



# International Rivers and Lakes

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Thirteenth meeting of the Ministers for Foreign Affairs of the Plate  
basin countries focuses on institutional issues

The thirteenth regular meeting of the Ministers for Foreign Affairs of the Plate basin countries (Argentina, Bolivia, Brazil, Paraguay and Uruguay) was held at Brasilia on 6 and 7 December 1982. Representatives of the Governments of Costa Rica, the Dominican Republic, Mexico, Nicaragua, Panama, Peru and Suriname and representatives of various intergovernmental organizations participated as observers. Participants in the meeting had before them for discussion the annual report of the Intergovernmental Co-ordinating Committee of the Plate Basin Countries (CIC) which functions as the permanent secretariat within the framework of the 1969 Plate basin co-operation treaty.

The CIC report covers activities carried out in all six major fields of co-operation, namely, transportation, water and other natural resources, economic co-operation, health and education, public services and institutional issues, and contains draft recommendations for consideration by the Ministers. In particular, the section on institutional issues reports on the implementation of resolution 171 (XII), adopted by the Ministers at their twelfth meeting, which called for the streamlining of the process of implementation of decisions adopted by the Ministers for Foreign Affairs at their periodic meetings. <sup>1/</sup> The resolution, in particular, called for a review of the state of implementation of all the resolutions adopted by the Ministers at their meetings and for the subsequent establishment of an order of priority in the implementation of resolutions on which no action had been taken. Further to resolution 171 (XII), an ad hoc working group of CIC met between June and September 1982. It reviewed and finalized a preliminary report on the state of implementation of Ministers' resolutions, which had been prepared in September 1981 by an ad hoc working group pursuant to resolution 159 (XI). The report as finalized discloses that fewer than one in every four resolutions passed since the tenth regular meeting (December 1978) have been fully implemented. The causes of that serious state of affairs are identified in the report as the fragmentation and sometimes duplication of co-operative efforts, the ineffectiveness of the institutional responses of the basin countries to the challenge of sustained co-operation and the inadequacy of the structure and resources of CIC to cope with the challenge. As a result, guidelines for the orientation and rationalization of the future work of CIC are deemed, in the report, an indispensable instrument to correct the situation. Accordingly, criteria are outlined for the guidance of CIC in identifying a rational order of priorities in the implementation of the more than 100 resolutions adopted since the tenth regular meeting of Ministers which are in need of attention. The report of the ad hoc working group of CIC is incorporated in the CIC annual report as a working paper.

In addition, effective 1 March 1982, CIC adopted an important administrative instruction regulating in detail the functioning of the CIC secretariat. The annual report further discloses that detailed proposals for institutional reform primarily designed to strengthen the CIC secretariat had been submitted by the delegation of Paraguay to the CIC working group on

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<sup>1/</sup> See International Rivers and Lakes, No. 1, p. 7.

economic co-operation, in the form of a draft revised statute of CIC. The proposals, however, were not considered by that working group.

Discussions at the meeting of Ministers centred largely on institutional issues, and resulted in the adoption of three resolutions, as follows: resolution 181 (XIII), in which the Ministers approved the report of CIC; resolution 182 (XIII), in which the Ministers granted the executive directors of the Plate Basin Financial Fund (FONPLATA) advisory status within CIC; and resolution 183 (XIII), in which the Ministers dealt with broader institutional issues concerning the strengthening of the Plate basin institutional system. By resolution 183 (XIII), the Ministers, in particular, authorized CIC to finalize, with the assistance of high-level representatives of the Governments concerned, the institutional review exercise mandated by them in their resolutions 159 (XI) and 171 (XII). In resolution 183 (XIII) also, the Ministers laid down criteria for the guidance of CIC in outlining an order of priorities for the implementation of decisions adopted by the Ministers in previous years.

The institutional orientation of the thirteenth regular meeting of Ministers for Foreign Affairs of the Plate basin countries and the limited number of resolutions adopted are in sharp contrast with previous meetings, in which discussions spanned the whole spectrum of basin co-operation and scores of resolutions were adopted accordingly.

The fourteenth regular meeting will be held at Asunción, Paraguay, in the course of 1983.

