

UNST
TCO/NRED
(05)
N3
No. 24
ENC



International Rivers and Lakes

A Newsletter prepared jointly by the Department for Development Support and Management Services, United Nations, New York and the Economic Commission for Latin America and the Caribbean, Santiago, Chile

No. 24

December 1995

CONTENTS

I.	Agreement Between China and Mongolia	2
II.	Agreement Signed for Mekong River	4
III.	Intergovernmental Commission Regarding Tumen River	8
IV.	Agreement on the Okavango River	9
V.	Proposed Protocol for Shared Watercourses for the SADC Region	10

The statements and opinions reported in this *Newsletter* do not necessarily reflect the views, opinions, or official positions of the United Nations, and are to be exclusively attributed to authors, organizations and media quoted or summarized in the *Newsletter*.

The editor encourages contributions of news items for the information exchange exercise from interested readers.

Individual copies of the *Newsletter* are available upon request. Requests should include the names and addresses of offices and officials wishing to receive copies. All correspondence should be addressed to:

Ms. Béatrice Labonne
Director
Division for Environment Management and Social Development
Department for Development Support and Management Services
United Nations, Room DC1-818
One UN Plaza, New York, N.Y. 10017

I. Agreement Between China and Mongolia¹

On 29 April 1994 an Agreement was signed between the Governments of The People's Republic of China and of Mongolia regarding water management and conservation. The Treaty entered into force on 16 January 1995.

The purpose of this treaty is to develop a good neighbourly relationship and cooperation in the protection and rational utilization of transboundary waters. The Agreement is based on the principles of equality and mutual benefit. It was signed in accordance with the Treaty between the People's Republic of China and the Government of Mongolia on Sino-Mongolian Boundary System and Settlement of 28 November 1988.

Transboundary waters include specific water courses (Halaha, Kerulen, Bulgan rivers, and the Bor Nor Lake) and also the lakes, rivers, streams and other waters straddling or resting on the boundary line between the two countries.

Cooperation for the purpose of protection and equitable and rational use of transboundary waters includes: investigation and survey of dynamics, resources and quality of transboundary waters; identification and assessment of changes in transboundary river and lake basins; research, protection and development of transboundary waters and aquatic resources; monitoring and reduction of water pollution; and maintenance and rational use of water conservation projects and flood-prevention facilities involving transboundary waters.

Implementation activities include: monitoring the quality, dynamics and resources of transboundary waters, and also changes in boundary waters and basins, at stations, posts, or locations designated by the two Parties; technological exchanges including technical materials, information and maps; joint investigations and surveys by delegations and experts; and the establishment of joint research and experiment centres or groups.

The ecological systems of transboundary waters are to be jointly protected by the Parties, who shall use their waters in a manner that is not detrimental to the other Party. Any development and utilization of the waters shall adjust to the principles of fairness and equability without impeding any reasonable use of transboundary waters.

Activities supporting the economic development and utilization of transboundary waters shall conform to the Agreement reached at the meetings of the Joint Committee on Transboundary Waters as prescribed by Article 10 of the Agreement.

The Parties have agreed to cooperate in the protection, development and utilization of Lake Bor Nor and its fish resources; jointly to work out technologies for breeding of fish and for the protection of fish resources; and to hold separate consultations on the question of fishing in Lake Bor Nor.

¹ From translation made available by Mr. Albert Utton, New Mexico, USA.

The Parties shall take measures to prevent, mitigate and eliminate the possible damages to the quality, resources, and natural dynamics of transboundary waters and aquatic animals and plants caused by natural and human factors such as floods, ice, and industrial accidents.

The allocation of water for annual consumption from transboundary waters shall be decided through consultations. These consultations shall implement effective measures to prevent excessive use beyond the designated amount of annual water consumption.

The placement of stations, posts, and sites for joint investigation and surveys of the boundary waters and the content, quantity and time of planned exchange of data shall also be determined by way of consultations. Data may be used freely by the Parties, but not transferred to third Parties without the agreement of the Parties to the treaty.

A Joint Committee on Transboundary Waters, consisting of one representative and two deputy representatives appointed by each party, is to take charge of matters related to the implementation of the Agreement.

The Joint Committee convenes twice per year to discuss the implementation of the Agreement and matters related to transboundary waters. The venue of the sessions alternates between the two countries, and sessions are convened and chaired by the representative of the host country. The representative may be assisted by experts. Minutes shall be taken at each meeting, in the languages of the two countries, and reported to the two governments. Expert meetings may be held as necessary.

Travel expenses are to be borne by the sending country, while the host country provides board, lodging and local transport during the work in its territory.

