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**THE CONVENTIONAL ARRANGEMENTS
ON HYDROECONOMY BETWEEN GREECE
AND BULGARIA-TURKEY-YUGOSLAVIA**

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I. An introductory Note

The aim of this study is to analyze the content of the bilateral agreements presently in force between Greece and Bulgaria, Turkey and Yugoslavia dealing with the legal regime of the international rivers and lakes which run through or fall partly within Greek territory¹. The analysis is basically conducted through a description of the provisions of the arrangements, an interpretation of their main stipulations and the determination of the practice which has followed through their application. An effort to draw some general principles governing their spirit and letter is finally made in the last part of this paper.

We should point out from the outset that the focus of the study is on the conventional arrangements dealing with hydroeconomic matters, in other words dealing with the economic utilization of the waters of the international rivers and lakes of the area. Since navigation is hardly a question today for these waters, the only other subject-matter of legal importance which is excluded from this study is the boundary agreements.² Because of the specific political significance that this last question has, it should be dealt with in a detailed manner which takes into consideration a number of extralegal factors; such a task, however, goes beyond the purposes of this presentation and its stated goals.

II. Certain Geophysical and Geopolitical Considerations

Greece has common boundaries with four states of the Balkan Peninsula. The three are the northern socialist neighbours, namely Albania (north-west),

* The study is a first version of a chapter which will be published under the imprint of Sithjoff publishing house and the aegis of the Hague Academy of International Law late in 1980.

1. For a description of the rivers and lakes of the area, see *infra*, Part II.

2. The usual legal questions which arise with respect to international rivers and lakes concern: a) navigation within the rivers and lakes; b) the economic utilization (fishing, irrigation, resources of the bed), c) boundary lines between States. No river or lake among those examined in the present study is navigable today.

Yugoslavia (north-center) and Bulgaria (north-east). The fourth is Turkey with which it shares, in the east of the province of Thrace the Maritza/Evros river, and which is separated from Greece through extended sea-boundaries lying between the extreme eastern Greek islands and the Turkish Asian mainland (Anatolia). Greece shares, with all four states, the fresh waters of the area. The main international waters to be found in the border areas of these countries are the following³: The Great Prespa lake shared by Yugoslavia (in its greater part), Albania and Greece; the Small Prespa lake shared by Greece (in its greater part) and Albania; the Dojran lake shared by Yugoslavia and Greece; the river Vardar/Axios, a tributary of the river Morava, which, in its turn may be considered a tributary of the Danube, and which has its estuaries in the Thermaikos Bay (the Aegean Sea); The river Strouma/Strymon, springing from the Yugoslavian eastern mountainous mass and flowing down to the Aegean Sea; the river Mesta/Nestos springing from Bulgaria and flowing down to the Aegean Sea, the river Arda entering the Greek territory from the upperstream state Bulgaria to continue its trip to the final downstream state Turkey, running into the Black Sea; and, finally, the river Maritza/Evros which springing from Bulgaria forms part of the natural, and nowadays political, boundaries between Greece and Bulgaria and Greece and Turkey.

1. — The Topography of the Area

The particular geographic area under consideration, which basically consists of what constituted Macedonia and Thrace in the ancient times, is largely a mountainous area. These mountains actually are a continuation of the Carpathian Branch of the Alpine chain and leave little space for plains and valleys. If we look at the map we can see that the only lowlands which may be detected are, in fact, faults or lines of breakage of the mountains with, most of the times, a northwest and southwest trend giving their direction to the Vardar/Axios, Strouma/Strymon and Mesta/Nestos rivers. The eastern part of the area has the most considerable tracts of lowland which is watered by the Maritza/Evros river.⁴

Regarding the climatic conditions prevailing over the area we should point out that we must somehow distinguish between those existing in the lowland and sea regions and those existing in the mountainous northern regions. In the first case, which covers in actual terms the southern, eastern Greek Macedonia and the Western Thrace, the climate is a modification of the Mediterranean climate. The winters are cold (41° F in January, average temperature), because of the cold northerly winds which blow down from the mountains. But the summers are hot and the sunshine period extends from July to the end of Septem-

3. See, *infra*, for the map of the area.

4. Information on the geographical particularities of the area were taken from the Encyclopaedia Britannica (1968 ed.).

ber. There is no rainless period and one may say that only July is a really dry month. There is an even distribution of rain throughout the year, the six colder months having very little more rain than the six warmer ones. The colder winters, especially where there is exposure to wind, limit distribution of the more delicate Mediterranean fruit trees and growth of hardy plants is checked. On the other hand the high summer temperatures and the fairly heavy summer rainfall, with the possibility of irrigation from the mountainous snows, make it possible to grow crops demanding both heat and moisture but indifferent to winter cold, such as cotton, rice, tobacco and maize.

Northward from the sea coast plains, the climatic conditions begin to change to Central Europe's climatic features. The general trends of this climate are cold winters, warm summers and rainfall well distributed throughout the year. The winter temperatures are well below freezing point, which means that agricultural activities definitely stop at that period.

Despite the rather rich rainfall, throughout the year, in the area, the flow of the rivers is uneven and seasonal. This fact is mainly due to the structure of the mountainous grounds which direct a great part of the water fall to underground rivers, usually falling directly into the sea — sometimes at considerable distances from the shores. Moreover, the quality of rainfalls — usually abrupt cyclonic storms lasting only minutes — allows heavy evaporation and immediate seepage of large quantities of water. Consequently the volume of the waters of the rivers is rather small, and seasonal problems, mainly in the dry month of July, arise with respect to irrigation. For the same reason these rivers are of little value to navigation.

2. — The Political and Economic Setting

To further understand the peculiarities of the area some information must be given on the political relations of these neighbouring States and the economics of the area. The political environment of the Balkan States has been, for a long time, affected by the existence of conflicting territorial claims. Following the dissolution of the Ottoman Empire and the creation of the Nation-states in that area (which was completed, through various territorial modifications, after the end of the First World War) the relations of these states were traumatized by the claims of Yugoslavia and Bulgaria over the Macedonia area — as a result of the need of an exit to the Mediterranean and an open enmity between Greece and Turkey as a result of the 1922 Greco-Turkish war which ended in a Greek defeat and the creation of a refugee problem for Greece; for all Greek-origin people leaving in the coasts of Asia Minor fled the country out of fear of possible retaliating measures by the victorious Turks.⁵ The over-all relations of

5. For a comprehensive analysis of the recent history of the Balkans — which has created the present political atmosphere — see, *inter alia*, Toynbee, A.J., *The Western Question in Greece and Turkey* (London 1922), Stavrianos, L.S., *The Balkans Since 1453* (New York, 1958).

these countries improved temporarily in the period between the two wars, to become tense again after the end of the second World War as a result: (a) insofar as the Northern countries are concerned, of the open assistance given to Greek-communists, by the Governments of these States, in the time of the civil war (1947-1949). The part which eventually won and which was pro-western, favoured the atmosphere of the so-called threat from the North, particularly throughout the cold war, in its effort to become the undisputed power in the Greek affairs and protect the sociopolitical system that it propagated; and (b) insofar as the Greek-Turkish relations are concerned, as a result of the Cyprus problem which is recently enriched with the Aegean dispute over the continental shelf. As it is thus easily understood the political setting of the last thirty years does not constitute an ideal climate for fruitful international relations in the area.

The economic, now, profile of the area that we are discussing is briefly the following⁶: The rivers which flow these countries are in the midst of areas where an economic boom takes place. This is particularly true with respect to Greece, Yugoslavia and Bulgaria and less to Turkey since the eastward part of the Maritza/Evros is almost solely a traditionally agricultural area. For the first three countries the valleys of the rivers and the areas of these rivers are identified as main areas of industrial development. Main industrial towns such as Skopje, Salonica, Kavala, Alexandroupolis, etc, are flourishing areas of economic development and main centers of commerce and communication. The rivers, therefore, of the area are precious for irrigation, for domestic uses and for basic industrial uses. I should point out, only indicatively, that major steel and aluminium industries and electric energy factories exist near the Axios river representing for Yugoslavia and Greece a considerable proportion of their annual national output. Needless to say that the fresh waters in this part of the Balkan Peninsula are badly affected by the pollution coming from the urban sewage and their industrial utilization both by Greece and Yugoslavia.

III. The Conventional Arrangements and their Application

1. — General Remarks

The specific political atmosphere which prevailed over a time span of almost ten years (1940-1950) of international relations in the Balkan Peninsula prevented the neighbouring States from establishing legal regimes of a regional character dealing with the outstanding problems that the lapse of time and the historical changes have created. Under these circumstances, the growing and

6. See, for further details Blanc A., *Géographie des Balkans* (Paris, PUF, 197).

the widening of the local problems aggravated, furthermore, the already tense and cold relations existing between Greece and the other lower Balkan States.