#### Lower Mekong co-operation under review at the sixteenth session of the Interim Mekong Committee

The thrust towards regional co-operation in the lower Mekong river basin was at the centre of discussions at the sixteenth session (plenary) of the Interim Committee for Co-ordination of Investigations of the Lower Mekong Basin (the Interim Mekong Committee), which comprises the Lao People's Democratic Republic, Thailand and Viet Nam. The session was held at Vientiane, the Lao People's Democratic Republic, from 13 to 19 January 1983. Of particular interest was the discussion of the future of the Pa Mong project, which involves the multi-purpose development of a stretch of the Mekong river forming the boundary between the Lao People's Democratic Republic and Thailand. Some 20 years of study at an estimated cost of \$US 50 million have been devoted to the project, the peculiar feature of which is that it is the only project entertained to date by the Interim Mekong Committee - and its predecessor, the Mekong Committee - involving the development of the Mekong river proper. In April 1982 a detailed report on the institutional, legal and financial aspects of implementing the project was completed.<sup>2/</sup>

Discussions disclosed a considerable divergence of views between Thailand and the Lao People's Democratic Republic over the future course of the Pa Mong project. Whereas Thailand proposed that the Lao People's Democratic Republic and Thailand should take preliminary steps towards

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<sup>2/</sup> See Interim Committee for Co-ordination of Investigations of the Lower Mekong Basin, Pa Mong Multi-Purpose Project - Organization and Financing for Project Implementation, a report prepared by the Snowy Mountains Engineering Corporation, April 1982.

implementation of the project, the Lao People's Democratic Republic took a non-committal position, and proposed that any development of the mainstream resources should await resumption of membership in the full Committee by Democratic Kampuchea. Firm opposition to the development of the Mekong river proper had already been voiced by the National Mekong Committees of the Lao People's Democratic Republic, Viet Nam and Democratic Kampuchea in a joint communiqué issued at Ho Chi Minh City on 17 December 1982. No agreement could be reached in Vientiane on the controversial issue and, as a result, the report of the meeting could not be adopted. In the aftermath of the meeting, the Ministry for Foreign Affairs of Thailand reiterated its position in an official statement which has been filed with the Secretary-General of the United Nations for circulation to Member States.

The seventeenth session of the Interim Mekong Committee was held at Bangkok from 19 to 23 April 1983, in conjunction with the thirty-ninth session of the United Nations Economic and Social Commission for Asia and the Pacific.

India and Bangladesh work out an understanding on the sharing of Ganges waters after expiration of the 1977 Agreement

The protracted argument between India and Bangladesh regarding the allocation of water from the river Ganges moved into a new phase in November 1982 when the 1977 agreement between the two countries governing water releases from the Farakka barrage in India expired and was not renewed.

The President of the Council of Ministers of Bangladesh visited India to discuss the problem with Prime Minister Indira Gandhi but the meeting produced only a "memorandum of understanding" (negotiated by the respective Foreign Ministers) which ends the guaranteed minimum delivery of water to Bangladesh during the dry season and effectively reduces Bangladesh influence on possible future development of the upper Ganges basin.

India is reportedly contemplating diverting water from the Brahmaputra into the Ganges. The Indian proposal is for a canal to be built from Jogighopa in Assam to the existing Farakka barrage to divert 100,000 cubic feet per second (cusecs) of Brahmaputra water into the Ganges. This would allow 50,000 cusecs to flow across the border to Bangladesh and 30,000 cusecs to be transferred to the Hooghly canal to meet the flushing requirements of the port of Calcutta, leaving 20,000 cusecs to spare. Having ensured supply to Bangladesh, India would be able to make long-term plans for a national water grid and for conjunctive water use exploiting the waters of the region's two major rivers. Bangladesh, on the other hand, wants a tripartite agreement which would include Nepal and advocates building high dams to trap snow melt in Nepal and to retain monsoon rain water for release into tributaries of the Ganges to augment dry season flow. While India is going ahead with bilateral discussions with Nepal with a view to the construction of dams on the Karnali, Rapti and Pancheswar rivers, no provision has been made in the "memorandum of understanding" for the three riparian States to delineate a plan and work out a long-term tripartite agreement. In fact, since 1977 India has totally rejected the Bangladesh proposal that Nepal should be included in the Indo-Bangladesh Joint Rivers Commission (JRC), which has been

charged with identifying and agreeing upon the best way to supplement dry season flow of the Ganges at Farakka. The latest "understanding" directs JRC to study the Bangladesh scheme from an economic and technical viewpoint without involving the Government of Nepal. (Source: World Water, December 1982, p. 17)

### General agreement on the Canada-United States Skagit River dispute announced

A general agreement on the long-standing dispute between Canada and the United States over the Ross Dam project in the Skagit River was announced on 31 March 1983.

