilateral agreements or other arrangements, where these do not yet exist, or adapt existing ones, where necessary to eliminate the contradictions with the basic principles of this Convention, in order to define their mutual relations and conduct regarding the prevention, control and reduction of transboundary impact. The Riparian Parties shall specify the catchment area, or part(s) thereof, subject to co-operation. These agreements or arrangements shall embrace relevant issues covered by this Convention, as well as any other issues on which the Riparian Parties may deem it necessary to cooperate.

2. The agreements or arrangements mentioned in paragraph 1 of this article shall provide for the establishment of joint bodies. The tasks of these joint bodies shall be, *inter alia*, and without prejudice to relevant existing agreements or arrangements, the following:

- (a) to collect, compile and evaluate data in order to identify pollution sources likely to cause transboundary impact;
- (b) to elaborate joint monitoring programmes concerning water quality and quantity;

- (c) to draw up inventories and exchange information on the pollution sources mentioned in paragraph 2 (a) of this article;
- (d) to elaborate emission limits for waste water and evaluate the effectiveness of control programmes;
- (e) to elaborate joint water-quality objectives and criteria having regard to the provisions of article 3, paragraph 3 of this Convention, and to propose relevant measures for maintaining and, where necessary, improving the existing water quality;
- (f) to develop concerted action programmes for the reduction of pollution loads from both point sources (e.g. municipal and industrial sources) and diffuse sources (particularly from agriculture);
- (g) to establish warning and alarm procedures;
- (h) to serve as a forum for the exchange of information on existing and planned uses of water and related installations that are likely to cause transboundary impact;
- (i) to promote co-operation and exchange of information on the best available technology in accordance with the provisions of article 13 of this Convention, as well as to encourage co-operation in scientific research programmes;
- (j) to participate in the implementation of environmental impact assessments relating to transboundary waters, in accordance with appropriate international regulations.

3. In cases where a coastal State, being Party to this Convention, is directly and significantly affected by transboundary impact, the Riparian Parties can, if they all so agree, invite that coastal State to be involved in an appropriate manner in the activities of multilateral joint bodies established by Parties riparian to such transboundary waters.

4. Joint bodies according to this Convention shall invite joint bodies, established by coastal States for the protection of the marine environment directly affected by transboundary impact, to cooperate in order to harmonize their work and to prevent, control and reduce the transboundary impact.

5. Where two or more joint bodies exist in the same catchment area, they shall endeavour to co-ordinate their activities in order to strengthen the prevention, control and reduction of transboundary impact within that catchment area.

#### Article 10 Consultations

Consultations shall be held between the Riparian Parties on the basis of reciprocity, good faith and good-neighbourliness, at the request of any such Party. Such consultations shall aim at co-operation regarding the issues covered by the provisions of this Convention. Any such consultations shall be conducted through a joint body established under article 9 of this Convention, where one exists.

Article 11  
Joint monitoring and assessment

1. In the framework of general co-operation mentioned in article 9 of this Convention, or specific arrangements, the Riparian Parties shall establish and implement joint programmes for monitoring the conditions of transboundary waters, including floods and ice drifts, as well as transboundary impact.
2. The Riparian Parties shall agree upon pollution parameters and pollutants whose discharges and concentration in transboundary waters shall be regularly monitored.
3. The Riparian Parties shall, at regular intervals, carry out joint or co-ordinated assessments of the conditions of transboundary waters and the effectiveness of measures taken for the prevention, control and reduction of transboundary impact. The results of these assessments shall be made available to the public in accordance with the provisions set out in article 16 of this Convention.
4. For these purposes, the Riparian Parties shall harmonize rules for the setting up and operation of monitoring programmes, measurement systems, devices, analytical techniques, data processing and evaluation procedures, and methods for the registration of pollutants discharged.

Article 12  
Common research and development

In the framework of general co-operation mentioned in article 9 of this Convention, or specific arrangements, the Riparian Parties shall undertake specific research and development activities in support of achieving and maintaining the water-quality objectives and criteria which they have agreed to set and adopt.

Article 13  
Exchange of information between riparian parties

1. The Riparian Parties shall, within the framework of relevant agreements or other arrangements according to article 9 of this Convention, exchange reasonably available data, *inter alia*, on:
  - (a) environmental conditions of transboundary waters;
  - (b) experience gained in the application and operation of best available technology and results of research and development;
  - (c) emission and monitoring data;
  - (d) measures taken and planned to be taken to prevent, control and reduce transboundary impact;
  - (e) permits or regulations for waste-water discharges issued by the competent authority or appropriate body.

2. In order to harmonize emission limits, the Riparian Parties shall undertake the exchange of information on their national regulations.

3. If a Riparian Party is requested by another Riparian Party to provide data or information that is not available, the former shall endeavour to comply with the request but may condition its compliance upon the payment, by the requesting Party, of reasonable charges for collecting and, where appropriate, processing such data or information.

