



# International Rivers and Lakes

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## CONTENTS

	<u>Page</u>
First meeting of Amazonian Co-operation Council . . . . .	2
New Executive Secretary appointed to the Lake Chad Basin Commission . . . . .	2
State of pollution of Lake Geneva (Lac Lemman) . . . . .	2
International Law Commission - new report on international rivers law . . . . .	3
ECE convenes a seminar on co-operation in transboundary water issues . . . . .	4
International Water Tribunal - new cases filed . . . . .	4
Book reviews . . . . .	4
Call for documents and participation in the information exchange . . . . .	6

### First meeting of the Amazonian Co-operation Council

The Amazonian Co-operation Council, which is the institution responsible for the implementation of the aims of the Treaty for Amazonian Co-operation (see Newsletter No. 1, p. 6), held its first meeting at Lima, from 5 to 8 July 1983. The meeting was attended by representatives from all the States parties to the Amazonian Co-operation Treaty.

Working sessions were arranged along the main lines of co-operation singled out in the Declaration of Belém, that is, technical co-operation for regional development, co-operation in the science and technology field, communications and transport, and the pre-investment fund. Acting on the several proposals for regional co-operation projects put forward by the participating delegations, the meeting deferred approval and eventual implementation until further study by the respective national Governments, including further discussion at ad hoc sectoral meetings or seminars to be arranged.

The meeting decided that the Council will convene again in Bolivia, at a date to be determined, and that the Ministers for Foreign Affairs of the Amazonian countries will hold their second meeting at Bogotá, also at a date to be determined. By virtue of the deliberations made at the meeting, the Ministry for Foreign Affairs of Bolivia has now undertaken to function as the pro tempore secretariat to the Amazonian Co-operation Council.

### New Executive Secretary appointed to the Lake Chad Basin Commission

Mr. Mustapha SAM of Nigeria was appointed Executive Secretary to the Lake Chad Basin Commission at the Commission's twenty-seventh session, held at Lagos, from 12 to 18 April 1983.

### State of pollution of the Lake of Geneva (Lac Lemán)

At a press conference called in Geneva by the Association pour la sauvegarde du Lemán, it was disclosed that, during the more recent years, discharges from waste treatment plants have proved to be a more dangerous source of pollution of lake water as opposed to industrial discharges. It appears that, whereas private industries have managed to check discharges of heavy metals into the lake, treatment plants have been unable to accomplish as much because of lack of the necessary equipment, and also in view of the fact that the effluents from the plants are discharged into too narrow receptors - including low-flow watercourses emptying into the lake. At the same time, the International Commission for the Protection of Lake Geneva reported that progress is being achieved under the Franco-Swiss agreement for the control of pollution of lake waters from phosphates. This is mainly due to a dramatic increase in the efficiency of municipal plants in the treatment of effluents containing phosphates.

(Source: Annuaire français de droit international, Chronique des faits internationaux).

International Law Commission - new report on international rivers law

As announced in the previous issue of the Newsletter, the new Special Rapporteur on the Law of the Non-navigational Uses of International Watercourses currently on the agenda of the United Nations International Law Commission has submitted his first report on the topic (A/CN.4/367 of 19 April 1983, and corrigendum 1 of 15 June 1983).

Based on the considerable amount of preparatory and drafting work done by his two predecessors, and guided by the discussions held on this topic both within the International Law Commission at its past yearly sessions and in the Sixth Committee of the United Nations General Assembly, the new Special Rapporteur, Jens Evensen, has produced at the outset of his mandate a comprehensive draft convention composed of 39 articles and relevant commentary. The draft convention is divided into six chapters covering, seriatim, introductory articles (arts. 1 to 5), general principles on rights and duties of system States (arts. 6 to 9), notification, data collection, processing and dissemination, and establishment of international river commissions (arts. 10 to 19), environmental protection, pollution control and prevention, natural hazards, and other matters (arts. 20 to 30), settlement of disputes (arts. 31 to 38), and final provisions (art. 39). Mr. Evensen's report is quite comparable in scope, conceptual approach and substantive contents to his predecessor's third and last report on the topic. The new Special Rapporteur's draft convention, like his predecessor's, provides general principles governing international watercourses in the absence of agreement among the States concerned, and, at the same time, guidelines for the drafting of such agreements. <sup>1/</sup> The drafting style, however, is remarkably different, as it reflects the new Special Rapporteur's stated goal of formulating the principles in less detail than his predecessor's last report, thereby easing potential problems of interpretation and practical application of the rules laid down.