Amendments and supplements to the Agreement are to be agreed to by the Parties through consultations.

Differences regarding the implementation of the Agreement are to be addressed through friendly consultations.

The Agreement shall last for ten years to be automatically renewed for periods of five years, except if termination is requested in writing by one of the Parties at least one year before the date of expiration.

II. Agreement Signed for Mekong River²

Previous issues of the Newsletter have informed that a new agreement on the Mekong River had been signed. This issue summarizes the contents of the treaty signed on 5 April 1995.

The Parties to the Agreement are the Kingdom of Cambodia, The Lao People's Democratic Republic, The Kingdom of Thailand, and the Socialist Republic of Vietnam.

1. The Parties:

- Recognize that the Mekong River Basin and its related natural resources are natural assets of immense value to all riparian countries;
- Reaffirm the determination to cooperate for the sustainable development of the basin's resources;
- Affirm the actuality of interdependent sub-regional growth;
- Realize the need for adequate institutional arrangements; and
- Generally proclaim the contents of the treaty according to principles and objectives of the United Nations Charter and principles of international law.

2. The Treaty includes a **definition of terms**, which intends to set a common basis for the interpretation of the Agreement and reflects many of the factual issues and topics concerning the Parties.

3. It also spells out the **objectives and principles of cooperation**.

The Parties agree:

- (a) To cooperate in the sustainable development, utilization, management, and conservation of water and related resources of the Mekong River Basin, to optimize the uses and benefits of all riparians and to minimize the harmful effects that might result from natural occurrences and man-made activities.
- (b) To promote, support, cooperate and coordinate the development of the full potential of the basin for all riparians, preventing wasteful use, preferring and emphasizing joint projects and programmes, through the formulation of a basin development plan, that will be the basis for programmes, projects, and assistance;
- (c) To protect the environment and ecological balance from pollution and other harmful effects resulting from plans, developments and uses;

² Source: Copy of Agreement made available by Professor A. Utton, New Mexico, USA.

- (d) To cooperate on the basis of sovereign equality and territorial integrity in the protection and utilization of the resources of the basin;
- (e) To utilize the waters of the Mekong River system in a reasonable and equitable manner within their respective territories, according to the Rules for Water Utilization and Inter-Basin Diversion of Article 26 of the Treaty and also according to the following provisions:
- (i) Notification to the Joint Committee (which is one of the organs of the Agreement, as explained below) in cases of intrabasin uses and interbasin diversions, including Tonle Sap (in Cambodia), in the case of tributaries of the Mekong River;
- (ii) On the main stream of the Mekong:
- During the wet season:
- The Joint Committee is to be notified of other intrabasin uses;
 - Intrabasin diversions are subject to prior consultation in order for the Joint Committee to arrive at an agreement;
- During the dry season:
- Intrabasin uses shall be subject to consultations with a view to arrive at an agreement by the Joint Committee;
 - Interbasin diversions shall be agreed upon by the Joint Committee, prior to any diversion, through a specific agreement for each project; however, should there be surpluses, in excess of all proposed uses of all parties, unanimously confirmed by the Joint Committee, an interbasin diversion of the surplus could be made subject to prior consultation;
- (f) To cooperate in the maintenance of flows in the mainstream, except in the case of historically severe droughts and/or floods:
- To maintain flows of no less than the acceptable minimum monthly natural flow during each month of the dry season;
 - To enable the natural reverse flow of the Tonle Sap to take place during the wet season, and;
 - To prevent average daily peak flows greater than what naturally occur on the average during the high flow season.

The Joint Committee is to establish guidelines for the location and levels of the flows, and monitor and take necessary action for their maintenance, as provided in Article 26.

- (g) To avoid, minimize, and mitigate harmful effects to the environment resulting from the development and use of the Mekong water resources or discharge of waste or return flows; States, notified with proper and valid evidence that they are causing substantial damage to other riparian/s by using or discharging into the waters of the Mekong, shall immediately cease the cause of harm until the such cause is determined according to Article 8;
- (h) State responsibility for substantial damage shall be based on the determination of all relative factors, and the cause and extent of such damages, in conformity with principles of international law related to state responsibility, and to resolve issues differences and disputes in an amicable and timely manner by peaceful means as provided in Articles 34 and 35 of the Agreement, and in conformity with the Charter of the United Nations
- (i) Freedom of navigation on the mainstream is accorded on the basis of equality of right, without regard to territorial boundaries, for transportation and communication to promote regional cooperation, and to satisfactorily implement projects under the Agreement. Navigation shall not be interfered with or made more difficult. Navigation concerns shall be incorporated into any mainstream projects, although navigation does not have an assurance of priority. Riparians may issue regulations for the portions of the Mekong River within their territories;
- (j) The Joint Committee shall be notified of emergency situations and directly consulted by the finding party and the party concerned in order to take appropriate remedial action without delay.

