



UNITED NATIONS  
GENERAL  
ASSEMBLY



Distr.  
GENERAL

A/34/557 *fecht. 1*  
16 October 1979

ORIGINAL: ENGLISH

Thirty-fourth session  
Agenda item 60 (b)

UNITED NATIONS ENVIRONMENT PROGRAMME

Co-operation in the field of the environment concerning  
natural resources shared by two or more States

Report of the Secretary-General

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
I. INTRODUCTION . . . . .	1 - 5	2
II. SUMMARY OF REPLIES RECEIVED FROM GOVERNMENTS . . . . .	6	3
III. ANALYSIS AND CONCLUSIONS . . . . .	7 - 10	4
IV. RECOMMENDATIONS . . . . .	11	6
V. SUGGESTED ACTION BY THE GENERAL ASSEMBLY . . . . .	12	7
<u>Annex.</u> SUMMARY OF VIEWS OF INDIVIDUAL GOVERNMENTS ON GENERAL ASSEMBLY RESOLUTION 33/87		

## I. INTRODUCTION

1. The General Assembly, at its twenty-eighth session, adopted resolution 3129 (XXVIII) of 13 December 1973 entitled "Co-operation in the field of the environment concerning natural resources shared by two or more States".
2. Pursuant to that resolution, the Governing Council of the United Nations Environment Programme (UNEP) requested the Executive Director to establish an Intergovernmental Working Group of Experts to prepare draft principles of conduct for the guidance of States in the conservation and harmonious utilization of natural resources shared by two or more States (Governing Council decisions 44 (III), 77 (IV) and 99 (V)). The Group of Experts worked from 1976 to 1978, and succeeded in establishing 15 draft principles. The principles which were contained in a report were submitted to the Governing Council at its sixth session. The Governing Council, by its decision 6/14 of 19 May 1978, approved the report, and at its request, the Executive Director transmitted the report to the General Assembly at its thirty-third session, inviting the Assembly to adopt the principles contained therein.
3. The General Assembly discussed the subject at its thirty-third session, and on 15 December 1978 adopted resolution 33/87, in which it, *inter alia*, noted the valuable work done by the Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States in carrying out the tasks entrusted to it in regard to the implementation of General Assembly resolution 3129 (XXVIII); took note of the report of the Group of Experts, its approval, as adopted by the Governing Council of the United Nations Environment Programme, and its transmission to the General Assembly with an invitation to adopt the draft principles; and invited the Secretary-General to transmit the report to Governments for their study and comments regarding the principles and to report thereon, taking into account also other significant information, with a view to enabling the General Assembly to take a decision at its thirty-fourth session.
4. Pursuant to the resolution, the Secretary-General, by notes verbales, sent copies of the report with the principles to all States Members of the United Nations, and invited them to submit their comments to the Executive Director of UNEP by 15 June 1979. In the face of an extremely low response by that date, the Executive Director of UNEP sent out reminders by cables and letters to all Governments and extended the deadline for responses to 24 July 1979 and again to 1 September 1979.
5. By 10 October 1979, replies of 34 Governments had been received. A number of Governments had also expressed their views on this question at the thirty-third

session of the General Assembly 1/ and at the sixth and seventh sessions of the Governing Council of UNEP. 2/

## II. SUMMARY OF REPLIES RECEIVED FROM GOVERNMENTS

6. The summary of views of individual Governments on General Assembly resolution 33/87 will be found in the annex to the present report. The replies indicate the following:

(a) Twenty-eight of the 34 Governments whose views were received were generally in favour of the adoption of the principles. Without derogating from their favourable views on the principles, some of those Governments, however, expressed reservations on specific principles, or suggested alternative formulation of some of them. Some expressed the view that the adoption of the principles should not preclude the solution of specific problems on shared natural resources through bilateral agreements based on principles other than the 15 principles.

(b) Many Governments expressed views on the legal status of the principles. On this issue most of the Governments that regarded the principles as acceptable also wanted the principles to be regarded as guidelines only and not as a set of international code of conduct which was necessarily binding on States. Nearly all the Governments in favour of the principles wanted those principles to be used as the negotiating basis for the preparation of bilateral or multilateral treaties among States with regard to their conduct when dealing with natural resources they share in common. Even some of them indicated that already similar principles are being used by States to make treaties relating to shared natural resources.

(c) One Government, however, expressed disappointment that all the principles, without any exception whatsoever, appeared to be regarded as mere recommendations and guidelines without any legally binding force. That Government argued that some of the principles agreed to by the group of experts were declaratory of existing international law and practice which were already binding on States, and so those at least could not be regarded as mere recommendations. Without wishing to disrupt any consensus, however, that Government pleaded that article 3 of the Charter of Economic Rights and Duties of States (General Assembly resolution 3881 (XXIX)) should be taken into consideration whenever States considered their

---

1/ Afghanistan, Argentina, Bangladesh, Brazil, China, Ecuador, Ethiopia, India, Japan, Romania, Sweden and Spain (see, inter alia, A/C.2/33/SR.48, paras. 19-33 and A/33/PV.85, p. 91).

