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REPORT

Robert D. Hayton*

Report on the Dakar Meeting of International River Commissions

Resolution VII of the Mar del Plata Action Plan, adopted by the 1977 United Nations Water Conference, recommended exploration of the possibility of meetings "between representatives of existing international river commissions" having "competence in the management and development of international waters, with a view to developing a dialogue between the different river basin organizations. . . ." Moreover, representatives from "countries which share water resources but yet have no established basin-wide institutional framework should be invited to participate in the meetings."¹ The idea was subsequently endorsed by the United Nations Economic and Social Council (ECOSOC), which requested the Secretary-General "to make appropriate arrangements" for such meetings.²

Pursuant to these resolutions, the Centre for Natural Resources, Energy and Transport (now the Division of Natural Resources and Energy) of the UN Department of Technical Cooperation for Development (DTCD) organized the first such meeting, an Interregional Meeting of International River Organizations, in Dakar, Senegal, on May 5–14, 1981.

The meeting, opened by Under-Secretary-General Bi Jilong, was attended by delegates from 17 commissions³ and 36 states,⁴ many of which were members of commissions represented; representatives of the UN

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1. Report of the United Nations Water Conference, U.N. Sales No. E.77.II.A.12 at 77 (1977).

2. E.S.C. Res. 2121, 63 U.N. ESCOR Supp. (No. 1), U.N. Doc. E/6020 (1977).

3. Represented were: Autorité du Bassin du Niger; Comisión Administradora del Río Uruguay; International Boundary and Water Commission, United States–Mexico; Comisión Mixta Ecuatoriano-Peruana para el Aprovechamiento de las Cuencas Binacionales Puyango–Tumbes y Catamayo–Chira; Comisión Técnica Mixta del Salto Grande; Entidad Binacional Yacyretá; Greek–Yugoslav Permanent Water Economy Commission; Indo–Bangladesh Joint Rivers Commission; Interim Committee for Co-ordination of Investigations of the Lower Mekong Basin; International Joint Commission, Canada–United States; Mano River Union; Organization for the Management and Development of the Kagera River Basin; Organisation pour la Mise en Valeur de Fleuve Gambie; Organisation pour la Mise en Valeur du Fleuve Senegal; Permanent Indus Commission; Permanent Joint Technical Commission for Nile Waters, Egypt–Sudan; and Yugoslav–Hungarian Water Economy Commission.

4. Specifically: Argentina, Austria, Bangladesh, Bolivia, Brazil, Canada, Egypt, El Salvador, Finland, France, The Gambia, Ghana, Greece, Guinea, Guyana, Honduras, Hungary, India, Iraq, Italy, Cote d'Ivoire, Liberia, Mauritania, Mozambique, Netherlands, Nigeria, Pakistan, Romania, Senegal, Spain, Sudan, Sweden, Syria, Uganda, U.S.S.R., and the United States.

family of organizations;⁵ and other governmental and non-governmental organizations.⁶ Substantive discussions focused on three topics:

- I. Institutional and Legal Arrangements⁷
- II. Progress in Cooperative Arrangements⁸
- III. Economic and Other Considerations.⁹

A background study by a special rapporteur for each had been prepared and circulated in advance; after a series of overall statements by delegations, the entire group considered each topic which was then examined by working groups.¹⁰ A formal presentation by each topic's rapporteur preceded discussion.¹¹

INSTITUTIONAL AND LEGAL ARRANGEMENTS

Topic I's rapporteur stressed "legal questions of practical importance" such as: a) the advisability of taking environmental law into account in the management of international drainage basins; b) appropriate legal regimes for loans and loan guarantees and for regulating relations between a commission and its consultants, contractors, suppliers, staff, users, and the inhabitants of areas of operation, including eminent domain and easement problems; c) the effects of the member states' taxation, foreign exchange and customs legislation on commission and contractors' activities; d) third-party civil liability; and e) privileges and immunities of

5. In addition to the United Nations Headquarters personnel supporting the meeting, participants or observers were sent by the United Nations Development Programme; International Law Commission; Economic Commissions for Africa, Latin America, and Asia and the Pacific; United Nations Environment Programme; Food and Agriculture Organization; United Nations Educational, Scientific and Cultural Organization; World Health Organization; World Meteorological Organization; and the World Bank.