The present dispute dates back to 1941, when the city of Seattle, Washington, applied to the International Joint Commission of Canada and the United States for permission to increase by stages the height of Ross Dam on the Skagit River in Washington state to a final height of 1,725 feet, causing some 5,475 acres of land in British Columbia, Canada, to be flooded. In 1942 the application was approved, conditional on a binding agreement to be made between Seattle and the Province of British Columbia before water levels were raised above the boundary. From 1954 to 1966 annual interim agreements were made between Seattle and British Columbia allowing the city to flood up to an elevation of 1,600 feet. In 1967 a final agreement valid for 99 years was entered into. This agreement allowed Seattle to raise the reservoir level to 1,725 feet, flooding 6,350 acres, of which 5,475 acres belonged to the Province. Seattle agreed to pay an annual rental of \$34,566 or provide the equivalent in power to British Columbia. An International Skagit River Board of Control was established by the International Joint Commission and this Board reports on an annual basis to the Commission. Action by the city of Seattle to raise the reservoir to the agreed height was interrupted in 1971 when the International Joint Commission was requested by the Governments of Canada and the United States to examine the environmental consequences in Canada of raising the reservoir. The Commission reported back to the Governments that same year, recommending that mitigating measures should be fully studied before Ross Dam was raised.

On 25 June 1974, British Columbia requested the Commission to reconsider its 1942 Order of Approval, to declare the 1967 Agreement between Seattle and British Columbia to be invalid and to direct Seattle, pending adjudication by the Commission, not to raise the levels at the boundary. Noting that British Columbia and Seattle were proceeding towards direct negotiation, however, the Commission advised the parties that this was the most appropriate procedure. Negotiations continued without success until August 1980, when British Columbia requested the International Joint Commission to annul the 1942 Order on grounds that the Commission had not followed proper procedures, that the Order had been approved because of a national wartime emergency but had not been acted upon during the emergency and that environmental factors had not been considered. In its Supplementary Order of 28 April 1982, the Commission declined to grant the relief sought by British Columbia, but it froze the status quo of the project for one year, and directed a Joint Consultative Board to seek an agreement acceptable to the parties to the dispute. While other details of the agreement worked out by the Consultative Board are not known at the present time, provisions have been made for an Environmental Endowment Fund dedicated to enhancing the recreational opportunities and protecting the environmental resources of the Skagit Valley.

New chairman appointed to the Canadian Section of the International  
Joint Commission of Canada and the United States

Effective 20 December 1982, Mr. J. Blair Seaborn was appointed as the Third Commissioner and Chairman of the Canadian Section of the Canada-United States International Joint Commission. The position had been vacant since January 1981. (Source: FOCUS on Great Lakes Water Quality, vol. 8, No. 3)

United States federal judge rules on the dispute between the city of El Paso  
(Texas) and the state of New Mexico over the use of ground water

On 17 January 1983, a federal district judge ruled in favour of the city of El Paso, Texas, and against the state of New Mexico in a dispute over the use of ground-water resources in the Mesilla Bolson aquifer in southern New Mexico.