2/ A summary of the relevant discussions at the Governing Council can be found in chapter VIII of the report of the Governing Council on the work of its sixth session (Official Records of the General Assembly, Thirty-third Session, Supplement No. 25 (A/33/25)) and on the work of its seventh session (ibid., Thirty-third Session, Supplement No. 25 (A/34/25), paras. 101 and 301).

relations in connexion with the conservation and utilization of natural resources they shared in common.

(d) Two Governments expressed strong disapproval of the principles. The reasons for the disapproval were varied. One of the Governments, for example, was dissatisfied with the meaning attributed to expressions like "shared natural resources", "significantly affect", "adverse environmental effects", "equitable utilization", "practical capability" and "good neighbourliness and good faith". The same Government wanted all references to "environmental assessments" deleted, since, in its opinion, poor countries would not be able to afford the financial and manpower burden which environmental assessment would impose on them. Another Government pointed out that some of the principles, particularly 6 and 7, were capable of giving States the right to interfere in the environmental policies of one another, contrary to the principle of sovereignty of States over their natural resources. According to that Government, no limitation or restriction could be imposed on the exercise of the sovereign right of a State without that State's consent. Therefore, any attempt to impose restrictions on sovereign rights through broad principles such as those under consideration was a matter for concern. The same Government argued that UNEP did not have the competence to prepare the principles, since the co-ordinating and catalytic role of UNEP could not include preparation of such principles having normative nature.

(e) Although the Group of Experts did not define "shared natural resources", many Governments expressed views on the question of defining that expression. Some Governments, particularly those that found the principles unacceptable, argued that in the absence of a definition of "shared natural resources", they did not see how acceptable principles could be formulated on the subject. Others thought that although the principles could be accepted without a definition of "shared natural resources" it would be desirable to develop, in due course, a comprehensive definition of the expression. Others, on the other hand, thought that an acceptable comprehensive definition would be difficult to achieve, for a definition of a shared natural resource should depend upon the nature of the particular resource.

(f) Some Governments were of the opinion that the work of the Group on shared natural resources had to be continued to bring it to perfection, and that any such future work should be primarily the responsibility of UNEP, or in collaboration with the International Law Commission.

(g) Two Governments made it clear that they had no views to offer on the principles on shared natural resources. One Government, however, simply doubted the competence of UNEP to prepare the principles and the usefulness of the principles. It, however, did not wish to disrupt any consensus that might be reached by the General Assembly.

### III. ANALYSIS AND CONCLUSIONS

7. The various views of Governments gathered from the two sources stipulated above, pointed to three major concerns. They were:

/...

- (a) The legal status of the principles;
- (b) The applicability and the promotion of the principles;
- (c) The question of an acceptable definition of a shared natural resource.

8. In arriving at the recommendations below, which are also focussed on these three concerns, every effort has been made to reconcile the varying views of Governments. Thus with regard to (a), it may be noted from the report of the Group that the Group itself anticipated the likelihood of a controversy arising from the legal status of the principles, and after strenuous efforts successfully avoided it. The Group, in fact, admitted the possibility of some of the principles being declaratory of certain legally binding rules and practices of international law; but it avoided the responsibility of identifying any particular principle as having or not having legally binding effect on States. <sup>3/</sup> In making the recommendations on (a) this neutral and reconciliatory approach of the Group has been respected. Thus, every effort has been made to arrive at recommendations that would accommodate the views of those Governments which believe that all the principles should be regarded prima facie as mere recommendations, without undermining, in any way, the view that in so far as any of the principles is already an international law, rule or practice, its binding effect should not be prejudiced.

9. With regard to the recommendations relating to (b), consideration was given to the fact that UNEP's involvement in developing legal principles on shared natural resources could not end with the submission of the principles to the General Assembly. Indeed UNEP's Goal 20 for 1982 <sup>4/</sup> demands that UNEP's involvement continue until such time that the principles could be translated into international treaties. However, the extent to which UNEP could be useful, and the nature of the role it should properly play, in the future development of these principles, have also been very carefully considered. Therefore, in considering the role UNEP should play in improving upon the formulation of the principles, account was taken of the fact that the principles were formulated after lengthy and exhaustive negotiations which extracted far-reaching compromises from the Group of Experts and Governments members of UNEP. So delicate are some of these compromises that there is no certainty that they can be obtained again in any second round of negotiation for improving upon the present text. Accordingly, all recommendations on any future role of UNEP likely to impair the consensus which has been obtained so far on the formulation of the principles, have been avoided.