The gradual, however, improvement of the relations of Greece with its northern neighbours as a result of the relaxing policies of the «détente», adopted in the mid-60 's by the two super-powers, led to a change of attitudes of these countries between them and to a flood of bilateral meetings and eventual agreements which, even belatedly, were dealing with some of the questions unsettled for many years. At first, there was an improvement of the Greco-Yugoslav relations, (since Yugoslavia adopted a distinct policy toward the communist bloc and closed her borders to the Greek communist guerillas), which started to take place in the early fifties. The amelioration of the relations with Bulgaria started much later, in the mid-60's, and it has not reached, as yet, the peak of the friendliness that Greco-Yugoslavian «institutional» relations have attained. The only northern country which remained isolated and refused to proceed to the obvious betterment of relations in the Peninsula was Albania. Albania, propagating a philosophy of absolute self-reliance refused to arrange possible outstanding problems with Greece and Yugoslavia. Her insistence on facing alone the economic and social adversities was, and still is, one of the cornerstones of her embryonic international relations. Regarding, finally, the relations with Turkey, the eastern neighbour, there was, after the end of the second great war a fluctuation of policies, influenced or affected by the political events, taking place at various times: there were moments of improvement of relations but there also were moments of bitter confrontation, on the political-diplomatic level, which were a path only short of armed conflict. It would not be expected then, under such conditions, that arrangements for the development of economic relations and, more particularly, on the promotion of hydroeconomic matters of the Maritza/Evros river, which constitutes the natural boundary actually separating the respective armies of the two States, could be concluded. Hence, the only conventional arrangement existing today between Athens and Ankara is an agreement dating back to the year 1936 and some sparse protocols which try to regulate some urgent problems created by the very application of that agreement.⁷

The «water agreements», now, concluded between Greece and Bulgaria and Yugoslavia are part and parcel of the general legal framework built by these countries, upon entering the new era of peaceful coexistence and good neighbourhood. One can detect a number of agreements on economic and cultural ties which are intended to link the Balkan States closer between them.⁸ However, while in some economic and cultural matters a substantive progress was really made concerning the creation of specific relations and exchanges, in the field of river and lake law, the pace was rather slow. The main observation

7. See, *infra*.

8. See, *infra*.

that one can make after studying the conventional body of law contained in the successive agreements and the various protocols of the Commissions working on the basis of their provisions is that the three States, in their bilateral relations, proved rather reluctant to proceed to some bold stipulations, which would weaken the sovereignty postulate existing with respect to rivers and lakes of the area, and preferred to conclude agreements which only generated a general framework with the least possible substantive legal obligations. Thus, on the one hand, there is now, as a result of the recent State activity, a number of agreements on rivers and lakes and some Commissions working to «materialize» their provisions; but, on the other hand, the framework of reference of these agreements is extremely inadequate to effectively meet the new needs and cope with the modern ideas of an equitable utilization of the international waters and the serious problem of an evergrowing pollution threat.⁹

In enumerating the existing agreements which are actually in force between Greece on the one hand, and Bulgaria, Yugoslavia and Turkey respectively on the other, we should, first of all, refer to the fact that their conclusion was reached in two ways: some of them were solemnly concluded after long negotiations and usually as part of a series of other economic agreements; others simply represented the agreed outcome of the working of *ad hoc* delegations or Commissions provided for by previously concluded agreements. These protocols or procès-verbaux, published in due time in the official journals of the respective countries — after having been duly accepted by the governments-constitute, nowadays, a collection which, apart from specifying the otherwise too general and sometimes too vague letter of the original agreements, show at the same time the eventual progress that has been made both in the interstate relations of the agreeing countries and in the specific field of river law.

In the first category of arrangements we should include the Agreement between Greece and Turkey relating to the Regulation of the Hydraulic Works on the two banks of the river Maritza/Evros, signed in Ankara on June 30, 1934; the Agreement between the Kingdom of Greece and the Federal Socialist Popular Republic of Yugoslavia relating to Questions of Hydroeconomy and accompanied by an Annex concerning the status of the Greek-Yugoslav Permanent Commission on Hydroeconomy and an Exchange of Notes, signed in Athens on June 18, 1959; the Agreement between the Kingdom of Greece and the Federal Socialist Popular Republic of Yugoslavia relating to the Study of the Integrated Development of the Axios/Vardar Basin, signed in Belgrade on June 2nd, 1970; the Agreement between the Kingdom of Greece and the Federal Socialist Popular Republic of Yugoslavia relating to the Fisheries in the Lake of Dojran signed at Skopje, on March 24, 1972; the Agreement between the Kingdom of Greece and the Popular Republic of Bulgaria relating to the Co-

9. For a discussion of the idea of equitable utilization of the waters see *infra*.

peration in the Utilization of the Waters running through the territories of the two countries, signed in Sofia on July 9, 1964; and finally, the Agreement between the Kingdom of Greece and the Popular Republic of Bulgaria, relating to the constitution of a Greco-Bulgarian Commission for the cooperation of the two States in the domains of electric energy and the utilization of the river waters running through their territories, signed in Sofia on July 12, 1971.¹⁰

In the second category we should include the successive protocols of the Commissions, constituted under the provisions of certain of the previously mentioned agreements. Some of them contain more than the mere exposition of the routine meetings and an analysis of the discussions of the agenda. Actually, one can find concrete proposals of legal conduct to be undertaken by the governments of the respective countries; since these proposals were accepted by the countries, through the consent of the executive power which lent them the form of agreements, these operative parts of protocols have actually the power of obligatory international agreements. Till now we have a large number of such protocols, namely: at least nine protocols with Yugoslavia, corresponding to the successive meetings of the main Commission, and a smaller number of protocols with Bulgaria resulting from the application of the more recent Greco-Bulgarian agreements. In this category we should also include the minutes of delegations which met, usually before the conclusion of a formal agreement, to prepare the ground for the eventual drafting of an international instrument, covering outstanding matters.

Ratione materiae, this number of conventional arrangements — both agreements and protocols — cover a wide range of subjects. We may classify these subjects and deal with them separately in the following section, into six basic categories: first, the question of cooperation of the neighbouring States for planning a common attitude or action with regard to border rivers or lakes falling within their territory. The provisions which deal with that question are the most frequent to be found in almost all the agreements and protocols signed by these States. They are, at the same time, the more rudimentary provisions, since they only refer to planning future action rather than to the actual attainment of some desirable goals. In this category of what we called rudimentary provisions, we should also include stipulations dealing with the obligation of the contracting States to exchange information on the status of rivers and lakes and to provide previous notification for any — or some — of the activities to be undertaken by them in the part of the lake or the water-course falling within their territory.

Secondly, the question of the actual undertaking of obligations by the parties to proceed to some works which improve the utilization of their rivers and lakes as economic units. The provisions dealing with these matters are less frequent in the basic agreements concluded between the respective countries

10. For a reference of their original sources see individually, *infra*.

than the provisions on abstract planning; but, nevertheless, one may find that protocols have a rather satisfactory number of provisions of that kind, which act as palliative elements to the inadequacies of the main agreements.

Thirdly, the question of conservation and exploitation of the living resources of the international rivers and lakes of the area. Provisions on fisheries — or, even, whole agreements — were precipitatedly adopted between the countries as a result of the gradual annihilation of the living resources of rivers and lakes. The interested States realized that with the present rate of catching fish and with the methods employed to that effect the hitherto thriving community of fish in some rivers and lakes would be seriously threatened. The relevant provisions were, thus, inserted or concluded to prevent the imminent danger and to enrich the waters with a satisfactory amount of new fish.

Fourthly, the question of river and lake pollution. Unfortunately, because of the special economic conditions prevailing over the Balkan Peninsula, which, in its greater part undergoes a period of development and industrialization, the concern for the quality of life and the quality of water has remained a secondary priority. Thus, despite heavy polluting problems existing nowadays, mainly with regard to the Greco-Yugoslav waters, States seem reluctant or unwilling to impose serious obligations the one upon the other for the prevention and curtailment of pollution. Only sparse provisions, of a quite general character, may be found in the agreements of these States relating to rivers and lakes.

Fifth, the question of institutions to apply the substantive law. A number of agreements provides for the constitution of permanent Commissions which are intended to coordinate, supervise and plan the measures to be taken in the water basins, provided for by the agreements, in a general or specific manner. The provisions on the Commissions are extremely interesting because they contribute, to a certain extent, to the limitation of inadequacies of the substantive provisions.

Finally, the question of the settlement of disputes arising out of the application and interpretation of the conventional arrangements is dealt with by some provisions of the formal agreements. In the following sections we analyze the main characteristics of these five categories of provisions, subdividing them into two classes: the first class comprises the provisions of substance, where we include the provisions on planning, undertaking of works, fisheries and pollution; and the second class comprises the procedural provisions, where we include the provisions on the organization and functioning of the Commissions, as well as the provisions on the settlement of disputes.