4. For the purposes of the implementation of this Convention, the Riparian Parties shall facilitate the exchange of best available technology, particularly through the promotion of: the commercial exchange of available technology; direct industrial contacts and co-operation, including joint ventures; the exchange of information and experience; and the provision of technical assistance. The Riparian Parties shall also undertake joint training programmes and the organization of relevant seminars and meetings.

#### Article 14

##### Warning and alarm systems

The Riparian Parties shall without delay inform each other about any critical situation that may have transboundary impact. The Riparian Parties

shall set up, where appropriate, and operate co-ordinated or joint communication, warning and alarm systems with the aim of obtaining and transmitting information. These systems shall operate on the basis of compatible data transmission and treatment procedures and facilities to be agreed upon by the Riparian Parties. The Riparian Parties shall inform each other about competent authorities or points of contact designated for this purpose.

#### Article 15

##### Mutual assistance

1. If a critical situation should arise, the Riparian Parties shall provide mutual assistance upon request, following procedures to be established in accordance with paragraph 2 of this article.

2. The Riparian Parties shall elaborate and agree upon procedures for mutual assistance addressing, *inter alia*, the following issues:

- (a) the direction, control, co-ordination and supervision of assistance;
- (b) local facilities and services to be rendered by the Party requesting assistance, including, where necessary, the facilitation of border-crossing formalities;
- (c) arrangements for holding harmless, indemnifying and/or compensating the assisting Party and/or its personnel, as well as for transit through territories of third Parties, where necessary;
- (d) methods of reimbursing assistance services.

Article 16  
Public information

1. The Riparian Parties shall ensure that information on the conditions of transboundary waters, measures taken or planned to be taken to prevent, control and reduce transboundary impact, and the effectiveness of those measures, is made available to the public. For this purpose, the Riparian Parties shall ensure that the following information is made available to the public:

- (a) water-quality objectives;
- (b) permits issued and the conditions required to be met;
- (c) results of water and effluent sampling carried out for the purposes of monitoring and assessment, as well as results of checking compliance with the water-quality objectives or the permit conditions.

2. The Riparian Parties shall ensure that this information shall be available to the public at all reasonable times for inspection free of charge, and shall provide members of the public with reasonable facilities for obtaining from the Riparian Parties, on payment of reasonable charges, copies of such information.

PART III  
Institutional and final provisions

Article 17  
Meeting of parties

1. The first meeting of the Parties shall be convened no later than one year after the date of the entry into force of this Convention. Thereafter, ordinary meetings shall be held every three years, or at shorter intervals as laid down in the rules of procedure. The Parties shall hold an extraordinary meeting if they so decide in the course of an ordinary meeting or at the written request of any Party, provided that, within six months of it being communicated to all Parties, the said request is supported by at least one third of the Parties.

2. At their meetings, the Parties shall keep under continuous review the implementation of this Convention, and, with this purpose in mind, shall:

- (a) review the policies for and methodological approaches to the protection and use of transboundary waters of the Parties with a view to further improving the protection and use of transboundary waters;
- (b) exchange information regarding experience gained in concluding and implementing bilateral and multilateral agreements or other arrangements regarding the protection and use of transboundary waters to which one or more of the Parties are party;

- (c) seek, where appropriate, the services of relevant ECE bodies as well as other competent international bodies and specific committees in all aspects pertinent to the achievement of the purposes of this Convention;
- (d) at their first meeting, consider and by consensus adopt rules of procedure for their meetings;
- (e) consider and adopt proposals for amendments to this Convention;
- (f) consider and undertake any additional action that may be required for the achievement of the purposes of this Convention.

Article 18  
Right to vote

1. Except as provided for in paragraph 2 of this article, each Party to this Convention shall have one vote.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 19  
Secretariat

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions:

- (a) the convening and preparing of meetings of the Parties;
- (b) the transmission to the Parties of reports and other information received in accordance with the provisions of this Convention;
- (c) the performance of such other functions as may be determined by the Parties.

Article 20  
Annexes

Annexes to this Convention shall constitute an integral part thereof.

Article 21  
Amendments to the convention

1. Any Party may propose amendments to this Convention.
2. Proposals for amendments to this Convention shall be considered at a meeting of the Parties.

3. The text of any proposed amendment to this Convention shall be submitted in writing to the Executive Secretary of the Economic Commission for Europe, who shall communicate it to all Parties at least ninety days before the meeting at which it is proposed for adoption.

4. An amendment to the present Convention shall be adopted by consensus of the representatives of the Parties to this Convention present at a meeting of the Parties, and shall enter into force for the Parties to the Convention which have accepted it on the ninetieth day after the date on which two thirds of those Parties have deposited with the Depositary their instruments of acceptance of the amendment. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of acceptance of the amendment.

#### Article 22 Settlement of disputes

1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.

2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 of this article, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

- (a) submission of the dispute to the International Court of Justice;
- (b) arbitration in accordance with the procedure set out in Annex IV.

3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this article, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

#### Article 23 Signature

This Convention shall be open for signature at Helsinki from 17 to 18 March 1992 inclusive, and thereafter at United Nations Headquarters in New York until 18 September 1992, by States members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe pursuant to paragraph 8 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of these matters.



