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The Pollution of Rivers and Lakes and International Law

(Fifteenth Commission, Rapporteur : Mr Jean Salmon)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Recalling its Resolutions of Madrid in 1911 and of Salzburg in 1961 ;

Conscious of the multiple potential uses of international rivers and lakes and of the common interest in a rational and equitable utilization of such resources through the achievement of a reasonable balance between the various interests ;

Considering that pollution spread by rivers and lakes to the territories of more than one State is assuming increasingly alarming and diversified proportions whilst protection and improvement of the environment are duties incumbent upon States ;

Recalling the obligation to respect the sovereignty of every State over its territory, as a result of which each State has the obligation to avoid any use of its own territory that causes injury in the territory of another State,

Hereby adopts the following articles :

Article I

I. For the purpose of this Resolution, "pollution" means any physical, chemical or biological alteration in the composition or quality of waters which results directly or indirectly from human action and affects the legitimate uses of such waters, thereby causing injury.

2. In specific cases, the existence of pollution and the characteristics thereof shall, to the extent possible, be determined by referring to environmental norms established through agreements or by the competent international organizations and commissions.

3. This Resolution shall apply to international rivers and lakes and to their basins.

Article II

In the exercise of their sovereign right to exploit their own resources pursuant to their own environmental policies, and without prejudice to their contractual obligations, States shall be under a duty to ensure that their activities or those conducted within their jurisdiction or under their control cause no pollution in the waters of international rivers and lakes beyond their boundaries.

Article III

1. For the purpose of fulfilling their obligation under Article II, States shall take, and adapt to the circumstances, all measures required to :
 - a) prevent any new form of pollution or any increase in the existing degree of pollution : and
 - b) abate existing pollution within the best possible time limits.
2. Such measures shall be particularly strict in the case of ultra-hazardous activities or activities which pose a danger to highly exposed areas or environments.

Article IV

In order to comply with the obligations set forth in Articles II and III, States shall in particular use the following means :

- a) at national level, enactment of all necessary laws and regulations and adoption of efficient and adequate administrative measures and judicial procedures for the enforcement of such laws and regulations ;
- b) at international level, co-operation in good faith with the other States concerned.

Article V

States shall incur international liability under international law for any breach of their international obligations with respect to pollution of rivers and lakes.

Article VI

With a view to ensuring an effective system of prevention and of compensation for victims of transboundary pollution, States should conclude international conventions concerning in particular :

- a) the jurisdiction of courts, the applicable law and the enforcement of judgments ;

b) the procedure for special arrangements providing in particular for objective liability systems and compensation funds with regard to pollution brought about by ultra-hazardous activities.

Article VII

1. In carrying out their duty to co-operate, States bordering the same hydrographic basin shall, as far as practicable, especially through agreements, resort to the following ways of co-operation :

a) inform co-riparian States regularly of all appropriate data on the pollution of the basin, its causes, its nature, the damage resulting from it and the preventive procedures ;

b) notify the States concerned in due time of any activities envisaged in their own territories which may involve the basin in a significant threat of transboundary pollution ;

c) promptly inform States that might be affected by a sudden increase in the level of transboundary pollution in the basin and take all appropriate steps to reduce the effects of any such increase ;

d) consult with each other on actual or potential problems of transboundary pollution of the basin so as to reach, by methods of their own choice, a solution consistent with the interests of the States concerned and with the protection of the environment ;

e) co-ordinate or pool their scientific and technical research programmes to combat pollution of the basin ;

f) establish by common agreement environmental norms, in particular quality norms for the whole or part of the basin ;

g) set up international commissions with the largest terms of reference for the entire basin, providing for the participation of local authorities if this proves useful, or strengthen the powers or co-ordination of existing institutions ;

h) establish harmonized, co-ordinated or unified networks for permanent observation and pollution control ;

i) develop safeguards for individuals who may be affected by polluting activities, both at the stages of prevention and compensation, by granting on a non-discriminatory basis the greatest access to judicial and administrative procedures in States in which such activities originate and by setting up compensation funds for ecological damage the origin of which cannot be clearly determined or which is of exceptional magnitude.

Article VIII

In order to assist developing States in the fulfilment of the obligations and in the implementation of the recommendations referred to in this Resolution, it is desirable that developed States and competent international organizations provide such States with technical assistance or any other assistance as may be appropriate in this field.

Article IX

This Resolution is without prejudice to the obligations which fundamental human rights impose upon States with regard to pollution occurring in their own territories.

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(12 September 1979)