2. — The Substantive Law

(a) Provisions on Cooperation for Planning, Exchange of Information and Notification

Early efforts for some comprehensive solution of the outstanding questions relating to Greco-Yugoslav rivers and lakes may be detected, almost immedia-

tely after the end of the Greek civil war. On the basis of an agreement on Economic Cooperation and Commercial Exchanges, done on February 28, 1953, the two governments exchanged letters, ultimately sanctioned in their internal legal system which called for the examination of a number of problems concerning the river Vardar and the lakes Prespa and Dojran, and referring to the maintenance of the water regime of these areas, the studying of the possibilities of common action for the regulation of the water flow of the river and lakes, the exchange of information on hydrometeorological matters, and the protection and conservation of the environment, the living organisms and the flora. These general lines, drawn through the «exchange of letters» were used as a term of reference for all subsequent «preparatory» discussions which eventually led to the signing of the formal Agreement of 1959.¹¹

There are two points, at this early stage of evolution of cooperation between the two neighbouring States, which provide an indication of the desirable direction that they then envisaged vis-à-vis their rivers and lakes: The first point is that they made an effort to isolate in an exhaustive manner the problems in suspense and to work out plans for definitively settling them through cooperation and common agreement. The second point was that with respect to the lake of Dojran the two parties undertook the obligation to inform each other of all technical, statistical, etc. data, available to them and to notify each other in advance for any measure to be taken which could affect the regime of the waters of the lake. The provision containing this obligation of notification did not specify whether the consent of the other State was necessary for the execution of the proposed measures.¹² It should, in any event, be no-

11. See «Echange de Lettres entre le Gouvernement de la République Fédérative de Yougoslavie et le Gouvernement du Royaume de Grèce concernant l'Exécution des Dispositions du Procès-Verbal, Annexé à l'Accord de Collaboration Economique et d'Echanges Commerciaux du 23 Février 1953. (Belgrade, le 25 Mai 1954). In *Legislative Texts and Treaty Provisions concerning the Utilization of International Rivers for other Purposes than Navigation*, United Nations Document ST/LEG/SER. B/12, April 1964. p. 809. (*Legislative Texts*). As a result of the exchange of letters delegations of the two States met twice, (in 1956 and 1957) to discuss relevant problems and find solutions. The results of their deliberations were incorporated in two extended and comprehensive documents (Protocols). See «Procès Verbal des Délégations de la République Populaire Fédérative de Yougoslavie et du Royaume de Grèce, réunies du 23 au 30 Mars 1956 pour la Question du Niveau des Eaux du Lac de Doiran (Signé à Salonique le 31 Mars 1956)» (*First Protocol*) and «Procès-Verbal de la réunion des Délégations de la République Populaire Fédérative de Yougoslavie et du Royaume de Grèce qui a eu lieu du 26 Aout au 1 Septembre 1957 à Stari Dojran pour Elaborer le Mode et le Plan de Collaboration concernant les Etudes Hydroéconomiques du Bassin d' Ecoulement du Lac de Dojran. » (Le 1er Septembre 1957). (*Second Protocol*) *Ibid.* pp. 811 et seq.

12. See paragraph 4 of Part III of the First Protocol, were it is stated that «Dans le but de la solution juste des problèmes qui pourront surgir à l'avenir au sujet du lac de Doiran et pour l'intérêt des deux parties, il serait nécessaire d'assurer la collaboration d'experts et autres techniciens des deux pays, de faciliter l'échange de données techniques, statistiques et scientifiques: il serait nécessaire aussi que les deux parties préavisent d'avance l'une l'autre sur les mesures à prendre qui pourraient influencer le régime des eaux du lac». *Ibid.*, p. 812.

ted that the first Protocol seemed rather reluctant to actually provide for real, effective cooperation between the two States: as it is easily discernible from its text no common planning was provided. The States concerned should proceed to the planning of the works in their respective part of the lake, taking only into account the general framework elaborated through the first agreed Protocol of 1956. This early handicap, however, was eventually obliterated by the signature of a new Protocol (of September 1, 1957) which provided for the undertaking of joint planning of future action in matters such as topography, hydrology, agronomy as well as regular exchange of information and observations.

These protocols of the delegations, which worked within the newly established climate of the Greco-Yugoslav relations, were the first expression of a more concrete and formal arrangement which was soon to emerge. Eventually that formal agreement (June 18, 1959) was signed in Athens.¹³ Its main goals were, as the preamble expressly stipulated, «the promotion of cooperation in the hydroeconomic domain, concerning the study and the execution of measures and works on hydroeconomy which present an interest for the two States».¹⁴ All questions concerning planning and execution were assigned to a permanent Commission of a mixed character which undertook the responsibility, under article 1 of the Agreement, to deal with the questions. It is, however, worth noting that the Commission had the power to study projects and execute plans that the contracting parties themselves would submit to it, consenting to that effect. Under such condition the Commission had only recommendatory and executive, administrative power, not power to decide.¹⁵ From the point of view of the material competence of the Commission, as regarded planning, we should mention that the agreement had bestowed to it the planning of the development of the Vardar/Axios basin, the management of the torrents in the border area and the general hydroeconomic questions of the river Vardar/Axios and the lakes Prespa and Dojran. Opening a parenthesis, at this stage, we should point out that article 5 of the agreement under discussion contained the

13. «Accord entre le Royaume de Grèce et la République Populaire Fédérative de Yougoslavie relatif aux Questions de l'Hydroéconomie avec Annexe concernant le Statut de la Commission Permanente Gréco-Yougoslave de l'Hydroéconomie et Echange de Notes» (Signés à Athènes, le 18 Juin 1959). *Legislative Texts* p. 818.

14. *Ibid.*

15. Article One of the Agreement states: «Il est constitué une Commission Permanente Gréco-Yougoslave de l'hydroéconomie pour l'étude des problèmes et projets hydroéconomiques que les Parties contractantes lui soumettront de commun accord. Les attributions de la Commission comprennent notamment la coopération dans l'étude des problèmes du Vardar (Axios) en vue du régime futur des eaux du bassin de ce fleuve, l'aménagement des torrents dans la zone frontalière, les problèmes d'amélioration, les problèmes hydroéconomiques des lacs de Doiran et de Prespa, la pêche dans ces deux lacs, l'échange de données hydrométéorologiques ainsi que d'autres problèmes éventuels d'hydroéconomie qui se présenteraient et dont les Etats contractants chargeraient de commun accord la Commission Permanente» (emphasis added). *Ibid.*

solemn obligation for the two parties to it to notify each other, through the competent authorities and by the most effective means, of any danger which might threaten the regime of waters and the functioning of the hydrotechnical works. Presumably, the wide enunciation of this obligation covered not only cases of activities of one of the two States in its own part of the lake or river, but also natural occurrences – floodings, etc – which might endanger the protected interests.

The eventual ratification of that agreement by the two countries led to the organization of the Permanent Commission which in 1963 started to work regularly, on the basis of its constitutive instrument.¹⁶ The Commission met once in a year, at regular sessions, and started, from the very beginning, to consider the questions supplied to it by the two Governments. The dynamism, however, of the actual events surpassed, as we shall see in another section of this presentation, the confines put by the agreement delimiting its framework. The gradual amelioration of the political relations between the two countries allowed the taking by the Commission of some significant initiatives. Thus, beyond some studies on hydroelectricity and irrigation which were completed by the initiative of the Commission, there was a quite significant proposal on the «integrated development» of the river Vardar/Axios.¹⁷ That proposal was formulated and discussed within the working sessions of the Commission.¹⁸ The basic aims and the proposal and the means to reach them are succinctly described in the final Protocol signed by the respective countries.¹⁹ We translate freely from the original french text:

«Because of the aridity of the region traversed by the river Axios/Vardar, the lack of water is substantial, mainly during the summer time. The regime of the waters of the basin is very irregular, a matter which constitutes an unfavourable situation for their exploitation and utilization. For that particular reason the «integrated development» is recommended.

By the term «integrated development» is meant the series of measures to be taken concerning both surface and underground waters of the basin and some other questions relating to the utilization of these waters.

All works, therefore, in the basin of Axios/Vardar should be executed in order to allow the better exploitation of the natural resources (of the area), by utilizing and exploiting the waters in conformity with the technical solutions and the financial abilities of the two countries.

The waters of the basin of the river Axios/Vardar should be optimally utilized in a manner to satisfy the needs of irrigation, of the cultivation of the

16. See *infra*.

17. For the works of the Commission see the Greek *Official Journal* (Εφημερίς της Κυβερνήσεως) Part One, in the following numbers: 221/1961, 10/1964, 51/1965, 2/1970 and 109/1970.

18. See the Greek *Official Journal*, Part One, Numbers: 126/1972, 68/1973, 40/1973, 297/1974, 83/1977.

19. See «Procès-Verbal de la Seconde Partie de la IVème Session de la Commission Permanente Gréco-Yougoslave pour l' Hydroéconomie», *Official Journal*, Part One, 2/1970, p. 5.

ground, of the domestic use, of the alimentation of industry, of the electric energy, as well as of other needs.

