1975 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

MEMORANDUM FOR JUDGES

This memorandum has been specially prepared for judges, with a view to summarize the issues raised in the problem. UNDER NO CIRCUMSTANCES IS IT TO BE SHOWN TO CONTESTANTS. Regional Administrators are urged to use utmost discretion in keeping this memorandum from the eyes of students.

Association of Student International Law Societies
American Society of International Law
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1975 Jessup Competition

Special Memorandum for Judges

I. Overview of the 1975 Problem

The focus of the 1975 Jessup Problem is upon the recurrent disputes over transnational pollution. It is often said that pollution knows no national boundaries; and with the transfrontier movement of pollutants from a source in one nation so as to injure individuals and property in a neighboring state, the following primary international legal issue is raised: What is the responsibility of a State (here, Karma) for activities (both public and private) in its territory which cause injury to the environment of its neighbor (here, New Helios)?

Only recently with the growing worldwide concern with the environment, has the above question received much attention. As a result, the international norms governing transfrontier pollution are still in an embryonic stage. Thus, much of the argument generated by this Problem will involve the nature and extent, under existing international law, of a nation's obligation to refrain from, prevent, or give prior consultation on existing or possible sources of transnational environmental injury.

In addition to the emerging body of international law and customary river law, the parties to this dispute are bound by the terms of the 1923 Treaty (Annex B) which regulates, in a rudimentary way, the use of the Upper Peace-International Lake-Lower Peace drainage basin. The rather general language of the Treaty will provide ample opportunity for arguments over textual interpretation, while Karma will undoubtedly attempt to avoid any obligation under the treaty with assertions of rebus sic stantibus or changed circumstances.

An undercurrent of this year's Problem is the constant conflict between the "have" and "have-not" nations. Karma, a developing nation, will understandably emphasize its severe need for economic growth and industrial development. To counter, New Helios will assert the desire for environmental preservation and the plight of innocent victims of pollution.

What follows is not a case-book solution. This year's Problem raises a number of difficult, unresolved questions of international law, and judges should look for well-reasoned, documented, and creative arguments. Judges should not consider the substantive merit of the disputants' submissions, but only the quality of their presentation.

If you wish to do further research, please consult the attached bibliography.

II. Some Thoughts on the Issues

Issue 1 - Whether Karma's failure to prevent the dumping of effluents and sewage from the paper mill and town into the Upper Peace River constitutes a breach of her international obligations?

A. 1923 Treaty, Article II, para. I: "... neither State shall pollute boundary waters or other waters running between them so as to injure the health or property in the other State."

New Helios will argue for an interpretation of these words, which are similar to that of Article IV of the 1909 U.S.-Canadian Convention Concerning Boundary Waters, "in accordance with their ordinary meaning" and "in light of [the treaty's] object and purpose." See Vienna Convention on the Law of Treaties, Article 31 (1). Since there is no mention of the source of the pollution, New Helios will assert that the treaty applies to any public or private activity harming these "boundary waters" no matter its location. Unless the Treaty is held to apply to the entire drainage basin, the object of the Treaty would be rendered meaningless.

Although the pollution is a result of wholly private activities, the State of Karma may still be in breach of its treaty obligations under the concept of "attribution." There is still controversy over this question, but it is generally agreed that a State must, at a minimum, take reasonable measures to prevent its citizens from undertaking activities which violate that State's obligations. There is some authority (see Sohn & Baxter, Draft Treaty on State Responsibility for Injury to Aliens) for the existence of absolute liability where a treaty commitment is involved.

Given the inaction of Karma as to the pollution emanating from the mill-town, the standard chosen is not decisive, since a good argument can be made that Karma was clearly negligent in her failure to fulfill her international obligations.

Thus, New Helios will submit that Karma has failed to perform its Treaty obligations "in good faith" and in violation of the well-accepted maxim pacta sund servanda.

Karma will respond to these arguments by attempting to divert the attention of the Court away from the words of the Treaty to the course of events thereafter, particularly:

1. New Helios's unreasonably long delay in protesting against the pollution of the Upper Peace.

2. The willingness of New Helios to install the water purification facilities necessary to preserve the quality of its drinking water.

3. The tremendous growth and development of Karma's economy.

The first two items lend support for an argument by Karma that New Helios has acquiesced to the pollution or, by its inaction, permits a less strict interpretation of the Article II prohibition.

Relying essentially on Item 3, Karma will assert that this 50-year-old treaty clause is no longer binding under the doctrine of rebus sic stantibus, that is, that a treaty ceases to be binding when the basic conditions upon which it was founded have essentially changed. Karma will cite the dramatic change in technology and its own dramatic economic growth as conditions which make it unduly burdensome to preserve the prior rather pristine condition of the lake.