Article 24  
Depositary

The Secretary-General of the United Nations shall act as the Depositary of this Convention.

Article 25  
Ratification, acceptance, approval and accession

1. This Convention shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations.
2. This Convention shall be open for accession by the States and organizations referred to in article 23.
3. Any organization referred to in article 23 which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under this Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under this Convention concurrently.
4. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 23 shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Depositary of any substantial modification to the extent of their competence.

Article 26  
Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.
2. For the purposes of paragraph 1 of this article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of such an organization.
3. For each State or organization referred to in article 23 which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

Article 27  
Withdrawal

At any time after three years from the date on which this Convention has come into force with respect to a Party, that Party may withdraw from the Convention by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary.

Article 28  
Authentic texts

The original of this Convention, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Helsinki, this seventeenth day of March one thousand nine hundred and ninety-two.

Annex I  
Definition of the term "best available technology"

1. The term "best available technology" is taken to mean the latest stage of development of processes, facilities or methods of operation which indicate the practical suitability of a particular measure for limiting discharges, emissions and waste. In determining whether a set of processes, facilities and methods of operation constitute the best available technology in general or individual cases, special consideration is given to:

- (a) comparable processes, facilities or methods of operation which have recently been successfully tried out;
- (b) technological advances and changes in scientific knowledge and understanding;
- (c) the economic feasibility of such technology;
- (d) time limits for installation in both new and existing plants;
- (e) the nature and volume of the discharges and effluents concerned;
- (f) low- and non-waste technology.

2. It therefore follows that what is "best available technology" for a particular process will change with time in the light of technological advances, economic and social factors, as well as in the light of changes in scientific knowledge and understanding.

Annex II  
Guidelines for developing best environmental practices

1. In selecting for individual cases the most appropriate combination of measures which may constitute the best environmental practice, the following graduated range of measures should be considered:

- (a) provision of information and education to the public and to users about the environmental consequences of the choice of particular activities and products, their use and ultimate disposal
- (b) the development and application of codes of good environmental practice which cover all aspects of the product's life;
- (c) labels informing users of environmental risks related to a product, its use and ultimate disposal;
- (d) collection and disposal systems available to the public;
- (e) recycling, recovery and reuse;
- (f) application of economic instruments to activities, products or groups of products;
- (g) a system of licensing, which involves a range of restrictions or a ban.

2. In determining what combination of measures constitute best environmental practices, in general or in individual cases, particular consideration should be given to:

- (a) the environmental hazard of:
  - (i) the product;
  - (ii) the product's production;
  - (iii) the product's use;
  - (iv) the product's ultimate disposal;
- (b) substitution by less polluting processes or substances;
- (c) scale of use;
- (d) potential environmental benefit or penalty of substitute materials or activities;
- (e) advances and changes in scientific knowledge and understanding;
- (f) time limits for implementation;
- (g) social and economic implications.

3. It therefore follows that best environmental practices for a particular source will change with time in the light of technological advances, economic and social factors, as well as in the light of changes in scientific knowledge and understanding.

Annex III  
Guidelines for developing water-quality  
Objectives and criteria

Water-quality objectives and criteria shall:

- (a) take into account the aim of maintaining and, where necessary, improving the existing water quality;
- (b) aim at the reduction of average pollution loads (in particular hazardous substances) to a certain degree within a certain period of time;
- (c) take into account specific water-quality requirements (raw water for drinking-water purposes, irrigation, etc.);
- (d) take into account specific requirements regarding sensitive and specially protected waters and their environment, e.g. lakes and groundwater resources;
- (e) be based on the application of ecological classification methods and chemical indices for the medium- and long-term review of water-quality maintenance and improvement;
- (f) take into account the degree to which objectives are reached and the additional protective measures, based on emission limits, which may be required in individual cases.

Annex IV  
Arbitration

1. In the event of a dispute being submitted for arbitration pursuant to article 22, paragraph 2 of this Convention, a party or parties shall notify the secretariat of the subject-matter of arbitration and indicate, in particular, the articles of this Convention whose interpretation or application is at issue. The secretariat shall forward the information received to all Parties to this Convention.

2. The arbitral tribunal shall consist of three members. Both the claimant party or parties and the other party or parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission

for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.

4. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may so inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. If it fails to do so within that period, the president shall so inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.

5. The arbitral tribunal shall render its decision in accordance with international law and the provisions of this Convention.

6. Any arbitral tribunal constituted under the provisions set out in this Annex shall draw up its own rules of procedure.

7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.

8. The tribunal may take all appropriate measures to establish the facts.

9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) provide it with all relevant documents, facilities and information;
- (b) enable it, where necessary, to call witnesses or experts and receive their evidence.

10. The parties and the arbitrators shall protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.

12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.

13. The arbitral tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

15. Any Party to this Convention which has an interest of a legal nature in the subject-matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.

16. The arbitral tribunal shall render its award within five months of the date on which it is established, unless it finds it necessary to extend the time limit for a period which should not exceed five months.

17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to this Convention.

18. 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 tribunal constituted for this purpose in the same manner as the first.