

RECOMMENDATIONS OF THE LEGAL AND INSTITUTIONAL WORKSHOP CONCERNING THE CONTENTS OF THE DRAFT AGREEMENT

The Workshop made the following recommendations to guide the drafting team mandated by the Workshop to prepare the draft Agreement.

Name of Agreement

The name of the Agreement should indicate that the Agreement is concerned with ensuring that the Lake is managed on a sustainable basis and is not only concerned with preventing pollution and protecting the biological diversity of the Lake.

The name that enjoyed the most support was "The Convention for the Sustainable Management of the Lake Tanganyika basin" but it was noted that in English this suggested that it was the management which must be sustainable, and some delegates expressed concern over the inclusion of the word "Basin".

It was noted that the name "Convention" should be used instead of "agreement" because this was the appropriate term in French.

Preamble

The preamble should make reference to other relevant international agreements such as the Rio Declaration and the Convention on Biological Diversity. It was suggested that the drafting team would find it helpful to refer to the preamble to the Lake Victoria Agreement.

Objectives/Aim

The overall objective is:

to promote regional co-operation to manage Lake Tanganyika sustainably and this includes managing activities within the Lake basin which affect, or have the potential to affect, the Lake.

Other objectives which should be mentioned include:

- the protection of biological diversity within the Lake;
- the prevention and control of pollution affecting the Lake;
- creating benefits for lake-side communities;
- the development of further binding rules governing the management of the Lake and its basin.

The drafting team was mandated to elaborate more specific objectives to give full expression to the general objective stated above.

It was noted that:

- it was important to indicate that the specific objectives are interrelated;
- where appropriate the specific objectives may be elaborated in protocols.

Definitions

The drafting team was mandated to draft the definitions. It was suggested that sedimentation be dealt with separately to pollution.

Scope/Application

The agreement will apply to the Lake and to those activities within the Lake basin which have, or may have, a significant impact on the aquatic environment of the Lake.

It was noted that:

- “basin” in fact means that part of the basin which lies within the territories of the countries which are parties to the agreement;
- the word “significant” or any other word used to qualify “impact” should be understood in relation to the fragile nature of the Lake Tanganyika ecosystem;
- some of the delegates considered that the Agreement should allow for countries other than the four lake-side countries to become a signatory at a later date while other delegates were opposed to this;
- the agreement is intended to protect the biological diversity of the lake and not the biological diversity within the entire basin.

Guiding Principles

The overall principle is the conservation and sustainable use (sustainable development) of the Lake and its resources. (This includes the concepts of rational use and non-abusive use).

Other principles to be included are:

- the precautionary principle;
- the principle of preventive action;
- the polluter pays principle;
- the principle of participation (principle 10 of the Rio Declaration);
- the information principle (principle 19 of the Rio Declaration).

It was noted that:

- many of the general international law principles applicable to environmental and natural resource management were already applicable by virtue of the fact that the states had signed other international treaties such as the Convention on Biological Diversity, and that not all relevant principles needed to be mentioned although it was helpful to emphasize those principles which are particularly important for the management of the Lake;
- some of the principles mentioned should be included later in the Agreement as rules and should not only be expressed as principles;
- participation should be understood to include all stakeholders, including women and youths.

Fundamental Rules and Obligations

The draft Agreement shall include rules to give effect to all the principles of this agreement.

Pollution

There should be an obligation on states not to cause transboundary pollution or environmental harm (Rio Principle 2) but it was noted that the duty not to pollute could not be absolute as some pollution was inevitable.

States should be obliged to take measures within their territories to prevent, reduce and control pollution affecting the Lake.

The States should agree on protocols to the Agreement which would specify specific minimum standards and other measures to be taken by each state to control pollution within its territory. This could also cover sedimentation rates.

The introduction of exotic species into the Lake or in places where there was a risk of them entering the Lake should be prohibited without the prior consent of the other parties to the Agreement.

It was noted that:

- It would be helpful to refer to the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and related protocols which contains several articles dealing with pollution from different sources.

SECOND SESSION

Environmental Impact Assessment

States should be obliged to ensure that activities in the Lake and within the basin which may have an impact on the Lake should be subject to an environmental impact assessment (which should consider all the environmental impacts of the proposed project and not only the impacts on the Lake). This obligation would apply to all projects likely to have a significant impact on the Lake and not only those likely to cause transboundary impacts. The provisions in the Agreement relating to environmental impact assessment must be linked to the obligation to share information with other parties to the Agreement otherwise they will be ineffective. Each state must also monitor the activities in the basin which may affect the Lake to ensure that appropriate environmental mitigation measures are applied. The obligation to share information should cover reporting on these activities.