B. Customary International Environmental Law

State practice in this area is rather limited, and counsel for New Helios will be hard pressed to show the existence of a

generally accepted norm of international law barring transfrontier pollution. New Helios should be expected to rely on the following:

1. Principle 21 of the Stockholm Declaration: "States have, in accordance with the Charter of the UN and the principles of international law .... the responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other States ... " (See Documents Appendix)

2. Trail Smelter Arbitration Between the U.S. and Canada (1938): "Under principles of international law, as well as the law of the U.S., no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, where the case is of serious consequence and the injury is established by clear and convincing evidence."

New Helios would argue that these two statements are evidence of a generally accepted specific obligation to prevent transfrontier pollution. Additional support for this proposition may be found in the writings of the "most highly qualified publicists," including Eagleton.

Karma will counter with arguments that international law has not evolved so as to include such a prohibition. Although adopted by the Stockholm Conference and affirmed by the U.N. General Assembly, the Declaration is not a binding legal document. As to the Trail Smelter decision, a number of serious objections have been raised:

a. Canada had already accepted liability by the terms of the arbitral Convention. Thus, the above statement is technically dictum.

b. This Convention directed the Tribunal to use U.S. Supreme Court precedents, which it did so apply, stating, with no discussion, that American law on water and air pollution was in conformity with international law.

c. The Tribunal misinterpreted the decisions it applied.

C. Customary River Law

Perhaps the most important codification of existing customary law regarding riverways is the Helsinki Rules, adopted in 1966 by the International Law Association, which is a private organization composed of legal scholars from primarily developed nations.

Judges should examine carefully the excerpts from the Helsinki Rules to be found in the Documents Appendix. Of particular importance is Article V which sets out the various criteria to be considered in deciding whether a State is exceeding its "equitable share" of the resources of an international drainage basin. Essentially, these principles require a balancing of the "benefit of the activity" v. "injury inflicted."

Karma might take a hard line by asserting what is known generally as the Harmon Doctrine -- that is a claim of an absolute right to use the waters within a State's territory, without any recognition of claims made by co-riparians. The Harmon Doctrine, although it continues to crop up in river disputes (Indus River, Columbia River) has generally been considered as obsolete. Furthermore, the doctrine is inconsistent with Karma's obligations under the 1923 Treaty.

D. General Principles of Law Recognized by Civilized Nations

New Helios may argue that the pollution of the Upper Peace constitutes an "abuse of rights" by Karma. It is generally recognized that there are limits, under international law, to the exercise of sovereign rights by a State. Depending upon the facts of the particular situation, the exercise of such rights may be so unreasonable and reprehensible so as to make such exercise contrary to international law.

One expression of this concept of "abuse of rights" is the Roman doctrine of sic utere tuo ut a lienum (use thine own so thou dost no harm to another). The Corfu Channel case (ICJ, 1949) has been called the premier example of the use of sic utere in international adjucation. In that case, the Court recognized "every State's obligation not to allow knowingly its territory to be used contrary to the rights of others."

Issue 2: Whether Karma's failure to consult with New Helios concerning the location and construction of the nuclear plant constitutes a violation of international law?

New Helios will argue that the source of this duty to consult may be found in the 1923 Treaty under Article I and Article II, para. 2. Under Article I, Karma and New Helios "agreed to co-operate and consult" with one another as appropriate on matters of mutual interest. Pursuant to Article II, para. 2, these States agreed that, in furtherance of their responsibility not to pollute the boundary waters, "the parties undertake to enter into specific arrangements as appropriate."

New Helios will argue that Karma's failure to notify her of the plans for the construction of the plant is a flagrant violation of Karma's clear treaty obligations. Karma will respond with factual arguments to show that the plant, which is necessary to meet the growing demand for electrical energy in Karma's expanding economy, is not a matter of "mutual interest." Further, Karma will argue that on such a matter of high national importance, bilateral arrangements and consultation would not be "appropriate," as such requirements would only serve to unreasonably delay and perhaps retard its economic development.

New Helios might attempt to bolster its position by showing the obligation to consult as generally accepted within international law and consistent with Karma's obligation under the U.N. Charter.

As evidence of this obligation, New Helios will rely on U.N. General Assembly Resolution 2995 (1972) which is appended to this memorandum. New Helios will cite Karma's failure to provide any "technical data" or to make any attempt to cooperate with New Helios on the question of the nuclear plant. Karma will emphasize the provisions of paragraph 3 of the Resolution which state that the requirement of information exchange should not be "construed as enabling each State to delay the programmes and projects of exploration, exploitation, and development of the natural resources of the States in whose territory such programmes and projects are carried out."

