Recommendation 555 (1969)[1]

Draft European convention on the protection of fresh water against pollution

Parliamentary Assembly

The Assembly,

1. Recalling the report of its Cultural and Scientific Committee on fresh water pollution control in Europe (Doc. 1965) and its Recommendation 436 (1965) urging governments to initiate joint action to control fresh water pollution ;

2. Recalling especially the guiding principles on fresh water pollution control contained in Recommendation 436 and afterwards broadly approved and reaffirmed in the Declaration of the Economic Commission for Europe relating to water pollution control policy ;

3. Referring to the European Water Charter proclaimed on 6 May 1968 in Strasbourg and in particular to Principle 12 : "Water knows no frontiers ; as a common resource it demands international cooperation",

4. Recommends that the Committee of Ministers instruct a committee of governmental experts to prepare as rapidly as possible a European convention based on the following draft :

Draft European Convention on the Protection of Fresh Water against Pollution

Preamble

The member states of the Council of Europe, signatory hereto;

Considering that a sufficient supply of water of good quality is of growing economic importance ;

Considering that the available water resources of Europe are limited and are subjected to increasing uses and demands, because of the increase in population and industrial development and the growing volume and diversity of pollutants ;

Considering that water pollution constitutes a growing danger to the health and well-being of man, his environment, his economic and social activities and to the manifold uses of water ;

Considering that many European countries have introduced measures to combat water pollution within their territories and that many treaties have been concluded between such countries relating to water pollution control ;

Considering that these measures have not proved sufficiently effective in combating water pollution throughout Europe ;

Considering that the cost of measures introduced to combat water pollution should be distributed as fairly as possible in order not to disturb the relative competitive positions of European industries ;

Considering Recommendation 555 of the Consultative Assembly ;

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1. Assembly debate on 12 May 1969 (1st Sitting) (see Doc. 2561, report of the Committee on Regional Planning and Local Authorities). Text adopted by the Assembly on 12 May 1969 (1st Sitting).

Considering the principles with regard to water pollution control adopted by the member governments of the United Nations Economic Commission for Europe by Resolution 10 (XXI) relating to the ECE Declaration of Policy on Water Pollution Control ;

Considering that it is a general principle of international law that no country is entitled to exploit its natural resources in a way that may cause substantial damage in a neighbouring country ;

Convinced that the problem of water pollution can be solved only with the close cooperation and co-ordination among states ;

Desirous of implementing the principle of the equitable utilisation of the waters of international drainage basins ;

Convinced of the need to secure similar legal provisions in the various European countries relating to liability for damage resulting from water pollution ;

Considering also that it is a fundamental principle of law that any person who enjoys the use of property in common with other persons must not interfere with such enjoyment by other persons and is liable to pay compensation for any damage so caused ;

Conscious of the difficult, if not impossible, position of a person who now suffers damage arising from the pollution of the waters of an international drainage basin, in establishing whether persons in a foreign country have caused or contributed to such pollution, and in obtaining an effective remedy against such persons under the relevant rules of private law which require proof of fault ;

Desirous, in such cases, to secure a speedy remedy, for those who suffer damage resulting from water pollution in a neighbouring country, against the state in whose territory such water pollution arises, while placing equitable limits upon the extent of such a state's liability, and affording to such a state every possible means of redress against those persons whose negligence or other wrongful acts or omissions have caused or contributed to such damage,

Have agreed as follows :

CHAPTER I

Definitions - Relations between states

Article 1

For the purposes of this Convention :

a. "international drainage basin" means a geographical area extending over two or more contracting states determined by the watershed limits of the system of waters, flowing into a common terminus ;

b. "waters" means internal waters, whether on the surface or underground ;

c. "water pollution" means any detrimental change directly or indirectly resulting from the activities of man in the natural composition, content or quality of the waters ;

d. "person" means any natural or legal person excluding a state.

Article 2

5. Contracting states shall take measures to abate any existing pollution and to prevent any new form of water pollution or any increase in the degree of existing water pollution causing or likely to cause substantial injury or damage in the territory of any other contracting state. Such measures shall be designed to preserve, to the maximum extent possible, the qualities of the waters of international drainage basins in order to safeguard public health and to permit their use, after such economically justified treatment as may be necessary, in particular for :

a. the production at a reasonable cost of drinking water of good quality ;

b. the conservation and development of aquatic resources, including both fauna and flora ;

c. the production of water for industrial purposes ;

d. irrigation ;

e. use by domestic animals and wildlife ;

f. recreational amenities, with due regard to health and aesthetic requirements.

6. Contracting states shall for the purpose of effectively implementing the provisions of paragraph 1 of this Article :

a. wherever possible, agree to establish and maintain standards of quality for the waters of an international drainage basin extending over their territories ;

b. where appropriate in the circumstances, establish joint commissions to regulate usage of such waters ;

c. inform the other contracting states about standards in force under paragraph (a) ;

d. from time to time inform and consult with other contracting states concerned, about the usages of such waters ;

e. adopt legislative and administrative measures to implement this Convention within their respective territories.

CHAPTER II

Settlement of disputes between states

Article 3

In the event of any dispute between any contracting states about their rights, interests or obligations under, or the interpretation of, any of the provisions of this Convention, they shall seek a solution by negotiation.