While, as noted above, the substantive coverage of Mr. Evensen's report is comparable to his predecessor's last reports, Mr. Evensen expands considerably in his own report on the dispute settlement process, as it provides in separate draft articles for consultation and negotiation; inquiry and mediation; conciliation, including separate articles on the functions and tasks of conciliation commissions, and on the legal effects of the report of such commissions; and adjudication, including a separate article on the binding effect of it. In addition to laying down the firm obligation of States riparian to an international watercourse system to solve their disputes by peaceful means and to this end to conduct negotiations, consultations, and to co-operate on the basis of good faith and friendly neighbourly relations, the framework convention drafted by the new Special Rapporteur provides for compulsory dispute settlement procedures, that is, commissions of inquiry, conciliation, and, in more serious cases, the resort to compulsory proceedings before international courts or arbitral tribunals - to be incorporated in specific river agreements to be concluded by the States concerned within the framework of the draft convention.

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<sup>1/</sup>See the report of the International Law Commission on the work of its thirty-fifth session (3 May - 22 July 1983) (Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 10 (A/38/10), paras. 210 and 212).

The new Special Rapporteur's first report on the law of the non-navigational uses of international watercourses was discussed by the International Law Commission at its thirty-fifth session. 2/ In very broad outline, the Commission voiced its basic support for the Special Rapporteur's methodology of approach, while the substantive discussion of specific draft articles - most notably, draft article 1 containing the definition of "international watercourse system", and draft article 6, on the international watercourse system as a shared natural resource - confirmed conflicting perceptions of exactly how far the Commission should go in its task of promoting the "progressive development" of international rivers law.

In his statement before the Commission, the Special Rapporteur indicated his intention to present a second report on the topic for consideration by the Commission at its 1984 session. 3/

#### ECE convenes a seminar on co-operation in transboundary water issues

The United Nations Economic Commission for Europe (ECE) has convened a Seminar on Co-operation in the Field of Transboundary Waters. At the invitation of the Government of the Federal Republic of Germany, the Seminar will be held at Düsseldorf (Federal Republic of Germany) from 15 to 19 October 1984. The Seminar is being convened to provide a forum for the exchange of views and experience between ECE Governments on bilateral and multilateral co-operation in the development, conservation and use of transboundary water resources, with special regard for pollution control and flood management issues.

The topics which have been selected for discussion are (a) forms, structures and aims of co-operation in the field of transboundary waters, (b) assessment and evaluation of water quality and quantity in transboundary waters and development of comparable objectives and (c) measures for pollution control and flood management in transboundary waters.

#### International Water Tribunal - new cases filed

Three more cases of water pollution were brought before the International Water Tribunal (see Newsletter No. 3, p. 8). The new cases concern pollution of, among others, the Weser River (shared by the Federal Republic of Germany and the German Democratic Republic) by salt discharges from potassium plants located in the German Democratic Republic.

#### Book reviews

Zaman and others (eds.), River Basin Development, proceedings of the National Symposium on River Basin Development (4-10 December 1981, Dacca, Bangladesh), published by Ticooly International Publishing Ltd., Dublin, 1983, pp. XIV-239.

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2/Ibid., paras. 191-260.

3/Ibid., para. 224.

The volume contains the proceedings of the National Symposium on River Basin Development, held at Dacca in December 1981 and organized by the Government of Bangladesh, with the financial assistance of the United Nations Development Programme. 4/

In the Indian subcontinent, water resources (that is, the basins of the Indus, Ganges, Brahmaputra and Meghna Rivers) are mainly shared by five States, namely, Bangladesh, Bhutan, China, India, and Nepal, and have paramount importance in the economic development and in the enhancement of the quality of life for 250 million people. In this respect, the convening of a symposium at Dacca was well-timed to consider the development of water resources as a multi-disciplinary process which needs contributions from foreign experts.