Karma might also argue that U.N. Resolutions are not binding under international law, despite the fact that this particular resolution was adopted by a vote of 114 votes to 0, with 10 abstentions. New Helios will assert, however, that this vote is indicative of a general acceptance of the obligation to consult. New Helios , in furtherance of this argument, will cite the quasi-legislative function of the General Assembly where a "legal vacuum" exists, a position advanced by a number of publicists.

Other support for the existence of the obligation to consult is the Helsinki Rules, Article XXIX, para. 1 and 2 (see Documents Appendix) and the Lac Lanoux Arbitration. In Lac Lanoux, which involved a dispute over river diversion between France and Spain,

the duty to consult was characterized not as a "veto power" in the hands of the lower riparian State, but rather as an obligation on the part of the upper riparian State to take into consideration, in a reasonable manner, the interests of the downstream State in a proposed project.

Issue 3: What relief, if any, is available to New Helios?

The principle that the obligation to make reparation arises from the breach of an international engatement is well-established in international law. In the Chorzow Factory case, the Permanent Court stated:

> " ... reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if the act had not been committed."

New Helios might, thus, request the following forms of reparation:

A. Compensation. As to the injury already incurred due to the operation of the mill-town, New Helios would argue, citing the Chorzow Factory case, that Karma has the obligation to pay compensation for material damages suffered by New Helios and its citizens.

B. Declaratory Judgment. As to future damages arising from the paper mill and town, New Helios will ask the Court to declare these pollution-generating activities unlawful to the extent of their expected extraterritorial impact. Karma might argue that such a judgment fixing legal rights is inappropriate, since there has been no serious injury (this is true of the nuclear plant) and such a decision leaves no room for reasonable compromise.

C. Injunctive Relief. New Helios should argue that monetary compensation is an inadequate remedy as to the future injury resulting from the mill-town and the projected full operation of the nuclear plant. Thus, New Helios should request that the Court declare that Karma take measures to prevent further pollution of the river system by the mill-town and that Karma should not operate the nuclear plant beyond its present capacity.

New Helios will argue that such relief is a form of satisfaction, consistent with international law as evidenced by the avail-

ability of equitable remedies in many States (thus, a general principle of law recognized by civilized nations) and the teachings of publicists (i.e., Schwarzenberger).

Since this remedy is equitable in nature, counsel for Karma might be expected to argue that the relief requested as to the nuclear plant would be unduly burdensome in relation to the future anticipated injury to New Helios.

D. Negotiations. Pursuant to the recently decided Fisheries Jurisdiction Cases (U.K. v. Iceland, W. Germany v. Iceland), New Helios might request that the Court declare both states "under mutual obligations to undertake negotiations in good faith for the equitable solution of their differences" concerning the utilization of their shared water resources, and that the Parties take into account in these negotiations the Court's declarations in this particular case on the future regime for the river system i.e., endorsement of the doctrine of equitable utilization).

Selected Bibliography for Judges

of the

1975 Jessup International Law Moot Court Competition

Books

1. BARROS & JOHNSTON, THE INTERNATIONAL LAW OF POLLUTION (1974)

2. GARRETSON, HAYTON & OLMSTEAD (ed.), THE LAW OF INTERNATIONAL DRAINAGE BASINS (1967)

3. J.L. HARGROVE (ed.), LAW, INSTITUTIONS, AND THE GLOBAL ENVIRONMENT (1972)

4. TECLAFF & UTTON (ed.), INTERNATIONAL ENVIRONMENTAL LAW (1974) - reprinted from 13 NATURAL RESOURCES J. (April '73)

Articles

1. C.B. Bourne, International Law and Pollution of International Rivers and Lakes, 6 U. BRIT. COLUMBIA L. R. 115 (1971)

2. Laylin & Bianchi, The Role of Adjudication in International River Disputes: The Lake Lanoux Case, 53 AM. J. INT'L. L. 30 (1959)

3. Sohn, The Stockholm Declaration on the Human Environment, 14 HARV. INT'L. L. J. 423 (1973)

1975 Philip C. Jessup International Law

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DOCUMENTS FOR ORAL JUDGES

These materials have been specifically prepared for judges and may be used for reference during oral arguments. UNDER NO CIRCUMSTANCES IS IT TO BE SHOWN TO COMPETITORS.

INDEX

ANNEX B

1923 Treaty of Amity, Friendship, and Economic Cooperation

ARTICLE I

In order to carry out the purposes and objectives of this Agreement, the States of Karma and New Helios agree to cooperate and consult with one another as appropriate on matters of mutual interest.