The Commission has, thus, been unanimous in accepting that the integrated (or over-all) development, through the optimum use of the resources of the waters and of the ground of the whole of the Axios/Vardar Basin (mainly insofar as the irrigation, the supply of drinking water and the production of electricity are concerned) shall bring to the two countries, acting together, considerably greater technical and economic advantages than those which would be attained through separate action by each State». ²⁰

The Commission went on to discuss the major financial problems involved in that enormous project of the over-all improvement and reached the decision that the governments had to apply for financial assistance to the United Nations Development Program (UNDP). Most of the rest, of the clauses of that significant Protocol were devoted to the enunciation of a plan of joint action for the preparation of the necessary preliminary studies on the problems of improvement and the respective costs. On the basis of this Protocol the two States proceeded to the conclusion of an agreement, signed at Belgrade on June 12, 1970, whereby:

- a) The two Parties, desiring to undertake jointly, with the aid of the United Nations Development Program, the study of the project for the over-all improvement of the Axios/Vardar basin, in order to be able to develop subsequently, in the interests of both countries, the resources of the said basin by the execution of this project, agreed to submit a request jointly to UNDP with a view to the preparation of this study (...preamble).
- b) The Agreement provides for the establishment of a Joint Commission for the Development of the Axios/Vardar Basin composed of five representatives of each Government, and responsible for supervising all work on preparing the study in question and for submitting to the two governments the proposals for the smooth execution of this work (art. 3).
- c) If the study, once it has been prepared and adopted, proves the economic and technical feasibility of the over-all improvement for each of the two Parties, the two Governments shall conclude an agreement concerning the execution of the work necessary for the over-all improvement of the Axios/Vardar Basin and the joint financing of such work* and the apportionment of costs and method of financing. The two Parties agreed that the purposes of the over-all improvement were (a) to satisfy the needs of Greece relating to the Axios/Vardar irrigation system and (b) to satisfy as a matter of priority the present and the future needs of Yugoslavia by its free utilization of all the water, other than the quantity of water needed by Greece. ²¹ This quite interesting

20. *Ibid.*

21. See «Accord entre le Gouvernement du Royaume de Grèce et le Gouvernement de la République Socialiste Fédérative de Yougoslavie concernant l' Etude de la Bonification Intégrale du Bassin de l'Axios/Vardar» in the Greek *Official Journal*, Part One 126/1972.

and illuminating instrument, which illustrates, as will be seen later in the section on the applicable principles - the respective legal approach taken by these two States vis-à-vis their international rivers, constituted the starting point of a joint action which was taken by Greece and Yugoslavia in planning the future development of the basin. An application for financial assistance was submitted to the United Nations Development Program, and following consideration of the matter by the Program, the representatives started to participate in the work of the already constituted Commission, studying the first feasibility plans.²² Thus far, there has been considerable work done by the Commission in specifying particular needs for the improvement of the area and preparing plans of a technical and economic nature. The costs are covered for almost 70% by the two countries (proportionately sharing them) and for 30% by the UNDP.²³ A private concern has undertaken the task to prepare the technical project.

This positive and encouraging image of cooperation and good neighbourliness may be considered as a rare phenomenon in the agitated history of the Balkan States, in times of peace. And it is also unprecedented insofar as the river-lake legal regime of the area is concerned. For, while there are some other agreements with Balkan countries in matters of cooperation, none of them goes as far as to suggest the kind of joint action that this recent agreement does. For instance, the corresponding agreement which exists between Greece and Bulgaria, and which is of a more recent vintage (compared to the first arrangements between Greece and Yugoslavia) remains a highly rigid and narrow document, which witnesses the then still existing cautiousness in the relations of the two countries.²⁴ In any event the agreement between Greece and Bulgaria of July 9, 1964, mainly aims at coordinating projects for the more effective struggle against floodings and for improving the methods of utilization of the waters of their common rivers. Stressing in its preamble that the agreed provisions are based on the principles of international law and that they are intended to improve, as a whole, the relations of the two countries, the instrument contains nine articles which, more or less, deal in an elementary manner with the basic idea of cooperation for planning studies and execution of works, the exchange of information for the prevention of floodings and the preparation of certain projects, by the respective services of the two countries, concerning the feasibility of some works in the Strymon/Strouma basin, within the Bulgarian territory, and improving the irrigation of Greek lands and

22. See, *inter alia*, the Greek *Official Journal*, (*loc. cit.* in footnote 18).

23. See, *inter alia*, Article 4 of the Agreement concerning the Integrated Development of Vardar/Axios River, in the Greek *Official Journal*, Part One, 126/1972.

24. See «Agreement between Greece and the Popular Republic of Bulgaria concerning their Cooperation in the Utilization of the Waters of the Rivers Running through the Territories of the two States» in the Greek *Official Journal*, Part One, 193/1964, p. 990 *et seq.*

securing them from seasonal floodings.²⁵

The conclusion of this embryonic agreement was followed, seven years later, by a meeting of the delegations of the two countries in accordance with the terms of that agreement (which provided for meetings, whenever necessary), intending to specify in more concrete terms the exact duties of each country with regard to planning and exchange of information relating to rivers Nestos/Mesta and Strymon/Strouma.²⁶

(b) Provisions on the Undertaking of Works of Improvement of the Area

The question of the undertaking of works improving the regime of rivers in matters of utilization of their waters is covered by a number of provisions to be found in conventional arrangements between Greece and Yugoslavia, Bulgaria and Turkey.

The oldest of these arrangements, still in force between the parties, is the Agreement between Greece and Turkey relating to the regulation of the Hydraulic Works on the two Banks of the River Maritza/Evros signed in Ankara on June 20, 1934.²⁷

This agreement is highly comprehensive. It consists of four parts, each one dealing with a specific matter. The first part refers to the regulation of the works which had already been undertaken by the parties. According to these provisions each party had the right to continue the works commonly agreed (in a previous meeting of their delegation), under the condition that the execution would not go beyond that which had been agreed. Each party had the right however, under article 2, to modify the planned works, only in the cases that a maintenance of the hydraulic system of the banks were required; in that case the party undertaking the maintenance should notify the other party for the beginning of the works ten days in advance.

The second part deals with the undertaking of new works on the banks, dikes and on the bed of the river. The hydraulic works are planned and undertaken, either separately by each party to the agreement or jointly. Article 1 of Part II, which deals with the first case, specifies in a quite minute manner the extent of the rights of the two parties, from the technical point of view; it also stipulates obligations to the parties not to alter, through the works, the depth and width of the river. That same article contains a highly interesting provision concerning the case that works are undertaken in areas where both banks be-

25. In that same agreement, and under article 2, there also exists a provision, which because of its subject-matter may be considered irrelevant in the specific context of the instrument, stipulating that the parties agree not to cause substantial damage to each other, "through the construction of works or through exploitation in their respective portions of the rivers.

26. See the Greek *Official Journal*, Part One, 204/1970, p. 1786.

27. See «Accord entre la Grèce et la Turquie relatif à la Réglementation des Travaux Hydrauliques sur les Deux Rives du Fleuve Maritza/Evros». (Signé à Ankara, le 20 juin 1934) in *Legislative Texts*, p. 803 et seq.

long to Turkey. In these areas the Turkish authorities have the absolute freedom to proceed to any hydraulic works; a right which, according to the provision, is not limited but by the general rules of international law and the international conventions on these matters to which Greece is a party and whose provisions prohibit the taking of measures which may cause damage to the Turkish territory. The international convention to which this provision seems to refer is the «Convention relating to the regulation of the hydraulic forces of interest to many States and the Protocol of Signature», signed at Geneva on December 9, 1923 (Convention Relative à l'Aménagement des forces Hydrauliques Intéressant Plusieurs Etats et Protocole de Signature²⁸), to which Greece is a party since March 14, 1929²⁹ (Article 4: «Lorsque un Etat contractant désire exécuter des travaux d'aménagement des forces hydrauliques dont il pourrait résulter, pour tout autre Etat contractant, un préjudice grave, les Etats intéressés négocieront en vue de la conclusion d'accords destinés à permettre l'exécution de ces travaux»).

Article 2 of Part II provides for the execution of works, by joint planning and executing. This case covers the works to be undertaken for the consolidation of the banks of the principal bed. The article provides that in the event of a need for a rectification of the course of the principal river bed, such rectification cannot take place but by common agreement of the two parties. The rest of the article deals with technical matters concerning the details of the works to be undertaken.

Article 3 of Part III, complemented by the whole provision of Part III of the agreement provides for the cases of urgent works to be undertaken in the interval between the coming into force of the agreement and the actual undertaking of the hydraulic works. In these provisions one may see the extremely detailed reference to the process of the planning and executing which should take place and the concern of the two States to secure that no work may be undertaken by a signatory without the previous consent of the other State. The article provides that if consent should be withheld a dispute arises which, according to that article, should be settled by arbitration.³⁰ The rest of the article deals, again, with technical matters concerning the details of the planning and execution.

Part IV of the agreement stipulates the methods for controlling the execution of the works. The control is undertaken by a Commissioner who must be an expert in the field of hydraulic works and a national of the party checking the execution of the works done by the other party. All differences a-

28. See *Legislative Texts* p. 91.

29. *Ibid.*

rising between the parties should be settled by arbitration or judicial settlement.³¹

The agreement of 1934 has worked relatively smoothly since its coming into force, despite the serious fluctuations of the Greek-Turkish relations in the post-war years. On the basis of this agreement, the two countries signed a Protocol, in Ankara on January 19, 1963, which provided for the final elimination of differences concerning the execution of hydraulic operations for the improvement of the bed of the river Maritza/Evros carried out on both banks.³²