6. Hydromet, International Assoc. for Hydrological Services, International Assoc. for Water Law, International Union for Conservation of Nature and Natural Resources, International Water Resources Assoc., and the Kuwait Fund.

7. The rapporteur for Topic I was Guillermo Cano. His background paper, the other background papers and technical papers selected from those contributed by participants can be found, together with the Report of the Meeting, in United Nations Natural Resources/Water Series No. 10, *Experiences in the Development and Management of International River and Lake Basins*, U.N. Sales No. E.82II.A.17 (Feb. 1983). The Report of the Meeting appeared separately in July, 1981 (mimeo); for a listing of all the documents circulated and submitted, see Annex VII of that Report.

8. Rapporteur, Robert Hayton.

9. Rapporteur, Karl-Eric Hansson.

10. The meeting participants elected Minister of Equipment, A. Senghor of Senegal as Chairman; Minister of Water Resources, E. Y. Atanu of Nigeria as Secretary-General; R. Bello of the Mixed Technical Commission for Salto Grande and Ministry of Irrigation Secretary C. C. Patel of India as Vice-Chairmen; and A. H. Fahmi of Egypt as general Rapporteur. The meeting's Co-Directors were E. Fano (U.N. Headquarters) and I. Ba (OMVS); the Co-Secretaries were S. Burchi (U.N. Headquarters) and M. Dieng (Secretariat for Water Resources, Senegal). Each working group also elected chairmen and rapporteurs for each topic.

11. For summaries, see Report of the Meeting, *supra* note 7, at 5-6 (Cano), 10-13 (Hayton), and 18-19 (Hansson).

staff and their goods. He advocated machinery within each participating government to coordinate sectorial interests involved in multipurpose hydraulic works and to provide its international commission representatives with adequate technical support.

The rapporteur then circulated a "priority" list, which was accepted as a guideline for discussion.¹² Several delegates addressed the problem of adequate principles and rules of international water law and the shortcomings of some river basin treaties. The legal requirements for the proper functioning of river commissions were given considerable scrutiny. Some participants expounded the view, shared by the rapporteur, that commission members should not be diplomats, but technical people. However, it was also stated that the technical, diplomatic, and internal political aspects could not be separated. The multidisciplinary nature of international river basin management was also emphasized.¹³

Among nine conclusions¹⁴ drawn from consideration of Topic I was the desirability of having appropriate national level machinery to support multinational activities. And:

[W]here it is the intention of States to establish a[n] . . . international organization for the management of shared water resources . . . the agreement . . . should at least contain . . . the following elements . . .:

- (a) objectives;
- (b) territorial jurisdiction;
- (c) composition;
- (d) authority and powers;
- (e) decision-making procedures;
- (f) financial provisions; and
- (g) procedures for the prevention and settlement of disputes.¹⁵

Furthermore, "technical matters should be dealt with by specialists, . . . diplomats should assist when problems arise and . . . the activities of both groups should complement one another."¹⁶

PROGRESS IN COOPERATIVE ARRANGEMENTS

A number of delegations again emphasized the urgency of the International Law Commission's (ILC's) long delayed codification and the progressive development of the law of international watercourses. The

12. Reprinted in *id.* at Annex III.

13. For the official summary of the debate, see *id.* at 6-8.

14. *Id.* at 8-10.

15. Fourth conclusion.

16. Sixth conclusion.

rapporteur reminded the meeting that a legal officer from the ILC's Secretariat¹⁷ was present as an observer and soon would conduct a full review of that Commission's work on the watercourses topic. He then invited the delegates to focus on the complex challenges now confronting many international river or lake commissions, as well as the situation of states sharing water resources systems for which there are no agreed-upon cooperative arrangements.