4. The agreement provides a carefully crafted **institutional framework** to respond to the specific needs of the basin. It consists of the **Mekong River Commission**. The Commission is organized into three permanent bodies: **The Council**, the **Secretariat** and the **Joint Committee**.

The Commission assumes all the assets, obligations and rights of the Committee for the Coordination of Investigations of the Lower Mekong Basin and the Mekong Secretariat.

The budget of the Commission is proposed by the Joint Committee and approved by the Council, and shall consist of contributions from member countries on an equal basis unless otherwise decided by the Council, from the international community and from other sources.

The **Council** consists of one member for each Party at ministerial and cabinet level, no less than vice-minister, who is empowered to make policy decisions on behalf of his/her government. Chairmanship is for one year on a rotating basis. The Council convenes once a year, and also at special sessions when considered necessary or requested by a member state.

The Council is responsible for policy decisions and overall guidance; implementation of the Agreement; approval of rules, guidelines for financial and technical assistance of development projects and programmes and invitations to Donors Consultative Groups; and consideration and solving of issues, differences and disputes. Its decisions are to be unanimous, unless otherwise provided in its procedural rules.

The Joint Committee consists of one member for each Party at no less than the level of Head of Department.

The Committee:

- (i) Implements the policies and decisions of the Council and also specific tasks that might have been assigned by the Council;**
- (ii) Formulates the basin development plan, submitting it to the Council for approval;**
- (iii) Obtains, updates and exchanges information relevant to the implementation of the Agreement;**
- (iv) Conducts studies for environmental protection and maintenance of ecological balance;**
- (v) Assigns tasks, supervises the activities of the Secretariat, including the maintenance of necessary information and databases and approval of the work programme prepared by the Secretariat;**
- (vi) Addresses issues and differences raised between sessions of the Council, and when necessary refer the matter to the council;**
- (vii) Reviews and approves studies and training for the personnel or the riparian member countries;**
- (viii) Makes recommendations to the Council regarding the organizational structures of the Secretariat;**
- (ix) Proposes its procedural rules;**
- (x) Proposes rules for water utilization and interbasin diversions including: the dates and time frame of wet and dry seasons; the location of hydrological stations and their flow levels; sets up criteria to determine surplus waters; improves the mechanism to monitor intrabasin use; sets up mechanisms to monitor inter basin diversions;**
- (xi) The decisions of the Committee shall be taken by unanimity, except when otherwise provided by its procedural rules;**

The Secretariat:

- (i) Renders technical and administrative services to the Council and the Joint Committee and is supervised by the latter;**
- (ii) Carries out the decisions and tasks of the Council and the Committee;**

- (iii) Provides technical services, financial administration and advise as requested by the Council and the Committee;
- (iv) Formulates the annual Work Programme as well as other plans, programmes and project documents;
- (v) Assists the Committee on program and project implementation and management;
- (vi) Maintains information databases;
- (vii) Prepares the sessions of the Council and the Technical Committee;
- (ix) Carries out other assignments as directed;

The **Chief Executive Officer** is appointed by the Council and directs the Secretariat.

5. **Differences and Disputes** are to be first addressed by the Mekong River Commission. In case of lack of success by the Commission, the issue shall be referred to concerned Governments for negotiation or mediation, if necessary thereafter proceeding according to principles of international law.

6. The **Final provisions** determine the Agreements replaced by the Agreement (1957, Committee for Coordination of Investigations; 1975, Principles for the Utilization of Waters; 1978, Interim Committee), and related rules of procedure. The Agreement does not replace other treaties except as decided by governments in case of conflict.

The rest of the Agreement addresses formal and procedural issues of scope, additional Parties, suspension and withdrawal, international involvement, registration, and signing of the representatives of the Parties. According to the Protocol to the Agreement, commencement and establishment date for the Mekong River Commission is 5 April 1995.

III. Intergovernmental Commission Regarding Tumen River³

Five countries including China, Russia, Mongolia, Democratic People's Republic of Korea and Republic of Korea established an Intergovernmental Commission to promote the economic development of the Tumen River Basin in north-east Asia. The region has a population of some 150 million people and offers important growth possibilities given its access to resources in Siberia and its nearness to the large markets of Japan and Republic of Korea.

Formed under the aegis of UNDP, the Commission will be a forum for cross-border consultations on infrastructure, especially transport, and on ways to speed up trade through harmonizing customs regulations.

³ Source: Financial Times, 6 December 1995.

