

ENVIRONMENTAL LAW GUIDELINES AND PRINCIPLES **ON SHARED NATURAL RESOURCES**

Explanatory Note

The draft principles of conduct, in this note further referred to as the principles, have been drawn up for the guidance of States in the field of the environment with respect to conservation and harmonious utilization of natural resources shared by two or more States. The principles refer to such conduct of individual States as is considered conducive to the attainment of the said objective in a manner which does not adversely affect the environment. Moreover, the principles aim to encourage States sharing a natural resource, to co operate in the field of the environment

An attempt has been made to avoid language which might create the impression of intending to refer to, as the case may be, either a specific legal obligation under international law, or to the absence of such obligation.

The language used throughout does not seek to prejudice whether or to what extent the conduct envisaged in the principles is already prescribed by existing rules of general international law. Neither does the formulation intend to express an opinion as to whether or to what extent and in what manner the principles as far as they do not reflect already existing rules of general international law should be incorporated in the body of general international law.

The principles were drafted, in response to United Nations General Assembly Resolution 3129 (XIVIII) of 13 December 1973, by a UNEP working group of legal experts which met between 1976 and 1978. In the light of the Working Group's report (LJNEP.IG.12/2) and further Government comments on the draft principles (UN document A/34/557 and Corr.1), the General Assembly by Resolution 34/186 of 18 December 1979 requested all States 'to use the principles as guidelines and recommendations in the formulation of bilateral or multilateral conventions regarding natural resources shared by two or more States, on the basis of the principles of good faith and in the spirit of good neighborliness and in such a way as to enhance and not to affect adversely development and the interests of all countries and in particular of the developing countries'.

Progress reports on implementation of the principles were submitted to the General Assembly through the UNEP Governing Council in 1981 (UNEP/GC.9/5/Add.2) and in 1985 (UNEP/GC.13/9/Add.1).

Principle 1

It is necessary for States to co-operate in the field of the environment concerning the conservation and harmonious utilization of natural resources shared by two or more States. Accordingly, it is necessary that consistent with the concept of equitable utilization of shared natural resources, States co-operate with a view to controlling, preventing, reducing or eliminating adverse environmental effects which may result from the utilization of such resources. Such co-operation is to take place on an equal footing and taking into account the sovereignty, rights and interests of the States concerned.

Principle 2

in order to ensure effective international co-operation in the field of the environment concerning the conservation and harmonious utilization of natural resources shared by two or more States, States sharing such natural resources should endeavor to conclude bilateral or multilateral agreements between or among themselves in order to secure specific regulation of their conduct. In this respect, applying as necessary the present principles in a legally binding manner, or should endeavor to enter

into other arrangements, as appropriate, for this purpose. In entering into such agreements on arrangements, States should consider the establishment of institutional structures, such as joint international commissions, for consultations on environmental problems relating to the protection and use of shared natural resources

Principle 3

1. 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.

2. The principles set forth in paragraph I, as well as the other principles entitled in this document, apply to shared natural resources.

3. Accordingly, it is necessary for each state to avoid to the maximum extent possible and to reduce to the minimum extent possible the adverse environmental effects beyond its jurisdiction of the utilization of a shared natural resource so as to protect the environment, in particular when such utilization might

- (a) cause damage to the environment which could have repercussions on the utilization of the resource by another sharing State;
- (b) threaten the conservation of a shared renewable resource;
- (c) endanger the health of the population of another State.

Without prejudice to the generality of the above principle, it should be interpreted taking into account, where appropriate, the practical capabilities of States sharing the natural resource.