Among the noted matters of concern were: water-related disease; watershed destabilization (resulting in erosion, floods, desertification, and delta and port blockage); the fresh water-maritime interface in estuaries and deltas and more generally the pollution of the seas by rivers; the need to face up to the transnational implications of shared water in the "underground environment"; and the interactions between surface and ground water. The rapporteur also underscored the importance of the sharing of information and data, and of timely collecting the processing in accordance with an agreed scheme, in order to establish the indispensable base for national planning and for system-state cooperation.

It was reported that costly delays and interruptions of vital works and programs were occurring because compulsory dispute settlement machinery is nonexistent or because dispute avoidance and early accommodation procedures are not institutionalized at technical levels. There is an increasing likelihood of serious, even catastrophic, incidents resulting from both natural and man-made water-related hazards. Finally, the problems confronted by mature, as well as by recently formed, commissions in recruiting, training, and retaining professional and para-professional personnel were brought to the group's attention.¹⁸

The general debate on Topic II elucidated the difficulties encountered in coordinating international river commission actions with counterpart national agencies, as well as with other concerned regional international bodies. It became clear that some governments are apprehensive about the dangers involved in granting supranational authority to such commissions. However, many participants expressed the need to strengthen these institutions and to increase their responsibilities in light of the growing problem.

Minimum water quality standards interested several participants as a task requiring joint determinations and joint measures. The problem of disease vector control in relation to shared water bodies in tropical latitudes evoked strong concern, along with other water-related health matters.

17. L. D. Johnson, Esq.

18. Draft Guidelines for Substantive Discussion were circulated in question form. *Reprinted in Report of the Meeting, supra* note 7, at Annex IV.

Most participants were aware of the legal and institutional implications of the hydrologic cycle, but few international commissions had thus far been given express responsibility for shared aquifers. There was general agreement that groundwater problems, although complex, are of rapidly increasing importance. Conjunctive use of surface and ground water, and saltwater intrusion were also discussed.

Of the other questions taken up, information and data exchange brought forth the most heat as well as light. Downstream states insisted that such exchange was already a firm duty under general international law; upstream states were equally insistent that such an obligation was mandated only by agreements in force between the system states. On the whole, however, the practical necessity for some exchange, included as a corollary to equitable utilization, was not denied.¹⁹

Of the 15 conclusions that emerged from consideration of this topic,²⁰ the six most significant merit attention. "Some cooperating States," it was concluded,

need to provide their international and lake organizations with both the competence and the capability to deal effectively with the existing and impending demands for improved water resources development, use and protection by legal and institutional arrangements that do not deprive the governments of their final role in determining policy and controlling the actions of their agencies.

Where benefits and costs are to be shared, international river and lake organizations could be empowered to recommend . . . the general or specific formulas and rules for such sharing . . . to the governments concerned.

Water quality, water-related disease and environmental protection considerations have to date received inadequate attention in most cases, and governments need to request their river and lake organizations to include these aspects. . . .

The prevention and mitigation of floods, droughts and other hazards . . . are increasingly of concern . . . because of the numerous changes that are taking place at accelerating rates within the watersheds. . . . The international river and lake organizations are appropriate bodies for initiating studies and recommending measures, contingency plans and warning systems, as well as for conducting the necessary ongoing review of conditions and the adequacy of measures undertaken.

Those co-operating States that have not yet included groundwater as part of the shared water resources system need to recognize this part of the hydrologic cycle as intimately linked to the quantity and quality

19. For the official summary of debate, *see id.* at 13-15.

20. *Id.* at 15-18.

of their shared surface waters, and could entrust their international river and lake organizations with the task to initiate technical studies and to call for hydrogeologic data . . . with a view to benefiting from conjunctive use and to adopting the indicated conservation and protection measures for the underground environment.