The volume is divided into three sections according to the topics discussed: part I summarizes the conclusions and recommendations of the Symposium, part II deals with hydrogeological and economic aspects, and part III consists of three papers on the legal aspects of international river basin development.

Papers forming part II deal basically with engineering problems. The management of water resources, in which the selection of appropriate planning tools and modern technology is of highest importance, plays a crucial role in the developing countries as it may, for instance, create employment opportunities. The utilization of water systems which find their origin in the Himalayan chain is of common interest to the States sharing the basin with special regard to flood control (Rahman Khan) and irrigation techniques (Dray). The papers presented focus attention on issues which are of major concern to Bangladesh (for example, the development of the Ganges-Brahmaputra Basin). Hydrological aspects of the Ganges are examined by G.R. Choudhury and Anwar Khan, while Hossain Khan and Miah analyse the Brahmaputra. Results have been obtained with the support of modern modelling techniques for an integrated basin approach (M. S. K. Chowdhury and Nishat) and of the isotope method in the determination of the surface water/groundwater relationship (Dray). The exploitation of the Ganges water resources, in particular the water-sharing at the Farakka Dam, raised a long-lasting dispute between India and Bangladesh. 5/ It was brought before the United Nations General Assembly and has been only partially settled by means of two successive agreements in 1972 and 1977 (Zaman). Reports and experiences of the management of international and national water resources are discussed (the Rhine and the Nile by Volker, the Lower Mekong by Binson, the Netherlands by Blumenthal) bearing in mind the local basin development perspectives.

Part III contains three contributions devoted to the international legal aspects of the topic. The first deals with the major issues in international river law, its sources, its rules, both substantive and procedural, and its doctrinal base established on theories propounded by States and scholars. The traditional doctrine of unlimited territorial sovereignty and of unlimited

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4/See International Rivers and Lakes, No. 1, p. 5.

5/Ibid., No. 3, p. 4.

territorial integrity, supported respectively by upper and lower basin States, have been overcome by present needs calling for international and regional co-operation. The modern concept of "shared water resources", as embodied in article 30 of the Charter of Economic Rights and Duties of States, traces its rationale back to the judgement concerning the River Oder Case. The Permanent Court of International Justice stated then that, as far as navigation is concerned, the essential trait to draw inspiration from is the "community of interest" of all the riparian States in the use of the river. Since then, the theory of limited territorial sovereignty, affirmed by many domestic court decisions, led to the emergence of the principle of equitable apportionment of the shared water resources (Caponera).

Contributions by international intergovernmental organizations (Asian-African Legal Consultative Committee, International Law Commission) and by non-governmental organizations (Institut de droit international, International Law Association) have been selected for the second report. Since 1970, the International Law Commission has had under consideration the law of the non-navigational uses of international watercourses, 6/ with a view to its progressive development and codification. After an initial delay, the Commission has now made a reasonable start towards this objective (Hayton).

The third report concerns the institutional legal framework for co-operation between Bangladesh and India on the Ganges and Brahmaputra River Basins. The treaties of 1972 and 1977 are examined considering to what extent the principles of international law have been embodied in them. Deficiencies are pointed out, with special emphasis on the equitable utilization of water resources (relationship between existing and future uses), and the absence of the principles of non-discrimination against Nepal (Zaman).

The conclusions and recommendations of the Symposium are reported in part I. It was suggested that an integrated basin development be initiated, together with a National Water Plan for Bangladesh. Fostering co-operation among co-basin States implies application of the principle of equity in water-sharing, and it entails concern for the existing and future uses of the water.

#### Call for documents and participation in the information exchange

In view of the scope and purpose of the Newsletter, the editor would like to encourage all those who are in a position to do so to contribute to the information exchange exercise with news items or documents of relevance to the Newsletter. An encouraging response has been registered thus far, and it is firmly hoped that a growing network of interested readers will be willing to take part actively in this novel exercise.

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6/Ibid., No. 1, p. 5; No. 2, p. 9; No. 3, p. 7.

Individual copies of the Newsletter are available on request. Requests should include the names and addresses of offices and officials wishing to receive copies.

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