IV. Agreement on the Okavango River

An Agreement among the Governments of Angola, Botswana and Namibia has been entered into, to establish the Permanent Okavango River Commission.

The Agreement is based on principles of international law, environmental and development needs of the Contracting Parties as well as regional facts and conditions. Thus, the tenets of the Agreement are: good neighbourliness, close cooperation, a balance between developmental and environmental values, importance given to scarce water resources, sound resource management, sustainable development, equitable utilization of shared water resources, and cooperation and consolidation of friendly relations. The Agreement bears in mind the Helsinki rules and strives for a balance between development and environment.

The Permanent Okavango River Basin Commission is established to act as a technical advisor to the Contracting Parties on matters relating to the conservation, development and utilization of water resources of common interest, performing all other functions as assigned by the Parties to the Commission.

The Parties shall provide information, as allowed by their national laws, notifying the Commission of all proposed developments in matters falling within its functions. The Commission consists of three delegations of no more than three members each. Each delegation has a leader, who can be technically assisted, and a maximum number of three members, per meeting.

Leaders, representing the country hosting a meeting, shall chair the meeting and be responsible for its organization. A quorum requires at least two members from each delegation.

Decision-making is based on consensus at the Commission, and, lacking consensus, on negotiations by the Parties. The Commission determines its own rules of procedure.

The Commission advises the Parties on: long-term safe yields; reasonable demands; criteria for conservation; equitable allocation and sustainable utilization; investigations on development and waterworks; prevention of pollution and control of aquatic weeds; measures to alleviate short term difficulties, taking into account stored waters and water requirements; and other matters to be determined by the Commission.

The Commission may appoint consultants, issue reports signed by all the leaders of delegations; estimate costs of implementation of advice; all while considering the interests of third Parties in water sources of common interest.

Costs of attendance at and participation in meetings are to be borne by each contracting Party for its own delegation and advisors. Meeting costs are to be borne by the host country. All other costs are to be shared equally, unless otherwise agreed.

Disputes are to be settled by the contracting Parties.

The Agreement was signed in Namibia, on 15 September 1994, in English and Portuguese.

V. Proposed Protocol for Shared Watercourses for the SADC Region

A proposed Protocol for shared water systems within the Southern Africa Development Community (SADC) region was prepared on 16 May 1995.

The Protocol is to be submitted for consideration and approval by the countries of the region (Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe).

The Protocol takes into consideration: the Helsinki Rules and the work of the International Law Commission; the principles of Agenda 21; and the concepts of environmentally sound management, sustainable development, and equitable utilization of shared river basins. It considers socio-economic development programmes, strives for close cooperation and coordinated utilization of the resources of the basin; intends to promote environmentally sound development; recognizes the need for a regional convention in this regard; respects preexisting Agreements; and is based on Article 22 of the SADC Treaty.

The protocol gives an authentic interpretation to certain terms used in the Agreement, such as basin, basin state and other relevant concepts.

Utilization of shared waters is to be based on the principles of the Protocol, without prejudicing the sovereign rights of basin states. The utilization of water resources shall include agricultural, domestic, industrial and navigational uses.

Rules of existing customary international law regarding shared watercourse systems are to be respected and applied by member countries, particularly the principles of equitable utilization and community of interests. Additional principles are: balance between environment and development; close cooperation in the study and execution of projects; exchange of available information and data; equitable and optimum utilization and adequate protection of the watercourse system; and consideration of multiple factors in determining what is equitable in each particular case.

Member states would agree to implement a permit system for water uses and discharges therein, based on the condition of not causing detrimental change in the regime of watercourse systems.

The proposal would create river basin management institutions, with a view to: developing a monitoring policy for shared watercourse systems; promoting equitable utilization; formulating development strategies; and monitoring the execution of integrated watercourse development plans.

River basin management institutions shall perform, in consultation with member states:

- Functions of harmonization of legislation, monitoring of compliance, and proposals for amendments and new legislation;

- Promotion and organization of data collection, information systems, and appropriate water planning, according to the principle of environmentally sound development;
- Promotion of appropriate water utilization and control measures in shared watercourse systems, including: regulation of flow and drainage; flood and drought mitigation; desertification, soil erosion and sedimentation control; monitoring water utilization; and monitoring the establishment and generation of hydropower;
- Promotion of environmental protection measures to prevent degradation, to monitor banned or controlled substances, to promote environmental assessments, and to monitoring the impact of navigation;
- Promotion of hydro-meteorological monitoring programmes.

Financial matters shall be a specific annex and part of the Protocol.

Disputes are to be settled according to Article 16 of the SADC Treaty. The rest of the Articles address issues of form and procedure.

* * * * *