Article 4

If the contracting states concerned shall be unable to resolve any dispute by negotiation, they shall refer such dispute for determination :

a. to the appropriate joint commission, if any, in respect of the particular international drainage basin concerned ; or

b. to such international tribunal, or organisation, as may be agreed upon by the contracting states concerned, or

c. in the absence of a joint commission, under sub-paragraph (a) and failing agreement pursuant to sub-paragraph (b) by reference of the dispute, at the application of any one or more of the contracting states concerned, to an ad hoc arbitral tribunal in accordance with Article 5.

Article 5

7. The Arbitral Tribunal shall be constituted for the determination of each dispute. Each contracting state party to such a dispute (in this Article referred to as the "state party") shall appoint one member to the Tribunal. The members shall nominate as President a national of a state other than a state party who shall be appointed by the governments of the states parties. The members shall be appointed within two months and the President within three months after any state party has informed the other states parties or state party, as the case may be, of its intention to refer such a dispute to the Tribunal for determination.

8. If the time limits set out in paragraph 1 are not observed, any state party may request the President for the time being of the European Court of Human Rights to make the necessary appointments. If the President of the Court is a national of any state party, or is otherwise unable to act in accordance with this Article, the Vice-President of the Court shall make such appointments. If the Vice-President is also a national of any state party, or is otherwise unable to act as aforesaid, the next member of the Court in order of precedence who is not such a national shall make such appointments.

9. The President and each member of the Tribunal shall have one vote and the decision of the Tribunal shall be made by majority vote, and, in the event that votes are cast equally, the President shall have the casting vote. The decision of the Tribunal shall be binding upon the states parties.

10. Each state party shall pay its own expenses and an equal share of the costs of the Tribunal unless the Tribunal shall otherwise decide.

Article 6

The settlement of any dispute under the provisions of this chapter shall take into account the following considerations :

a. the geography and hydrology of the particular international drainage basin ;

b. the usage by the contracting states concerned, of the waters of the particular international drainage basin ;

c. economic and social needs of the contracting states concerned ;

d. the avoidance of unnecessary waste in the utilisation of such waters ;

e. whether the payment of monetary compensation would constitute just reparation for a contracting state which has suffered or is likely to suffer damage from water pollution ;

f. any relevant monetary compensation or other remedy already obtained under Chapter III of this Convention ;

g. the cost and effectiveness of existing and alternative measures to abate or eliminate existing water pollution or to prevent future water pollution ;

h. the extent to which the contracting states concerned benefit or would be likely to benefit from such measures ; and

i. the extent to which a contracting state which would be likely to benefit or suffer damage from the measures contemplated by the settlement of the dispute.

CHAPTER III

Compensation for damage to persons

Article 7

11. Any person who suffers damage in any contracting state arising from water pollution in any other contracting state shall be entitled to compensation in accordance with the provisions of this chapter, provided that, where standards of water quality have been adopted under paragraph 2 (a) of Article 2 for the international drainage basin concerned, compensation shall be recoverable only in respect of such damage as shall be caused in contravention of such standards.

12. Any compensation obtained by a contracting state for any person in respect of such damage shall be deducted from such compensation as would otherwise be awarded to such person in respect thereof under this chapter.

13. Nothing in this Convention shall affect the right to bring any proceedings in any contracting state, whether civil or criminal, which might have been brought if this Convention had not entered into force.

Article 8

The liability for compensation contemplated by Article 7 shall attach to the contracting state in whose territory any water pollution arises whether wholly or in part (hereinafter referred to as "the responsible state").

Article 9

14. A state which would otherwise be liable under the provisions of this chapter shall not be liable if it proves that the damage was caused solely by the negligence or other wrongful act or omission committed by the claimant or by any other person in the territory where the damage was caused.

15. If the responsible state proves that the damage was contributed to by the negligence or other wrongful act or omission of the claimant or of any other person committed in the territory of the state where the damage was caused, the compensation shall be reduced accordingly.

Article 10

16. Notwithstanding any other provisions of this chapter, the responsible state shall be entitled to obtain such remedies as are available under its internal law against any person who has caused or contributed to water pollution by a negligence or other wrongful act or omission committed in the territory of such state.

17. Subject to any monetary compensation or other remedy already obtained, the responsible state shall be entitled, as against any person who has contributed to water pollution by his negligent or other wrongful act or omission committed in the territory of any contracting state (other than the state where the relevant damage was suffered), to obtain such remedies as are available under the internal law of such state.

Article 11

18. Actions under the provisions of this chapter may be brought only in the courts of the responsible state. Contracting states shall notify the Secretary General of the Council of Europe of the courts within their respective territories having jurisdiction to hear and determine actions which may be brought under the provisions of this chapter.

19. Any action under this chapter must be brought within two years from the date upon which the claimant first knew or ought to have known that he had suffered the damage the subject of such action.

Article 12

20. The responsible state shall not be entitled to invoke any jurisdictional immunity in the court competent under the provisions of this chapter.

21. Contracting states shall, as far as possible, facilitate payment of compensation in the currency of the state where damage has occurred.

CHAPTER IV

Final clauses

Article 13

22. This Convention shall be open to signature by the member states of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.

23. This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.

24. In respect of a signatory state ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

Article 14

25. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member state to accede thereto.

26. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 15

27. This Convention shall remain in force indefinitely.

28. Any contracting party may in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

29. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 16

The Secretary General of the Council of Europe shall notify the member states of the Council and any state which has acceded to this Convention of :

a. any signature ;

b. any deposit of an instrument of ratification, acceptance or accession ;

c. any date of entry into force of this Convention in accordance with Article 13 thereof ;

d. any notification received in pursuance of the provisions of Article 11 ;

e. any notification received in pursuance of the provisions of Article 15 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at.....this..... in French and English, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding states.