10. The conclusions and recommendations made with regard to (c) have taken into consideration the practical difficulty of finding a definition of shared natural resources which will cover all natural resources, be acceptable to all States, and regarded as binding on them. If the general view of Governments is that the principles can only be binding on States through treaties, then similarly, a binding definition of shared natural resources would also have to emerge from treaties before it would be accepted.

---

<sup>3/</sup> See Explanatory Note (UNEP/IG.12/2).

<sup>4/</sup> UNEP/GC/L.48; see also Governing Council decision 82 (V), part IV.

#### IV. RECOMMENDATIONS

11. In the light of the general thrust of the governmental views and comments, and on the basis of the reasons and factors discussed above, the Secretary-General presents the following recommendations to assist the General Assembly to take a decision as requested by its resolution 33/87.

(a) Notwithstanding the fact that some of the principles may reflect rules and practice of international law; and without prejudice to the binding nature of those rules and practice, the principles as a whole should be regarded, prima facie, as guidelines and recommendations only, in the absence of specific identification of those principles which are deemed to be already binding under international law.

(b) The principles should be made the basis for negotiations among States for preparing international treaties or other arrangements, bilateral or multilateral, regarding the conservation and harmonious utilization of natural resources which they share.

(c) UNEP, in co-operation with Governments concerned, should identify various natural resources which States share in common with each other in a region or subregion, and make the information available to those Governments.

(d) When requested by the Governments concerned, UNEP, in collaboration with United Nations organizations and agencies, should assist such Governments to organize and conclude bilateral or multilateral treaties or other arrangements regarding those shared natural resources, by using the principles as the basis for such treaties and other arrangements.

(e) As a part of its duty to stimulate and promote international consciousness and co-operation among States in the field of the environment, UNEP should, as soon as possible, commence a study of selected conventions and treaties to illustrate how these principles have already become parts of some international conventions and treaties, and how they actually function in practice. The result of the study should be made available to all Governments.

(f) As much as possible, a shared natural resource which becomes the subject for negotiating a treaty or other arrangement, should be defined by the Governments as a part of their negotiating process so that a number of definitions of different shared natural resources would accumulate. This accumulation of definitions based on agreed treaties should be made to form a sound and flexible basis for future definition of a shared natural resource which would be resilient and comprehensive, and likely to command universal acceptance. 5/

---

5/ For sources of definition of a shared natural resource, see UNEP/GC.6/17, para. 9.

(g) The elaboration of, and the improvement upon the principles, should be achieved through the treaty making processes and other arrangements referred to above.

V. SUGGESTED ACTION BY THE GENERAL ASSEMBLY

12. The General Assembly may wish to take action along the following lines:

(a) To consider the report and the principles on shared natural resources in the light of the Secretary-General's report and recommendations.

(b) To adopt the principles and request the Governing Council of the United Nations Environment Programme to encourage and assist Governments to use the principles along the lines recommended in the present report.

ANNEX

Summary of views of individual Governments on  
General Assembly resolution 33/87

Argentina

Recommends that States should adopt the principles in their reciprocal relations. The future work of the United Nations on shared natural resources should be to promote the operations of the principles through the accepted obligatory international norms.

Australia

Believes that the principles are a useful contribution to international law and practice in the area of environment and that States should be requested to take them into consideration when co-operating on the development of international law governing the conservation and harmonious utilization of shared natural resources.

Austria

Expresses no difficulty with the principles. It gives several instances where similar principles are already being used in solving transboundary environmental problems, and where problems could be expected in the application of the principles, for example, principle 14 was expected to cause difficulty under certain social conditions, e.g., differences in land holding laws.

Brazil

UNEP, in Brazil's opinion, lacks competence to prepare the principles. The principles are not flexible enough for application to diverse situations in different regions. They also give excuse for interference in environmental policies of sovereign States by outsiders.

Burma

Has "no views to offer" on the report.

Canada

Accords her priority to the adoption of the draft principles prepared by the Group. Canada hopes that the principles would be adopted, without any further study, since the principles were sufficiently identified and formulated.

Chile

Considers the work of the group useful but that the 15 principles should be considered as "optional recommendations and general guidelines". A number of

/...



drafting suggestions and comments were made on some of the principles, without the Government disagreeing with the principles.

Denmark

The adoption of the principles would be desirable since it would be "a momentous step towards the establishing of international standards covering the preservation" of shared natural resources and their harmonious utilization.

Ethiopia

The principles are vague, ambiguous, too general, incomplete and impractical. They lack a definition of shared natural resources and definition of expressions like "significantly affect, adverse environmental effects, environmental assessment, equitable utilization, good faith, good neighbourliness". Practical capabilities were vague and impractical. Ethiopia, therefore, does not favour them.