The first institutionalized efforts to carry out operations for the amelioration of the utilization prospects of Greco-Yugoslav rivers and lakes dates back to 1954. However, the first moves were limited to abstract planning. Real work started only two years later (in 1956) through a Protocol of the delegations of the two countries which met in Salonica.³³ The protocol concerned the execution of operations by each country, in its own part of the lake Dojran. The operations were intended to assist the adjustment of the water level. That level was not to rise beyond a certain height at a particular area from which measurement was to be made. At the same time the contracting States undertook the obligation to proceed to an operation securing the regular flow of the lake water to the small rivers forming there. That protocol was eventually followed by some other instruments, resulting from the successive meetings of Greek and Yugoslav delegations. The culmination of these exchanges was the 1959 Agreement which constitutes the treaty-frame governing all the studies and operations concerning the two lakes (Prespa and Dojran) and the one river (Axios / Vardar) which belong to the territories of both countries.³⁴ That agreement, as we may recall from our previous discussion, provides for a mixed Commission which undertakes the study and control of the operations on these areas, as well as the preparation for the planning of the future works which are assigned to it by the two governments-consenting to that effect. It is worth noting that in an exchange of notes which followed the signature of the agreement mention was made of a possible participation of a signatory country to the works to be executed by the other signatory State intended to improve the accumulation of waters of the river Axios/Vardar.³⁵ At the regular (once in a year) meetings of the Commission, established under the 1959 Agreement, discussion was made for the planning of works and the eventual control of the operation of undertaken projects. If one reads the «procès-verbal» containing outlines of the minutes of the Commission, one may see the substantial progress made in the field of the improvement of the technical infrastructure. Both

31. See *infra*.

32. See the Greek *Official Journal*, Part One, 47/1963.

33. See, *supra*, footnote 11.

34. See *supra* footnotes 13 and 15.

35. See *Legislative Texts*, p. 821f.

countries have separately undertaken a number of operations in their own parts of the rivers or lakes; from the study of the minutes to date no indication exists of joint ventures or sharing of costs for any of the works already undertaken. One may, on the other hand, detect an effort of both countries to assist the regular flow of water and to avoid problems which may be created during improving operations with respect to the height of water and its uninterrupted supply. However, despite the works done particularly in the Axios/Vardar basin, extremely arid summers in recent years created problems of water supply, a fact which convinced the two States to undertake the project of the over-all development of the basin, described in previous pages of this paper.

Regarding, finally, the Greco-Bulgarian conventional arrangements with respect to the execution of works for the improvement of the utilization of their international rivers we should mention that a Mixed Technical Committee was constituted by a protocol between the two countries (1968) which had the specific function to study, plan and control the execution of the works at the Maritza/Evros river, near the Greek-Bulgarian borders.³⁶ That Technical Committee had so far met three times and proceeded to the planning of certain works of improvement which, having been accepted by the respective Governments, are now under construction.

(c) Provisions on Fisheries

Concern for the reasonable exploitation and conservation of the living resources of the fresh waters was early expressed in the 1957 Protocol between Greece and Yugoslavia whereby the two States agreed, *inter alia*, that there was a need for a study which could set up regulations concerning the exploitation, protection of fish and the determination of measures against contamination of the living resources of the lake of Dojran.³⁷ It was then natural that in the formal agreement which followed the series of Greco-Yugoslav exchanges mention was made of the question of fisheries. In fact one of the assignments of the Commission, which was formed (as we recall) by this Agreement of 1959 was the promotion of cooperation on fisheries in the two common lakes (Prespa and Dojran) through a series of actions and activities that we shall discuss in a following section of this paper (the organization and functioning of the Commissions).³⁸

The Commission established by the 1959 Agreement has worked really effectively on the question of fisheries. Having realized the urgent need for a concrete planning of conservation and improvement of the regime of the living resources in the two lakes, through preliminary studies, it submitted to the two governments a recommendation for the establishment of a special subcommis-

36. See *infra*.

37. See *supra*, footnote 11

38. See *infra*.

sion on fisheries, to deal particularly with the fishing problems of the lake Dojran. The recommendation was approved by the two Governments. Thus the Commission started, in 64, its working sessions. As a result of that sessions, the Governments decided to take some initial steps towards the improvement of the fish quantities, the establishment of protected zones in their own territories and the taking of measures for the contamination of fish. There was, however, some disagreement-during the first session of the Sub-Commission on fisheries-concerning the rules, proposed by the Yugoslavians over rules of allowable fish catch quantities and seasonal prohibitions of fishing.

The development of the rules on fisheries for the lake of Dojran continued through the mutual acceptance of the recommendations contained in the «procès-verbal» of the Sub-Commission by the two Governments. Here we content ourselves with mentioning only that during the ten years, or so, of the operation of the Sub-Commission a lot of technical work has been done on the following matters: scientific research on the improvement of the fish quantities of the lake Dojran, determination of the nutritional needs of the fish, research on the number of fishermen habitually fishing in the area, the type of fishing boats and the methods of fishing. Finally, through the agreement of both governments, the Sub-Commission controlled the re-stocking program, undertaken by the two States separately for each side of the lake (after its recommendation), a fact which greatly enhanced the otherwise threatened species of the lake. In its achievements we should add its success to convince the respective governments for the application of a prohibition of fishing of certain species (mainly trouts) which were seriously threatened at that time (1972).

The Sub-Commission realized in early 1972 that the time was ripe for the signing of a more comprehensive formal agreement between the two countries concerning the fisheries of the lake Dojran. The two states having agreed on that matter the main points of this agreement, which was signed at Skopje on March 24, 1972,³⁹ are: a) the agreement regulates the fishing and the conservation and the improvement of fisheries in the Lake Dojran: b) the parties undertake the obligation to harmonize their national legislation with the provisions of the agreement (art.2); there is a monthly prohibition of fishing per annum-for any kind of fish (art. 3); there is a determination of the categories of fish which may be fished at the lake (weight-height consideration) (art. 4); certain methods of fishing are prohibited (such as by toxic substances) (art. 5); there is prohibition of pollution (art. 6);⁴⁰ the fishing gears and mechanisms are restrictively enumerated (art.7); there is an obligation for the parties to enrich annually their own parts of the lake with fish species which are determined in the agreement (art. 8); the introduction of new fish species cannot be realized without

39. Accord concernant la Pêche dans le Lac de Doiran, Conclu entre les Gouvernements du Royaume de Grèce et la R.S.F. de Yougoslavie, in the Greek *Official Journal*, Part One, 125/1974, p. 741 *et seq.*

40. See *infra*

the prior consent of the two States; there is provision for studies and cooperation; the existing Sub-Commission which was constituted by the Protocol of 1964⁴¹, undertakes the task of the application of the agreement and acts, as a first instance, as the competent organ to settle disputes arising out of the application and interpretation of the agreement (art. 13).⁴²

The Agreement on Fisheries came into force two years after its signature, on May 10, 1974. The Sub-Commission on Fisheries has, so far, met twice and proceeded to the application of provisions regarding the improvement of the quantities of fish and the study of problems of national legislation concerning prohibition on fishing and methods of fishing.

(d). Provisions on Environmental Protection

Despite severe pollution problems which presently exist with respect to the international rivers and lakes in Yugoslavia and Greece (the North-East side is less polluted because rivers there do not cross, to a great extent, urban and industrial areas), international provision for the prevention of pollution remains elementary. One may certainly deduce an obligation of Yugoslavia and Greece not to pollute their rivers and lakes from the rules of general customary law which apply in the international relations, in general.⁴³ Specific, however, provisions on pollution are actually missing from the basic agreements we are discussing here.

We must, nevertheless, point out that there is a certain recent development in the field which may, in the long run, change the gloomy image of the uncontrolled pollution of rivers and lakes in this part of the world. First, we should mention that the Sub-Commission on Fisheries has been quite concerned with the pollution of the lake of Dojran which is threatened — as we have discussed in a previous section — by the pollution coming from both sides. In the «procès-verbal» of its meetings we can see its repeated efforts to protect the endangered environment. Its efforts were to a certain extent successful, since the recent Agreement on Fisheries contains a specific provision for pollution. Article 6 of the Agreement provides:

« There are prohibited:

- the continuous or periodical pollution of the waters of the lake and of the waters flowing within it, by waters containing industrial residues, regardless of the method of the disposal and the place from which they are disposed.
- the disposal of objects and other materials which may intoxicate, kill or temporarily anesthetize the fish or pollute their food».

41. See *supra*.

42. See *infra*.

43. For the general law applying in cases of transboundary pollution see, *inter alia*, Barros J., and Johnson, D.M., *The International Law of Pollution* (New York: The Free Press, 1974), particularly pp. 77-82 and 83-173.

This article seems to give a wide power to the Sub-Commission to control pollution of the lake: it does not, however, go as far as to provide specific measures for the prevention of pollution, by imposing either the obligation to both countries to abstain from a number of activities which pollute the lake or to adjust the urban and industrial activities to meet the need for a better quality of the water of the lake. It seems that it is now up to the Sub-Commission to make an effort to widen the limits of the application of this article and to enunciate a series of specific measures to be taken in conformity with the obvious spirit of the article.

Moreover we should mention that, in the deliberations of the Commission created by the 1959 Greco-Yugoslav Agreement, and during the examination of the merits of the over-all (integrated) development of the Axios/Vardar basin, the members discussed extensively the problem of the pollution of this river which is the most heavily polluted river of the area. In the proposal of development that they submitted to the UNDP, there was specific reference to the need for the taking of measures against any further pollution of the river and the establishment of such a permanent infrastructure in the basin which could ameliorate the present condition of fresh water of the Axios/Vardar river.⁴⁴

3. — The Procedural Law

In the present section we shall discuss two important topics of the conventional arrangements existing between Greece and its three neighbours: First, the question of the provisions on the organization and functioning of the Commissions, which to a great extent have undertaken the responsibility of applying, and thus interpreting, the substantive law of the agreements; and, second the question of provisions on the settlement of disputes arising out of the application and interpretation of the agreements. The examination of these provisions may further help us to draw certain conclusions with respect to the problem of sovereignty and the attitude of the contracting States vis-à-vis the notion of «basin» in the river law.⁴⁵

(a) The Organization and Functioning of the Commissions

We should deal with the relevant provisions of each agreement separately, since each one carries particularities not allowing safe generalizations.