An adequate and reliable data base is deemed indispensable to rational planning and project and programme execution. Since data gathering, processing and dissemination for complex shared water resources systems is costly and is a continuous process, it is more than normally important that the system States agree quite specifically on the kinds of data needed for different purposes, and on the scheme for their collection. With respect to the basic hydrologic data and operational information, however, a free and ample flow on a timely basis is called for at all times.²¹

ECONOMIC AND OTHER CONSIDERATIONS

The rapporteur emphasized the substance, rather than the form, of cooperation, and pointed out that no single technique exists for allocating costs in joint ventures. Moreover, projects are slow to reach fruition, and a flexible, pragmatic approach is needed. Each participating state must gain some benefit from cooperation.²²

Of major interest was the methodology for apportioning benefits and costs, with intensive querying of those representatives of commissions and of participating states with experience with joint projects such as hydropower, irrigation, navigation, and flood control. Cases described included those of the Mexico–United States International Boundary and Water Commission, and the Salto Grande (Uruguay–Argentina) and Yacyreta (Paraguay–Argentina) projects. Many commissions are facing or will have to face this benefits-cost allocation problem. The debate brought out the political and practical difficulties of, for example, the calculation of environmental costs. It became evident that guidelines and methodologies applied at the national level are not readily transposable to international situations.

The stages of cooperation were examined, from initial conversations, preliminary fact-finding, sound data collection, pre-feasibility and feasibility studies, planning, and design, to construction, operation, and maintenance. Regional planning was the subject of considerable discussion. Integrated planning was recognized to be the ideal way to proceed, though arduous in practice. Representatives identified and discussed the factors involved in analysis and planning. Consideration of requirements

21. The quoted texts are from conclusions (i), (iii), (iv), (v), (vi), and (xi), respectively.

22. The rapporteur had distributed a list of important issues in order to focus the discussions. Reprinted in Report of the Meeting, *supra* note 7, at Annex V.

for environmental impact assessments stressed the positive dimensions of such studies: “[E]nvironmental concern must be harmonized with development.”²³

Information exchange was considered “a prerequisite to basin-wide planning and to the establishment of useful cooperative arrangements for the many basic issues that arise.”²⁴ Joint studies were favored as saving time and money.

Major project financing received major attention, with participants from donor agencies and governments with experience explaining and illustrating assistance procedures and agreements. A number of large international river development loans and grants have been made. The representatives discussed approval criteria, guaranties, commitment of revenues to repayment, and other financial aspects.²⁵ The meeting arrived at nine conclusions under the economic and financial rubric.²⁶ The following are expected to be of most interest to the reader:²⁷

Both regional and integrated planning and execution of individual projects should proceed, but care should be taken . . . so that [individual projects] are compatible with, and do not preclude or obstruct, later joint projects and take into account the rights and obligations of neighbors.

. . . [E]nvironmental considerations have to be included, but [there was no] agreement on . . . the weight that should be given. . . . There was a clear impatience among participants from developing countries to get on with development. . . .

ADDITIONAL MEETING TOPICS

Representatives showed interest in an increased role for United Nations’ bodies in assistance to international river and lake commissions. The concept of a support function, broader in scope than an “information clearing house,” received widespread approval as a continuing follow-up to the Water Conference’s Resolution VII and ECOSOC’s mandate.²⁸

Several conclusions adopted by the Dakar meeting registered this need for a support function.²⁹ For example, it was deemed

[d]esirable that the Secretary-General . . . strengthen the support available . . . to service the various needs of [international river and

23. *Id.* at 21, ¶ 59.

24. *Id.* at 22, ¶ 62.

25. For the official summary of the debate, *see id.* at 19–23.

26. *Id.* at 23–25.

27. Conclusions (iv) and (vi), respectively.

28. *See* text accompanying footnotes 1 and 2, *supra*.