ARTICLE II

Paragraph 1. Both States agree that in keeping with the general aim of amity, friendship and economic cooperation, neither State shall pollute boundary waters or other waters running between them so as to injure the health or property in the other State.

Paragraph 2. In furtherance of this responsibility the parties undertake to enter into specific arrangements as appropriate.

ARTICLE III

The Lower Peace River shall be open to the ships of both States, and navigation shall not be impeded or unreasonable conditions placed thereon, unless a situation arises in which either State, upon notification to the other, believes that health and safety require the imposition of such conditions.

ARTICLE IV

Paragraph 1. Disputes between the two States shall be settled amicably and equitably with full regard to the purposes and principles set forth in this Agreement.

Paragraph 2. Upon the request of either State, both States agree that questions arising under this Agreement which have not been settled within a reasonable time may be brought to arbitration, each State choosing one arbitrator and the remaining arbitrator to be agreed between them or, if agreement is not reached within a period of six months from the date of the selection of the two other arbitrators, such third arbitrator shall be selected by the President of the Permanent Court of International Justice.

Paragraph 3. At the time a request for arbitration is made, or at any time before the arbitration commences, either State may request that the dispute be submitted to the Permanent Court of International Justice or to a special chamber of that Court. The agreement of the other State shall first be obtained before submission is made to the Court.

SECTION 3. INTERPRETATION OF TREATIES

Article 31

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32

Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.

Article 62

Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

(a) if the treaty establishes a boundary; or

(b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

SECTION 4. PROCEDURE

Article 65

Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty; terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

DECLARATION OF THE UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT

Principle 8

Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.

Principle 9

Environmental deficiencies generated by the conditions of underdevelopment and natural disasters pose grave problems and can best be remedied by accelerated development through the transfer of substantial quantities of financial and technological assistance as a supplement to the domestic effort of the developing countries and such timely assistance as may be required.

Principle 10

For the developing countries, stability of prices and adequate earnings for primary commodities and raw material are essential to environmental management since economic factors as well as ecological processes must be taken into account.

Principle 11

The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.

Principle 12

Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial assistance for this purpose.

Principle 13

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and co-ordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the human environment for the benefit of their population.

Principle 21

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 22

States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

Principle 23

Without prejudice to such criteria as may be agreed upon by the international community, or to standards which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.

HELSINKI RULES

ON THE

USES OF THE WATERS OF INTERNATIONAL RIVERS

RESOLUTION

EQUITABLE UTILIZATION OF THE WATERS OF AN INTERNATIONAL DRAINAGE BASIN

Article IV

Each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin.

Comment :

(a) GENERAL. This Article reflects the key principle of international law in this area that every basin State in an international drainage basin has the right to the reasonable use of the waters of the drainage basin. It rejects the unlimited sovereignty position, exemplified by the "Harmon Doctrine", which has been cited as supporting the proposition that a State has the unqualified right to utilise and dispose of the waters of an international river flowing through its territory ; such a position imports its logical corollary, that a State has no right to demand continued flow from co-basin States.

Article V

(1) What is a reasonable and equitable share within the meaning of Article IV is to be determined in the light of all the relevant factors in each particular case.

(2) Relevant factors which are to be considered include, but are not limited to :

(a) the geography of the basin, including in particular the extent of the drainage area in the territory of each basin State ;
(b) the hydrology of the basin, including in particular the contribution of water by each basin State ;
(c) the climate affecting the basin ;
(d) the past utilization of the waters of the basin, including in particular existing utilization ;
(e) the economic and social needs of each basin State ;
(f) the population dependent on the waters of the basin in each basin State ;
(g) the comparative costs of alternative means of satisfying the economic and social needs of each basin State ;
(h) the availability of other resources ;
(i) the avoidance of unnecessary waste in the utilization of waters of the basin ;
(j) the practicability of compensation to one or more of the co-basin States as a means of adjusting conflicts among uses ; and
(k) the degree to which the needs of a basin State may be satisfied, without causing substantial injury to a co-basin State ;

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

Article VI

A use or category of uses is not entitled to any inherent preference over any other use or category of uses.

Article X

1. Consistent with the principle of equitable utilization of the waters of an international drainage basin, a State
   (a) must prevent any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial injury in the territory of a co-basin State, and
   (b) should take all reasonable measures to abate existing water pollution in an international drainage basin to such an extent that no substantial damage is caused in the territory of a co-basin State.

2. The rule stated in paragraph 1 of this Article applies to water pollution originating:
   (a) within a territory of the State, or
   (b) outside the territory of the State, if it is caused by the State's conduct.