(aa) Permanent Greco-Yugoslav Commission on Hydroeconomy. *DUTIES:* The 1959 Agreement, having as its stated aim, the study and the execution of hydroeconomic works in the river Axios/Vardar and the lakes Prespa and Dojran, appoints a Permanent Greco-Yugoslav Commission on Hydroeconomy to promote these goals.⁴⁶ Article One of the agreement provides

44. See *supra*, footnote 18.

45. For the notion of basin in the international river law see *infra*.

46. See *supra*, footnotes 13 and 15.

that the task of that Commission «comprises, *inter alia*, the cooperation in the study of the problems of Axios/Vardar in view of the future developments of the regime of the waters of the basin, the regulation of the torrents in the border zone, the problems of improvements, the hydroeconomic problems of the lakes of Dojran and Prespa, the fishing in these two lakes, the exchange of hydrometeorological information as well as all other hydroeconomic questions which may arise in the future and which shall be assigned to the Commission by the common agreement of the two states». Article Two provides that the Commission shall propose the distribution of expenses for the execution of the works and the measures to be taken either for the common interest or for the interest of one of the States and shall submit its proposals to the approval of the two governments.

The Annex which follows the Agreement, and which is considered an integral part of it, specifies in its articles two and three the exact duties of the Commission through the following provision:

«2. The duty of the Commission is to examine the questions of hydroeconomy of a common interest, in conformity with article 1, alinea 1 of the Agreement.

3. The functions of the Commission are... the organization, supervision, and control of the projects and works of hydroeconomy which are entrusted to it, and mainly:

- a. The examination of the information communicated by the contracting States concerning measures to be taken and planned works of hydroeconomy;
- b. The elaboration and submission of proposals on measures to be taken and works to be undertaken.
- c. The examination of the submitted projects from the point of view of feasibility...;
- d. The control and the taking of delivery of the common works;
- e. The reconnaissance operation and the study of the localities;
- f. The organization of exchanges of experience in matters of hydroeconomy and hydrometeorological facts;
- g. The submission of proposals for the friendly settlement of disputes.»

At the end of Article 3 a provision stipulates that the two governments reserve the right to deal directly with questions which pertain to the competence of the Commission.

COMPOSITION: The Commission is composed of ten members. Each State is represented by five members, which constitute its delegation within the Commission, with the designation of one substituting member for each regular member. Each State may also appoint experts which shall take part in the works of the Commission. If need arises the Commission can appoint subcommissions. commissions.

FUNCTIONING: The Commission meets regularly once a year. The presidents of the delegations can convoke extraordinary sessions after common agree-

ment. The agenda of the sessions of the Commission is fixed by the diplomatic way. It takes its decisions through the agreement of at least three members of each delegation. The protocol, which contains the minutes of each session, is signed by both presidents and is submitted to each government for approval. The conclusions of the Commission become obligatory after their approval by the two governments. So far no protocol of the Commission has been rejected by either government. It is interesting to note that the agreement provides that in case of urgency, which is determined by the Commission, the delegation of a contracting State, in waiting the decision of the two governments, may *recommend* to the competent local authorities to proceed to necessary works in order to prevent eventual damages. Each contracting State undertakes the expenses of its delegation; the other expenses are equally shared by the two governments.

OPERATION: The main traits of the operation of the Commission have already been discussed in previous sections of the paper. We should point out, once again, that it has proved quite energetic and that it has, to date, developed a practice, within the limits of its powers, which actually gives substance to the otherwise general and abstract text of the 1959 Agreement. One may, of course, detect a number of instances of disagreement between the members of the two delegations and particularly with respect to some proposals of self-restraint in fisheries matters and proposals on the determination of the volume of waters which would be allocated to each country on the basis of the over-all (integrated) development of the Axios/Vardar river.⁴⁷ Yet, the Commission has almost overcome all difficulties. The growing, however, field of its competence, *ratione materiae*, made inevitable the creation of other Commissions to deal, in an expert manner, with specific decisions. Thus, following its proposal to the Governments, the basic questions which gave progress in the years of its functioning: namely the problem of fisheries and the over-all (integrated) development of Axios/Vardar scheme are now assigned, the first to a Sub-Commission on Fisheries,⁴⁸ the second to a special Commission, established by a protocol of the Commission, on the Over-All Development of the Axios/Vardar basin.

(bb) Joint Greco-Yugoslav Commission for the Over-all (Integrated) Development of the Axios/Vardar River Basin

DUTIES: The Commission is established in order to take care of all the work connected with the preparation of the study on the Integrated Development of the Basin and has as further duty to submit to both governments necessary suggestions for the progress of work, in accordance with the Agreement of June 12, 1970 concluded between the two governments.⁴⁹

47. See, *inter alia*, the Greek *Official Journal*, Part One, 68/1973, 40/1973.

48. See *supra*.

49. See the Greek *Official Journal*, Part One, 126/1972, pp. 973 *et seq.*

COMPOSITION: The Commission consists of delegations of five members from each side appointed by their governments. A number of experts can also participate in its deliberations.

FUNCTIONING: The Commission will meet whenever a necessity arises, but at least twice a year. The meetings of the Commission will be held at the proposal of either one of the delegations and it is to be arranged through the diplomatic channels. The UNDP resident representatives and UN representatives can participate in the meetings of the Commission together with representatives of the contracting firm which has undertaken the technical planning of the overall (integrated) development project.

OPERATION: To date the Commission has held a number of meetings for the examination of the projects of the private contracting firm.⁵⁰ The results of these meetings are not yet known. It should be pointed out, as a matter of information, that there is a recent expansion of its activities to cover projects on making the Axios/Vardar river navigable, thus allowing an uninterrupted communication of Western Europe (through the Danube) with the port of Salonica, in the Aegean Sea.⁵¹

50. See *ibid.*, 68/1973, p. 592.

51. The relevant excerpt from the Protocol of the Permanent Greco-Yugoslav Commission on Hydroeconomy (Greek *Official Journal*, Part One, 83/1977, p. 678) states: « A navigable waterway linking the Danube river to the Aegean Sea, via the Morava, Vardar and Axios Valleys, might facilitate and render more economic cargo transportation to and from the countries of Central Europe and the Mediterranean Sea and, in particular, Yugoslavia and Greece. Such a scheme may significantly contribute to the economic development of the whole region...

Among the transportation modes, inland waterway transportation has increasing significance for and impact on development of national and or regional natural resources. The attraction of this mode of transport lies in the fact that most waterways are provided by nature and can be used for navigation with minimum investment. Low cost is the inherent advantage of water transportation and modern technology has brought about a considerable increase in the efficiency of inland waterborne transport. Regarding the consumption of energy, barges require the least amount of diesel fuel on an average of 3.15 gallons per thousand ton-miles, compared with 4.21 gallons for rail freight and 8.33 gallons for truck freight. There is, therefore, an obvious need and especially in developing areas, where tangible benefit could be obtained from water transport as a part of a multipurpose water development scheme.

»The new waterway would extend in a general southerly direction from Belgrade to Thessaloniki on the Aegean Sea, a distance of approximately 700 kilometers. The waterway would be in the valleys of two rivers which have a common watershed divide, the Morava flowing north from this point to the Danube and the Vardar/Axios flowing south from this point into the Aegean Sea.

»Following recommendations in the Appraisal Report by a United Nations Interdisciplinary Team of Experts of June 1973, the Governments of Yugoslavia and Greece have agreed to undertake a thorough study of the technical and economic feasibility of constructing and operating such a navigational waterway.

»A second team of United Nations experts visited the countries in November 1975 and it has been then agreed by all parties to carry out the study in two phases: a) A first phase to last approximately one and a half year will include first the preparation of a detailed work programme including terms of reference for all studies and investigations necessary for the feasibility evalua-

(cc) Permanent Greco-Bulgarian Commission for Cooperation in the Fields of Electric Energy and the Utilization of the Waters of the Rivers Running through their Territories

DUTIES: The agreement of July 12, 1971⁵² establishes a Permanent Commission to work within the spirit of the Greco-Bulgarian Agreement of July 9, 1964.⁵³ Its duties consist of studying and deciding on all matters referring to the cooperation between the two States in the domains covered by the 1964 Agreement. The Commission has also a recommendatory power in the cases that the signatory governments refer to it a proposal or a project going beyond the scope of the agreement.

COMPOSITION: The Commission consists of twelve members. Each State is represented by six members, which constitute the national delegation within the Commission. Each delegation has its own President.

FUNCTIONING: The Commission meets once every year. No meeting has been held to date.