The aquifer extends over a wide area of the states of New Mexico and Texas and of Mexico. In New Mexico, just across the border from the cities of El Paso (United States) and Ciudad Juarez (Mexico), which are rapidly exhausting their ground-water stocks, the aquifer contains a substantial amount of largely untapped ground water. To gain access to the New Mexico ground water, El Paso in 1979 filed for permission from the New Mexico State Engineer to drill 326 wells in New Mexico for municipal use across the state line in Texas. In April 1981 El Paso's request was turned down by the New Mexico State Engineer on the grounds that New Mexico law forbids the out-of-state transportation of ground water. The city of El Paso then resumed a lawsuit it had already filed in September 1980 to have the statutory ban on the export of New Mexico ground water lifted on the grounds that it encroached on the freedom of interstate commerce sanctioned by the United States Constitution. El Paso's contention that water is like any other commodity as far as the United States Constitution is concerned is in sharp contrast with New Mexico's view of water as a unique commodity, a public resource subject to complete state control. In ruling in favour of El Paso, the federal judge found New Mexico's total ban on out-of-state transportation of ground water contrary to the United States Constitution, which only justifies limited restrictions to interstate commerce. The judge relied on a 1982 decision by the United States Supreme Court in a similar dispute involving a Nebraska law which had prevented two Colorado farmers from using Nebraska ground water in Colorado. The Supreme Court held that water must be treated as an article of commerce, and that arid states could justify a complete ban on ground-water export only if the ban was tied to public health and welfare needs. The federal judge in the El Paso case found that New Mexico had failed to meet the standard set by the Supreme Court.

In view of New Mexico's continuing opposition to El Paso's plans, the dispute is likely to reach the Supreme Court of the United States for a final ruling. (Primary source: El Paso Times, 18 January 1983).

International Law Commission - third report on international rivers law

As announced in the previous issue of the Newsletter, <sup>3/</sup> a third United Nations International Law Commission report on the law of the non-navigational uses of international watercourses was circulated in 1982 under the symbol A/CN.4/348 and Corr.1.

The comprehensive, 347-page long report which was prepared by Mr. S. Schwebel, the then Special Rapporteur on the topic, is divided into three chapters. In the first chapter, which illustrates the status of work on the topic, the two previous reports prepared by the Special Rapporteur are highlighted, and the relevant substantive comments made in the course of debate in the Sixth Committee of the United Nations General Assembly at its thirty-fifth session are reviewed for guidance in further work on the topic. In the Special Rapporteur's interpretation, the comments made in the Sixth Committee should be viewed "as predominant affirmation of the essential soundness of [the Commission's] basic approach and of the progress achieved thus far", it being understood that the work accomplished was tentative and incomplete and that the Commission would be reconsidering each draft article at a later stage of its work (see A/CN.4/348, para. 35).

In the second chapter, which forms the core of the report, six draft articles are laid down each with a commentary. The draft articles concern the principle of "equitable participation" (articles 6 and 7), the responsibility of States for harm to the interests of another State (article 8), information and data collection, processing and exchange (article 9), environmental protection and pollution control (article 10) and prevention and control of water-related hazards, including floods, soil erosion and saline intrusion (article 11). It should be noted that the numbers assigned to the draft articles follow sequentially the numbering of the first five draft articles laid down by the Special Rapporteur in his second report. <sup>4/</sup> The two articles on equitable participation reflect the Special Rapporteur's view that "there now exists a duty under general international law to participate affirmatively" in the management of shared water resources, and that this duty is mirrored by the "right [of States sharing an international watercourse system] to the co-operation of their co-system States" in any number of management ventures (see A/CN.4/348, para. 85). In this respect, the principle advocated by the Special Rapporteur goes beyond the well-established principle of "equitable utilization" of the waters of a shared river or basin, and the relevant wording is aimed at reconciling the entitlement of each basin State with the equal entitlement of the other basin States. The Special Rapporteur's restatement of the intricate principle of State responsibility for appreciable harm hinges on the existing duty to inform and to consult prior to taking action which may appreciably affect the interests of another basin State, and on the companion existing duty to work out a solution that obviates the expected appreciable harm. However, the draft rule carefully seeks to avoid giving a complaining State a right of veto over a proposed alteration in the status quo in the basin. Information and data collection and exchange are an indispensable ingredient of river basin co-operation and of the accommodation of differences. The draft article on this subject, which had already been addressed in the Special Rapporteur's two previous reports, provides a

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<sup>3/</sup> See International Rivers and Lakes, No. 2, p. 9.