Comment :

(a) GENERAL

International law imposes general limitations upon action that one State may take which would cause injury in the territory of another State. In the *Corfu Channel Case*, the International Court of Justice stated that international law obliges every State " not to allow knowingly its territory to be used for acts contrary to the rights of other States ". [1949] I.C.J. Rep. 4, 22. The Secretary-General of the United Nations has expressed the view that " There has been general recognition of the rule that a State must not permit the use of its territory for purposes injurious to the interest of other States in a manner contrary to international law". [Survey of International Law 34 (U.N. Doc. A/CN.4/1 Rev. 1) (1949).] This statement is no more than a reflection of the principle *sic utere tuo ut alienum non laedas*—" one must so use his own as not to do injury to another ". The same general thread of principle runs throughout the range of State-to-State relationships.

As to the law of water pollution, recently this general principle was favourably referred to in the *Lake Lanoux* Arbitration between France and Spain, [24 Int'l. L. Rep. 101, 123 (1957).] In discussing the division of waters of Lake Lanoux and possible bases of France's responsibility, the Tribunal stated : " It could have been argued that the works would bring about a definite pollution of the waters of the Canal or that the returned waters would have a chemical composition or a temperature or some other characteristic which could injure Spanish interests."

Article XI

1. In the case of a violation of the rule stated in paragraph 1(a) of Article X of this Chapter, the State responsible shall be required to cease the wrongful conduct and compensate the injured co-basin State for the injury that has been caused to it.

2. In a case falling under the rule stated in paragraph 1(b) of Article X, if a State fails to take reasonable measures, it shall be required promptly to enter into negotiations with the injured State with a view toward reaching a settlement equitable under the circumstances.

Article XXIX

1. With a view to preventing disputes from arising between basin States as to their legal rights or other interest, it is recommended that each basin State furnish relevant and reasonably available information to the other basin States concerning the waters of a drainage basin within its territory and its use of, and activities with respect to such waters.

2. A State, regardless of its location in a drainage basin, should in particular furnish to any other basin State, the interests of which may be substantially affected, notice of any proposed construction or installation which would alter the regime of the basin in a way which might give rise to a dispute as defined in Article XXVI. The notice should include such essential facts as will permit the recipient to make an assessment of the probable effect of the proposed alteration.

3. A State providing the notice referred to in paragraph 2 of this Article should afford to the recipient a reasonable period of time to make an assessment of the probable effect of the proposed construction or installation and to submit its views thereon to the State furnishing the notice.

4. If a State has failed to give the notice referred to in paragraph 2 of this Article, the alteration by the State in the regime of the drainage basin shall not be given the weight normally accorded to temporal priority in use in the event of a determination of what is a reasonable and equitable share of the waters of the basin.

2995 (XXVII). Co-operation between States in the field of the environment

The General Assembly,

Having considered principle 20 as contained in the draft text of a preamble and principles of the declaration on the human environment,[39] referred to it for consideration by the United Nations Conference on the Human Environment,

Recalling its resolution 2849 (XXVI) of 20 December 1971 entitled "Development and environment",

Bearing in mind that, in exercising their sovereignty over their natural resources, States must seek, through effective bilateral and multilateral co-operation or through regional machinery, to preserve and improve the environment,

1. *Emphasizes that,* in the exploration, exploitation and development of their natural resources, States must not produce significant harmful effects in zones situated outside their national jurisdiction;

2. *Recognizes* that co-operation between States in the field of the environment, including co-operation towards the implementation of principles 21 and 22 of the Declaration of the United Nations Conference on the Human Environment,[40] will be effectively achieved if official and public knowledge is provided of the technical data relating to the work to be carried out by States within their national jurisdiction, with a view to avoiding significant harm that may occur in the environment of the adjacent area;

3. *Further recognizes* that the technical data referred to in paragraph 2 above will be given and received in the best spirit of co-operation and good-neighbourliness without this being construed as enabling each State to delay or impede the programmes and projects of exploration, exploitation and development of the natural resources of the States in whose territories such programmes and projects are carried out.

2112th plenary meeting
15 December 1972

UN
GENERAL ASSEMBLY
RESOLUTIONS
2995 & 2996

2996 (XXVII). International responsibility of States in regard to the environment

The General Assembly,

Recalling principles 21 and 22 of the Declaration of the United Nations Conference on the Human Environment[41] concerning the international responsibility of States in regard to the environment,

Bearing in mind that those principles lay down the basic rules governing this matter,

Declares that no resolution adopted at the twenty-seventh session of the General Assembly can affect principles 21 and 22 of the Declaration of the United Nations Conference on the Human Environment.

2112th plenary meeting
15 December 1972