Principle 4

States should make environmental assessment before engaging in any activity with respect to a shared natural resource which may create a risk of significantly affecting the environment of another State or States sharing that resource. (see definition of “significantly” below)

Principle 5

States sharing a natural resource should, to the extent practicable, exchange information and engage in consultations on a regular basis on its environmental aspects

Principle 6

(1) It is necessary for every State sharing a natural resource with one or more other States:-

- (a) to notify in advance the other State or States of the pertinent details of plans to initiate, or make change in, the conservation or utilization of the resource which can reasonably be expected to affect significantly* the environment in the territory of the other State or States; and
- (b) upon request of the other State or States, to enter into consultations concerning the above mentioned plans; and
- (c) to provide, upon request to that effect or the other States or States, specific additional pertinent information concerning sub plans. and

(d) if there has been no advance notification as envisaged in sub-paragraph (a) above to enter into consultations about such plans upon request of the other State or States.

(2) In cases where the transmission of certain information is prevented by national legislation or international conventions, The State or States withholding such information shall nevertheless, on the basis, in particular, of the principle of good faith and in the spirit of good neighborliness co-operate with the other interested State or States with the aim of finding a satisfactory solution.

Principle 7

Exchange of information, notification, consultations and other forms of co-operation regarding shared natural resources are carried out on the basis of the principle of good faith and in the spirit of good neighborliness and in such a way as to avoid any unreasonable delays either in the forms of co-operation or in carrying out development or conservation projects

* See definition

Principle 8

When it would be useful to clarify environmental problems relating to a shared natural resource States should engage in joint scientific studies and assessments, with a view to facilitating the finding of appropriate and satisfactory solutions to such problems on the basis of agreed data,

Principle 9

1. States have a duty urgently to inform other States which may be affected.
 - (a) Of any emergency situation arising from the utilization of a shared natural resource which might cause sudden harmful effects on their environment.
 - (b) Of any sudden grave natural events related to a shared natural resource which may affect the environment, of such States.
2. States should also, when appropriate, inform the competent international organizations of any such situation or event.
3. States concerned should co-operate, in particular by means of agreed contingency plans, when appropriate, and mutual assistance, in order to avert grave situations, and to eliminate reduce or correct, as far as possible, the effects of such situations or events,

Principle 10

States sharing a natural resource should, when appropriate, consider the possibilities of jointly seeking the services of any competent international organization in clarifying the environmental problems relating to the conservation or utilization of such natural resource.

Principle 11

1. The relevant provisions of the Charter of the United Nations and of the Declaration of Principles of International Law concerning Friendly Relations and Co operation among States in

accordance with the Charter of the United Nations apply to the settlement of environmental disputes arising out of the conservation or utilization of shared natural resources.

2. In case negotiations or other non-binding means have failed to settle a dispute within a reasonable time, it is necessary for States to submit the dispute to an appropriate settlement procedure which is mutually agreed by them, preferably in advance. The procedure should be speedy, effective and binding.

3. It is necessary for the States parties to such a dispute to refrain from any action which may aggravate the situation with respect to the environment to the extent of creating an obstacle to the amicable settlement of the dispute

Principle 12

I. States are responsible for the fulfillment of their international obligations in the field of the environment concerning the conservation and utilization of shared natural resources. They are subject to liability in accordance with applicable international law for environmental damage resulting from violations of these obligations caused to areas beyond their jurisdiction

2. States should co-operate to develop further international Law regarding liability and compensation for the victims of environmental damage arising out of the utilization of a shared natural resource and caused to areas beyond their jurisdiction.

Principle 13

It is necessary for States, when considering, under their domestic environmental policy, the permissibility of domestic activities, to take into account the potential adverse environmental effects arising out of the utilizations of shared natural resources, without discrimination as to whether the effects would occur within their jurisdiction or outside it.

Principle 14

States should endeavor, in accordance with their legal systems and, where appropriate, on a basis agreed by them, to provide persons in other States who have been or may be adversely affected by environmental damage resulting from the utilization of shared natural resources with equivalent access to and treatment in the same administrative and judicial proceedings, and make available to them the same remedies as are available to persons within their own jurisdictions who have been or may be similarly affected.

Principle 15

The present principles should be interpreted and applied in such a way as to enhance and not to affect adversely development and the interests of all countries, and in particular of the developing countries.

Definition

In the present text, the expression “significantly affect” refers to any appreciable effects on a shared natural resource and excludes “de minimis” effects.