<sup>4/</sup> Ibid., No. 1, p. 5.

framework for the initiation of information and data collection and exchange among basin States, when needed, with emphasis on the compatibility of the data supplied. The complex draft article on environmental protection and pollution articulates the existing "normative principle making protection of the environment a universal duty even absent agreement" (see A/CN.4/348, para. 246), and it provides a framework for action by basin States to prevent or correct pollution or other threats to the water-related environment. Finally, in the draft articles on harmful effects of water, a number of water-related hazards are taken up - flood, ice accumulation, erosion, sedimentation, salt-water intrusion, obstruction of river flow, poor drainage and drought - and a framework outlined for purposes of information and data exchange, consultation and monitoring.

The third chapter of the report deals with additional subtopics which the Special Rapporteur has singled out for further, more in-depth consideration at a future stage of the work. The subtopics identified in the report, and the relevant draft articles proposed, include river regulation, hydraulic installations and water security, interaction of non-navigational with navigational uses, administrative arrangements for international watercourse systems, and dispute settlement and avoidance (articles 12-16).

In the meantime, it has been learned that the new Special Rapporteur on the topic, Mr. J. Evensen, has just filed with the United Nations Secretariat his first report on the law of the non-navigational uses of international watercourses (A/CN.4/367).

#### International Water Tribunal announced

As a result of the endeavours of Netherlands environmental organizations, an International Water Tribunal has been announced and will convene at Rotterdam, the Netherlands, from 3 to 7 October 1983. The Tribunal, which has gathered the support of some 85 European environmental organizations since it was first publicized in 1981, grew out of concern for the state of the environment with particular reference to the Rhine river and the North Sea. The purpose of the Tribunal is to present the public and the Governments of affected countries with enough evidence of disregard for binding obligations to the environment to force the Governments concerned to take corrective action. Accordingly, a number of "cases" will be brought and tried before an independent jury of internationally known experts, with a view to assessing the scientific and the legal foundation of specific instances of alleged environmental wrongdoing. So far, 11 cases have been identified, four of which concern discharges into the Rhine by industries in the Federal Republic of Germany. Of the four individuals who have thus far agreed to sit on the jury of the Tribunal, one is a former member of the Netherlands Parliament and another is a member of the Executive Board of the World Health Organization.

The Tribunal is funded by private and institutional sources.

Publications and documents

United Nations, Experiences in the Development and Management of International River and Lake Basins. Proceedings of the United Nations Interregional Meeting of International River Organizations (Dakar, Senegal, 5-14 May 1981). Natural Resources/Water Series No. 10. English (French and Spanish will be available shortly). 424 pp. \$ US 36.00. Sales No. E.82.II.A.17. This publication may be obtained by writing to United Nations, Sales Section, New York, N.Y. 10017, indicating the sales number. All participants in the Interregional Meeting of International River Organizations will receive a complimentary copy of the publication in due course. The publication contains the report of the Meeting, most of the background papers prepared for discussion at the Meeting, and a selection of 34 papers contributed by participants in the meeting and illustrative of a broad range of experiences in the development, conservation and use of internationally shared water resources.

United Nations Industrial Development Organization (UNIDO), Review of Existing Co-operative Arrangements among the Developing Countries with Special Reference to the Mekong Countries. 26 pp. UNIDO-ID/WG.225/6. 1975 (available from UNIDO, Vienna).

UNIDO, Information Paper on the Organization for the Harnessing of the River Senegal (OMVS). English and French. 12 pp. UNIDO/ICIS.59. 1978 (available from UNIDO, Vienna).

International Joint Commission, Canada-United States. Several 1982 reports on technical and institutional matters prepared by the Commission and its Great Lakes Water Quality Board and Great Lakes Science Advisory Board, including the First Biennial Report Under the Great Lakes Water Quality Agreement of 1978, are available from the International Joint Commission, Great Lakes Regional Office, 100 Ouellette Avenue, Windsor, Ontario, Canada.

R. Spencer, J. Kirton and K. R. Nossal, eds., The International Joint Commission Seventy Years On, Centre for International Studies, University of Toronto, 1981, 158 pp.

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.

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

All correspondence should be addressed to:

E. Fano, Deputy Director  
Division of Natural Resources and Energy  
Department of Technical Co-operation for Development  
United Nations  
New York, New York 10017