29. Conclusions (xii)–(xv), Topic II; and (vii) and (viii), Topic III. *Id.* at 17–18, and 24, respectively.

lake] organizations and of States concerned.³⁰ The . . . support function might include, in addition to responding to individual requests for information and the systematic accumulation of reports and periodic distribution of information . . . , the organization of seminars, the facilitation of the exchange of persons and the providing of expertise. . . .³¹ A manual on each of the . . . technical and managerial aspects of the development, use, and protection of shared water resources systems would be a highly useful product of such a United Nations support function.³²

The proposal subsequently found favor in ECOSOC, which agreed to the desirability of continuing and intensifying the dialogue commenced with the Dakar meeting.³³ The Water Resources Branch of DTCD has begun its efforts to implement the proposal along several lines.

The chief product, thus far, of this new effort is *International Rivers and Lakes*, a newsletter to be issued from time to time from New York, and edited by Mr. S. Burchi. Issue 1 (April 1982) gave a summary of the Dakar meeting and reported a number of items of interest including short pieces on the Bangladesh Symposium on River Basin Development (December 1981); the status of work of the ILC on the topic of "The law of non-navigational uses of international watercourses"; the coming into force of the Treaty for Amazonian Cooperation; the Meeting of the Ministers of Foreign Affairs of the Plata Basin countries; and the symposia "Anticipating Transboundary Resource Needs and Issues in the U.S.-Mexican Border Region to the Year 2000." Recipients of that first newsletter also received a "Preliminary Index of Documents Available. . . ." ³⁴ Issue 2 of the newsletter (December 1982) held information on, *inter alia*, the new Niger Basin Authority; the Mano River Basin Development Project; developments concerning Rhine salt discharges; the Interim Mekong Committee; and the actions taken at the Montreal Conference of the International Law Association on pollution, environmental protection, and international groundwater resources. Subsequent issues of the newsletter will include additional listings of documents and information on projects, institutional or legal developments, and other reports.³⁵

30. Conclusion (xii).

31. Conclusion (xiii).

32. From Conclusion (xv). Suggestions of this kind had been placed in the record of several earlier meetings, seminars, and conferences. The Dakar Meeting's "conclusions," however, are limited to the international aspects and are more specific within that focus than were previous exhortations.

33. Y.B.E.S.C. Res. E # 1981/81 (24 July 1981).

34. *International Rivers and Lakes*, Preliminary Index of Documents Available to the United Nations Department of Technical Cooperation for Development, United Nations, New York, April 1982 (mimeo).

35. Persons are urged to submit materials and information for possible inclusion in the newsletter. Inquiries should be addressed to Mr. Enzo Fano, Deputy Director, Dept. of Technical Cooperation for Development (Water Resources Branch), United Nations, New York, NY 10017.

CONCLUSIONS

Thus, the 1981 Interregional Meeting of International River Organizations has produced a number of telling conclusions, launched what may develop into a fruitful dialogue among commissions, states, and agencies, and persuaded ECOSOC to approve an active support role for UN organizations, particularly for DTCD's Water Resources Branch.

Probing and frank examination of managerial problems and issues of concern to international commission members was, at Dakar, noticeably inhibited by the presence of foreign office personnel from a number of the commissions' member states. Some of these persons, with or without special expertise, "preempted the field" as the spokesmen of "sovereigns." On the other hand, other government delegates dealt with the issues quite objectively. The size of the meeting, the diversity of its agenda, and the heterogeneity of its participants limited the frank, expert-to-expert give and take and informal atmosphere conducive to a real exchange of experience and an exploration of fresh alternatives on professional grounds. Although increasingly difficult to achieve in United Nations conclaves, future meetings pursuant to the resolutions may achieve the hoped-for exchange of information and experience among knowledgeable professionals if these are small, focused, and limited chiefly to specialist practitioners.

Despite some backing off under the *de facto* diplomatic conference atmosphere, participants manifested not only keen interest, but willingness to collaborate for the purpose of working toward optimum use and adequate protection of transnational fresh water resources.