Equatorial Guinea

No comments, as that country has no shared natural resources.

Finland

According to Finland the work of the Group has been constructive and it enhances international co-operation among States. Many of the principles are already applied in bilateral treaties. Further elaboration of the principles should also be encouraged.

Germany, Federal Republic of

Accepts the principles and would wish them to be adopted as they stand.

Greece

In favour of the principles as the minimum States should be prepared to accept. Greece will, therefore, support their adoption in the General Assembly.

Guyana

Supports the principles and would support the adoption of the report at the thirty-fourth session.

Iran

Iran is not in a position to make any comments.

Italy

Has no objections to the principles, particularly since the report makes it clear that the principles are only guidelines without their being "juridically binding". It expressed concern on the absence of a precise definition of shared natural resources. While noting the difficulty in finding a precise definition it urged that every effort should be made to find a good definition.

Japan

Does not oppose co-ordination but cannot vote on the adoption of principles. According to Japan, certain difficulties exist, i.e., the issues involved in the principles are complex, there is no comprehensive definition of shared natural resources, and doubts whether UNEP or the United Nations is the proper forum for dealing with the topic.

Kenya

Does not express any aversion to the principles. It is unhappy, however, that the principles do not contain a definition of "shared natural resources". Without such a definition, Kenya considers that the usefulness of the principles would be affected adversely.

Mexico

Reiterates position expressed in various fora. (The principles cannot all be recommendatory since some of them are already binding on international law.) Hopes, however, that although each State is going to treat the principles as recommendation and so interpret them as they please, they would be used in solving problems peacefully. Also that article 3 of the Charter of Economic Rights and Duties of States be taken into consideration in solving problems relating to shared natural resources.

Nepal

Has no comments.

Netherlands

Agrees with the draft principles, and recommends their adoption.

Norway

"The Nordic countries have submitted to the General Assembly a draft resolution on this item which requests the General Assembly to endorse the decision of the Governing Council, and to call upon Governments to apply them and also requests UNEP to continue and strengthen its work in this important area." To Norway the principles would be an important step towards giving more concrete form to the principles agreed upon in Stockholm in 1972.

/...

Peru

Does not express any disagreement with the principles. It wants the principles, however, to be clearly only recommendations. Peru wants the concept "shared natural resources" defined. It highlights the necessity of financial co-operation in principle 1 and the issue of national security in relation to principle 5 regarding exchange of information.

Poland

Recognizes the usefulness of formulation and systematization of principles regulating co-operation of States in the field of shared natural resources. The principles cannot have the nature of legally binding obligations for the States, but only the nature of recommendations.

Romania

No objection to the principles. The principles, however, should be regarded as recommendations only. The principles could create legal obligations only if they are incorporated in multilateral or bilateral agreements between interested States. Romania suggests that the expression "shared" should preclude all possibility of prejudicing the sovereign rights of States on shared natural resources which they find within their national boundaries.

Senegal

Has no special observations. The principles are to be regarded as guidelines.

Sudan

Supports the principles with reservation on principles 3, 6 and 7.

Sweden

"The principles have the nature of guidelines. Nevertheless, they codify to a great extent customary international law. Many of the principles are already applied in bilateral, subregional and regional conventions." Sweden urges that in order to strengthen the guidelines, States should take the principles into account within the framework of their mutual relations. "Sweden places great emphasis on the 15 principles and is looking forward to a decision at this year's session" for their adoption.

Switzerland

Actively supports the draft principles. The adoption of these principles will be a significant step towards the development of environmental law. The principles which are recommendations only should be the basis for adopting uniform or parallel legislation in different States.

Togo

Finds the report on shared natural resources interesting and supports it.

/...

Turkey

Agrees with and supports the principles of co-operation, but such co-operation should be based on sovereignty. The principles should not be detailed, and, that is, they should be general guidelines only without any binding force. Turkey shares the view of the explanatory note (specific drafting improvements and changes were suggested on principles 1, 3, 4, 6, 11 and 12).

United Kingdom of Great Britain and Northern Ireland

The principles are acceptable but must be regarded only as a set of recommendations. The principles are useful but it is for States directly concerned to define the methods for co-operation. Also apart from the principles that States should still continue to seek specific solutions to their problems on a bilateral or regional basis, further work should be carried out to make them more acceptable and that this work should be carried out by UNEP in conjunction with the International Law Commission.

United States of America

Fully supports the report including the draft principles.

Upper Volta

Agrees with the principles and recommends that they should be adopted. It urges that shared natural resources should be defined. If it is difficult to find a comprehensive definition, then particular, shared natural resources should be defined as they come to be considered.

-----