(b). The Settlement of Disputes

Most of the basic agreements between Greece and the other three countries have provisions on the settlement of disputes arising out of the application and interpretation of these agreements. Thus Article 7 of the 1959 Greco-Yugoslav Agreement⁵⁴ provides that the two Governments *may arrange* through prior agreement the submission of any difference arising out of the application or interpretation of the agreement to arbitration. The article, which determines that the award shall be binding to the parties, also provides that in case of a lack of agreement to that effect, the tribunal must be formed by the mere application of one of the contracting States. Each government shall appoint one member of the tribunal, which shall be presided by an umpire who must not be citizen of either State. In case that there is disagreement as to the person of the umpire, or in the case that the parties do not appoint their own members, in two months time, the tribunal or its missing members shall be appointed by the President of the Supreme Court of the Swiss Confederation. The applicable procedural rules shall be, unless there is specific decision of the parties to the contrary, the rules provided for by the Hague Convention of 1907 concerning the Peaceful Settlement of International Disputes.

tion, second preliminary studies of traffic flows and technical difficulties at critical points of the canal alignment. b) A second phase to last approximately three and a half years will include the carrying out of the studies and investigations by the Governments, and of the feasibility study through external technical assistance...».

52. See the Greek *Official Journal*, Part One, 67/1977, p. 1104.

53. *Ibid.*, 193/1964, p. 990.

54. See *supra*.

Also the agreement between Greece and Yugoslavia concerning the study of the over-all (integrated) development of the Axios/Vardar River (1970)⁵⁵ provides, through article 8, that all disputes arising out of the application or interpretation of the agreement (which may not be settled within the mixed Commission, which acts, as we have said, as a «first instance» to that effect), shall be submitted, through the application of one party, to an arbitration commission composed by two members, appointed by the two governments respectively, and a third member to be elected by the already appointed national members. In the event that one government has not appointed its member within thirty days from the date of application or in the event of non-election by the two members of the third member within sixty days from the time of their appointment, the appointment shall be made by the UNDP.

The Greco-Bulgarian Agreement of 1964⁵⁶ has a provision on settlement of disputes which is however extremely weak and general. Under article 8 of the agreement «all questions which may arise because of the application or interpretation of the present agreement will be settled through diplomatic channels of the two States».

Finally, with regard to the 1934 Greco-Turkish Agreement on Hydraulic Works⁵⁷, there is a provision, in its part 4, that «all disputes which arise between the high contracting parties relating to the interpretation or application of the present agreement shall be settled by the way of arbitration following agreement to that effect, or in case of a lack of agreement by the Permanent Court of International Justice in conformity with article 22 of the Treaty of Friendship, Neutrality, Conciliation and Arbitration concluded between Greece and Turkey on October 30, 1930».⁵⁸ This bilateral treaty contains all details concerning the methods of the constitution of arbitral tribunals and the procedure for an application to the Court by the two countries.⁵⁹

IV. A General Appraisal of the Principles Governing the Conventional Regime

From the analysis of the legal regime that has preceded and with the further assistance of certain other provisions that were not mentioned in this analysis we will now attempt to deduce some general principles governing the conventional regime and the relevant relations of Greece with its neighbours with respect to their rivers and lakes. We therefore propose to deal separately with, first, the question of which one of the main principles governing river law (territorial integrity, absolute territorial sovereignty, community of coriparian States

55. See *supra*.

56. See *supra*.

57. See *supra*.

58. Greek Law 4917/1931 as partly amended by Law 1256/1938.

59. See the Greek *Official Journal*, Part One, 96/1931.

in the waters of an international river, limited territorial sovereignty)⁶⁰ seems to better fit to the existing conventional arrangements⁶¹, and, secondly, to deal with the question of the procedural provisions of the agreements which, as we have seen, present a particular interest in the development of the river law in the area.

1. — The Main Principles of River and Lake Law as applied in the Agreements

Sovereignty plays a considerable role in the formation of the guiding lines of all the agreements that we have examined in the previous sections. There is no question, that none of the States which concluded one or more of these agreements had in mind to give-up basic sovereign rights in order to satisfy the concept of community of waters of coriparian States. However, the approach

60. For a detailed analysis of these notions, see, *inter alia*, Berber, *Rivers in International Law*, trans. Bartstone (London: Stevens, 1959). Here we content ourselves with citing one excerpt from an article analyzing briefly the concepts that we have just mentioned: «The writing of publicists in clarifying and identifying the governing principles of water law are not only few but also divided. Broadly speaking, theories enunciated by scholarly commentators may be classified into four categories; (i) Territorial Integrity; (ii) Absolute Sovereignty; (iii) Community in the waters; (iv) Limited Territorial Sovereignty.

«(i) *Territorial Integrity*: The theory is closely related to the old common law doctrine of private water rights whereby a lower riparian has the right to demand the continuation of the natural flow of waters coming from upstream. In other words, no state is permitted to modify the natural conditions of its own territory to the disadvantage of the natural conditions of the territory of a neighboring state... A state should not divert, interrupt, artificially increase or diminish the flow of water... (ii) *Absolute Sovereignty*... According to this theory — which has come to be known as the Harmon Doctrine — each state is master of its own territory and may adopt in regard to watercourse all measures deemed suitable to the national interest irrespective of their effects beyond its borders... (iii) *Community in the Waters*: This theory envisages a collective right of action by all riparians in such a manner that none of them can dispose of the waters without consultation and cooperation of the others. According to its chief exponent, Henry Farnham, a river which flows through the territory of several states is their common property and neither state can do any act which will deprive the other of the benefits of those rights and advantages... (iv) *Limited Territorial Sovereignty*: This principle ... would curtail absolute territorial sovereignty and integrity but at the same time does not go to the extent of the community approach. It envisages a less advanced level of international integration... According to (the proponents of this approach) each state has a right to have the river system considered as a whole, and to have its own interests taken into account and weighted in the balance against those of others. And each state is precluded from making any alteration in the river system which would cause material damage to another state's right of enjoyment without that other state's consent». (Menon, P.K., «Water Resources Development of International Rivers with Special Reference to the Developing World», *The International Lawyer*, vol. 9, 1975, pp. 441-464, at 445f.).

61. We should point out, from the outset, that the above mentioned principles governing water law - as they, at least, appear in the theory of international law - originate not from the practice of States, in the form of customs, but from the letter of relevant international agreements. Our effort, therefore, is to find out whether the agreements between Greece and its neighbouring States comply (or not) with the basic trends which may be traced in a number of international instruments of the same nature, and whether they thus contribute to their practical consolidation and generalization.

of the agreements witnesses that States do not consider with some few exceptions that they have absolute sovereign rights in the parts of the rivers or lakes which are within their own territory and they are free to dispose, in any manner they like, the water and the other resources of the areas. The very existence of some agreements evidences the general spirit which prevails in that part of the world and which calls for cooperation and joint development of the basins of the international rivers. The arrangements of these agreements go far beyond the mere general obligation of the States not to cause injury to other neighbouring states through activities from their own territory and, sometimes, come close to the substance of the international drainage basin approach.⁶²

It is, of course, true that the various agreements between the three States are not homogeneous. They vary considerably, both from the substantive law and the procedural law point of view. One may say that the set of arrangements between Greece and Yugoslavia are nearer, than the other agreements, to the basic characteristics of the «international drainage basin» treatment of their river. Indeed, since the early fifties the two States realized the need for cooperation in the areas of their fresh water, and for the uninterrupted utilization of the water of the rivers and lakes. The question is, then, to what extent the cooperation scheme is based upon the concept of the basin system. What mostly matters in this case is the attitude of Yugoslavia towards Greece, since the former is the upper-stream state, insofar as the river Axios/Vardar is concerned and its conduct is conducive to certain conclusions. We must recall, then, that in almost all the arrangements (and in this category we include both formal agreements and the Protocols signed by the Commissions and ratified

62. The concept of the «international drainage basin» may be considered as the realization in the modern inter-state practice of the idea of the community of the waters among the coriparian States (See *supra*, *supra*, footnote 61). As it is stated by Menon (*op.cit.* footnote 62, at p. 449) «With the use of rivers for other than navigational purposes the conventional concept of an international river has developed into that of an international drainage basin. It includes all the tributaries and distributaries forming part of the river system as a component of the whole drainage basin. Integrated basin development presumes needed joint action on the basis of the concept of a geoeconomic unit, considering, the basin as whole from a geographic, economic and social point of view. The idea of intergration does not necessarily mean the setting up and/or the operation of an institutionalized regional unit as the objective of development and the essential condition for joint action, not the creation of an administrative supranational authority for centralized management of the basin as a whole.

