

Part Two of the suggested principles on transboundary aspects (Articles 9 - 20) suggests norms including (Article 9) that transboundary natural resources shared by one or more States are to be used in a reasonable and equitable manner, while under Article 10 States must prevent or abate transboundary environmental interference or significant risk thereof which risks substantial harm. Article 11 stipulates that compensation shall be paid for substantial harm for which special procedures are set up in Article 12 for negotiations between states. Article 13 obligates States not to discriminate between external and internal detrimental effects.

Articles 14 through 19 call for cooperation in the exchange of information (15); prior notice of planned activities (16), consultations (17), cooperative arrangements for environmental assessment and protection (18), and in emergency situations (19). Article 20 strengthens the legal position of persons detrimentally affected by a transboundary interference by requiring States to grant equal access and due process and equal treatment as for their own nationals.

Finally, in articles 21 and 22, States are held responsible for a breach of an international obligation under these principles, and required to resolve any disputes peacefully through a step by step approach including, as a last resort, a binding process of dispute settlement.

These new procedures would involve strengthening existing machinery for dispute settlement at the ICJ, and, as well, at the Permanent Court of Arbitration, including the possibility of encouraging States to make greater use of the Court's capacity to form special chambers for dealing with environmental protection or resource management cases (a possibility that was signaled in the annual report of the ICJ to the Assembly in 1988.)

In his Forward, Judge Singh urged the development of a legal regime for "extraterritorial spaces" and areas that could be identified as "international commons" based on extensions of existing concepts relating to the high seas, outer space, and other dimensions. Such a regime would address questions of equitability and the primacy of protecting environmental factors in the "international commons."

4. Institutional Implications. Looking at a possible Convention on Environmental Protection and Sustainable Development, as recommended by WCED, the Legal Experts Group saw an opportunity for institutional innovation.

The proposed Convention might, for example, establish a UN Commission for Environmental Protection and Sustainable Development based on a membership of "competent individuals serving in a personal capacity .. elected preferably by secret ballot by States Parties to the Convention."

The proposed functions of the Commission would be to review regular reports from States and the UN system and other international governmental and non-governmental organizations on actions taken in support of the Convention. The Commission would be empowered to issue periodic public reports, assess and report on alleged violations, and review recommendations for proposed improvements to the Convention and other relevant international agreements.