It was noted that:

- Although the environmental impacts of all significant activities within the basin should be assessed, there may be exceptions where full information on the projects would not be communicated to other states (for examples in relation to military installations);
- Military activities should not be completely excepted from environmental obligations and indeed certain military activities which are prohibited under international conventions (e.g. the use of biological and mutagenic weapons) would be prohibited within the basin;
- It would be desirable to have a protocol which would set out the detailed requirements for environmental impact assessments;
- The provisions on EIA would also give effect to the certain principles already agreed, e.g. the principle of public participation.

Prior Notification of Planned Measures

This obligation should be included, as it is necessary for the co-operative management of the Lake. It should be expressed as a general obligation but specific examples should also be given to emphasise the kind of measure or projects which must be notified. However because it is impossible to foresee all possible activities which may affect the Lake (particularly if the effect is indirect) it must be clear that the activities listed are only examples and that it is not a complete list.

It was noted that:

- The formulation of this obligation must not be vague and in addition to listing examples it may be helpful to develop criteria regarding what kinds of activities are to be notified.

Conservation and Management

Since a strategic action plan for the Lake dealing with the conservation and sustainable use of the Lake is already being prepared and will include detailed conservation and management plans, it will be sufficient if the Agreement obliges states to participate in the preparation, revision and implementation of the strategic action plans.

It was noted that:

- other project activities are addressing the SAP processes and the drafting team should take note of their findings.
- the drafting team should be aware of the work being done to prepare a fisheries agreement for Lake Tanganyika which may fall under this Agreement.

Exchange of Information

An obligation to exchange relevant information is essential if the Agreement is to have any meaning. Notification should be to the institution established under the Agreement which would convey the information to all the parties.

All parties should be under an obligation to make regular reports to the Lake Basin Authority (as is done under the Convention on Biological Diversity) and the contents of such report should be specified. It was noted that this could be done at a meeting of the parties to the Agreement (perhaps the second meeting) while other delegates considered that it might be better for the Lake Basin Institution to specify what information should be included in the reports and the reporting mechanisms (modalities).

The Regional Management Structure for the Lake should have the power to request additional information from a state at any time.

It was noted that:

- The drafting committee should refer to Article 12 of the 1994 Danube Convention.

Procedural Rules

The procedural rules in the Agreement should include the duty to promote public participation in the management of the Lake and to allow public access to information as these obligations gave effect to the principles which had already been agreed.

THIRD SESSION

Institutions

There was much discussion over the institutional arrangements to be established under the proposed agreement. It was agreed that the institutional structure should be lean and inexpensive to run.

The institutional structure for the management of the lake should be as follows.

Conference of Ministers

The Conference of Ministers will meet periodically to make high level political decisions, and to agree binding protocols to the Agreement on the recommendation of the Management Committee/Expert Committee.

Steering Committee/Expert Committee

This committee of experts from each of the countries would be similar to, but not the same as the Steering Committee for the Project. It would meet at regular intervals and would supervise the implementation of the strategic action plan. It would also review the work of the Permanent Secretariat and make regional policy decisions concerning the management of the Lake. It would report periodically to the Conference of Ministers.

Permanent Secretariat

There will be a permanent secretariat based in one of the countries. It was suggested that this could initially contain two departments, one to deal technical aspects (e.g. pollution control, fishing, the protection of biodiversity) and a second to deal with administrative, financial and legal matters. (It was suggested that initially the Secretariat would probably require about eight professional staff: a director, deputy director, four professionals in the technical department and two in the administrative department.). The permanent secretariat would report to the Steering Committee.

FOURTH SESSION

The Procedure for Drafting the Agreement.

Each country will nominate two lawyers and a technical expert to participate in the drafting process and the agency in each country which is the lead agency for the purposes of the project will take responsibility for the drafting process in each country.

The Project should be responsible for producing an initial draft in English and in French. This would then be discussed at two separate workshops, one for the Francophone countries and one for the Anglophone countries, both attended by the international legal consultants. This would be followed by a joint meeting of the delegates from all the countries to produce harmonised texts in English and French. The harmonised texts would then be discussed informally within each country and another draft would be produced taking into account the comments from each country. This may necessitate another meeting of all the drafting team.

Once the drafting team were satisfied with the draft Agreement it would be presented to the Project Steering Committee for approval. After approval by the Steering Committee it will be submitted to each government for negotiation and signature.

Dispute Resolution

If a dispute arises it shall be notified to the secretariat which shall endeavour to facilitate the amicable resolution of the dispute which may involve the mediation of other parties to the Agreement which are not involved in the dispute. If this is unsuccessful, the dispute could be referred to arbitration or a similar procedure involving only the parties to the agreement. Provision could be made for the intervention of the OAU if these procedures did not succeed.

Liability and Compensation

The drafting team should make provision for state liability for breach of the obligations of the agreement and for the payment of compensation. If necessary a protocol on this subject should be prepared.

It was noted that the drafting team should refer to Article 15 of the Convention for the Protection, Management and Development of the Marine and Coastal Environments of the Eastern African Region and to the article in the draft Biosafety Protocol to the Convention on Biological Diversity which is being developed.

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