«The integrated approach is associated with two basic ideas: multi-purpose projects and basin-wide programs. Multi-purpose projects, as against single-purpose projects permit a more complete and prudent utilization of the water resources. The basic tenet of the multi-purpose development project is that certain facilities available in a drainage basin may be jointly used to serve more than one purpose. For instance, it may be possible to construct a dam that will not only provide water for irrigation, for industry, and for electric power but will also serve beneficially the purposes of navigation and flood control as well. The basin-wide programme, on the other hand, envisions a broad programme of regional economic development. It ties the development of water and other natural resources in the drainage basin more closely to each other and enhances their usefulness as an entity for planning... »

by the states) Yugoslavia admits that the Axios/Vardar area is a basin and that the studies and works undertaken on the basis of the arrangements promote the idea of the basin in this particular area of the Balkans. We should, however, take note of the fact that article 7 of the 1970 Agreement between these two countries on the over-all (integrated) development of the Axios/Vardar river stipulates in its paragraph 2 that:

«The two Governments have already agreed that the goals of the over-all development are:

- a) to satisfy the needs of the Greek Party, which relate to the irrigation of the Axios/Vardar area and which amount for the month of May to 8,30 m³/sec, of June to 17,30 m³/sec, of July 29,50 m³/sec, of August to 25,35 m³/sec, etc.
- b) to satisfy, as a priority, the present and future needs of the Yugoslavian Party through the free utilization by her of all quantity of water, beyond the quantities laid down in the previous paragraph. However, the Yugoslavian Party agrees to favourably examine, in the spirit of the friendly cooperation, the demands of the Greek Party, which may be addressed to Yugoslavia with a view to an eventual increase of the quantities of water provided for by the paragr. 2 of this Article.»⁶³

This article represents the limits of the basin approach which is propagated by the Greco-Yugoslav arrangements. There is an established fact, we may say, that the basin approach is closely related to the notion of equitable utilization: in fact the latter notion is part and parcel of the former.⁶⁴ The formulation of article 7 shows that Yugoslavia, despite the lip-service paid by both countries to the basin concept, retains, to a great extent, the exclusive right to decide on any changes in the supply of the water and to have a priority in the utilization of the quantities beyond the level agreed by the two countries. These two points conflict with the notion of equitable utilization because (a) in a system of equitable utilization no priority should be recognized a priori and (b) a readjustment of the quantities of the water supply to a country needing it (within the basin area) constitutes a matter of obligation for the other country and not a question of courtesy based on the notion of good neighbourliness and friendly relations.⁶⁵

There are, still, other signs of the relative persistence of both States to the notion of sovereignty. If one looks at the agreements concerning the two lakes and the river, one can conclude that the cooperation which is delimited by them consists of a series of actions and activities which to a large extent are to

63. See the Greek *Official Journal*, Part One, 126/1972.

64. We may safely assume that the basin system contains, as a basic constituent element of its structure the «equitable utilization» of the waters of the basin area. For a further discussion of the notion of «equitable utilization» see Garetson

65. These two basic principles emanate from the very nature of the notion of «equitable utilization». See Garetson A.H., *et al.*, *The Law of International Drainage Basins* (Dobbs Ferry: Oceana, 1967).

be undertaken separately and not by joint-action. This fact, of course, weakens the whole process of the development of the actual works, since it leaves for each country a wide discretion in matters of time and effort, and, at the same time, weakens the notion of cooperation for the river, where a common action is provided for by the arrangements on the over-all (integrated) development.

The situation with Bulgaria, as it presently exists, cannot sustain the argument of a basin approach. The recent amelioration of the Greco-Bulgarian relations has certainly led to the conclusion of a number of agreements, including agreements on water utilization. Although there is no recent, at least, incidence of a denial by the upper stream state of the right of the downstream state to a regular flow of the river waters, yet there is no sign that the upperstream state, which is Bulgaria, feels that there is an obligation of equitable utilization of the waters. The agreement framework — of 1964 by no means hints such an approach as it mainly deals with cooperation in the domain of the prevention of floodings. As for the more recent agreement (of 1971) it has not shown, as yet, its fruits. What may be characterized as an interesting point, both from the point of view of its legal originality and the point of view of the notion of sovereignty surrounding the Greco-Bulgarian water-arrangements is the following: the 1964 Agreement between the two countries was concluded together with some other agreements settling long awaiting problems on compensation for war damages. Article 3 of the agreement of July 9, 1964 concerning the regulation of financial questions and the economic cooperation between the two countries provided for the means of compensation of Greece for war damages inflicted by Bulgaria. A means of compensation was, according to paragraph b of that article, the supply of waters to Greece by Bulgaria. Citing the paragraph *verbatim*:

«...b. The Bulgarian part shall supply to the Greek party, for the needs on irrigation of the lands of the Greek territory, regularized waters of the river Arda of an annual volume of 186 millions of cubic metres, guaranteeing 85% of them a year for a period of sixty years. The technical details concerning the supply of waters are settled by the Protocol which is annexed to the present agreement.

...It is also agreed that the supply of regularized water shall be suspended in the case of a natural disaster or a force majeure, which shall make impossible, while it lasts, the execution of the undertaken obligations».

It goes without saying that such a conventional clause which, in actual terms sells waters belonging to the upperstream State does not match the features of a basin treatment. One may certainly contend that the provision may be justified even within a basin system because it contains an *obligation* of a *regular* supply of water for a specific time-span. However this argument would be probably correct if that water volume constituted a supplementary volume to the regular supply of water from the river Arda to Greece. But nowhere in this agreement, or in the agreements which followed, is there any hint that Bulgaria

has an obligation to share the waters of Arda — even on the basis of some relative inequality, not based on specific needs but on its favourable position as an upperstream State.

The regime existing between Greece and Turkey is less complicated and more undeveloped than the corresponding regimes with Yugoslavia and Bulgaria. The only Greco-Turkish river, the Maritza/Evros river, is a boundary river, shared through a median line frontier by both countries. The delicate political situation between them has made them cautious in proceeding to any substantive arrangement on the improvement of the river for its eventual utilization.

As an over-all conclusion on the discussion that we had, in the present section, we may say that the conventional arrangements existing to date in the field of river law evidence the will of these neighbouring States to cooperate with a spirit of improving the utilization of their rivers. Their relevant persistence on their sovereignty, which should be seen as the result of both the political environment surrounding their agreements *and* the upgrated value of the fresh water in the area (which in most parts suffers from aridity), may, under better circumstances of political and technical development give its place to a genuine basin approach.

2. — The Procedural Aspects

The absence of quite detailed and elaborated agreements between the Balkan States in question is, to a certain extent, cured by the existence of well-elaborated procedural provisions. This phenomenon of framework-agreements providing less substantive law and more concrete procedures — in the form of establishing Commissions applying and interpreting the law and rigid means of settlement of disputes — is a quite common feature in this field of international legal relations where lack of well-founded rules of law or dynamic legal change still persists. In these cases the application of the agreement is actually left to create or crystallize the law instead of its just following the precepts established by the agreement.

In the Greco-Yugoslav body of law on fresh waters we are in front of a classical example of such a legal development. The 1959 Agreement does not provide many substantive rules on the matter; it, however, establishes a system of application which carries with it a considerable creative power. The experience of almost twenty years of operation of the Commission has shown that the elementary obligations of the 1959 Agreement have advanced a long way since then. Although the powers of the Commission were meant to be recommendatory, and still are, the regular functioning of the body has created a set of rules, through the approval of its Protocol, which now constitutes together with the original agreement and the agreements elaborated by the Commission a comprehensive *corpus* of the rules dealing, *in extenso*, with the real problems of the area; and this is not, of course, the end of the matter: We may also remind the reader of the work of the Commission on the ambitious project of the

overall development of the Axios/Vardar basin. What has made the Commission satisfactorily effective, in our view, is the fact that (a) it is a living organism which follows, from a close distance, the developments which take place in the area and in the political, social and economic surroundings which eventually influence the development of the area. The outcome of its deliberations and recommendations reflects the actual level of the legal and economic relations which are attained, at a specific moment for specific questions; (b) the composition of the Commission has a national, not an «objective» international character. Although one may contend that this factor is a handicap we are inclined to think that this is its basic merit: The fact that the two delegations represent the interests of their own country and actually negotiate, during the meetings, on that basis in order to find the golden rule which may reconcile the existing differences between the clashing interests, makes their recommendations quite effective. By representing their governments — and not some impersonal power led by considerations of equity and justice — the representatives have the factual capacity to definitely conclude agreements. This argument is after all sustained by the Commission's experience: all recommendations of the Commission were eventually adopted by the respective governments in these twenty years of its operation.

Coming now to the question of the settlement of disputes arising out of the application and interpretation of the agreements, we may briefly say that the relevant provisions of most of the agreements are quite satisfactorily formulated. This is so for two reasons: (a) because they provide for compulsory means of settlement of disputes; and (b) because they provide a procedure of constitution of the arbitral tribunals or a procedure for the seizing of the International Court of Justice which cannot be blocked by the reluctance of one of the parties to submit a dispute to an objective means of settlement. Moreover these objective means of settlement may effectively contribute to the building of a jurisprudence which, in its turn, may assist the consolidation of legal rules concerning the rivers and lakes particularly in the field of compensation for damages, the rights of the downstream State for the free flow of the river waters, and the sensitive question of pollution.

V. Some Conclusions

The overall conclusions that we may draw from the discussion of the legal conventional regime of the rivers and lakes existing between Greece and its three neighbours are the following:

a) The development of the river-lake law in the area has been greatly influenced by the general political conditions which exist in this part of the world. The relatively recent improvement of these relations with some of the neighbouring countries has led to the establishment of conventional relations and cooperation tactics between them.

b) The persistence of the notion of «limited sovereignty» is evident in all the agreements which have been discussed. In some of them we can even find traces of «absolute sovereignty» approach. We should, however, distinguish between the case of the Greek-Yugoslav conventional arrangements and the rest of the conventional setting. It seems to us that in the first case there is a rapid development towards a basin approach which may be substantiated, if the project of the overall (integrated) development becomes a reality. With respect, now, to the Greek-Bulgarian case, we think that the establishment of the Commission may lead, as the case was with Yugoslavia, to the gradual consolidation of a legal body of rules more concrete than the general directives of the relevant agreement. The situation with Turkey seems, at present, stagnant, a fact which must be attributed to the existing political environment.

c) Finally, the main characteristic of the conventional arrangements between these countries, is the quite elementary provisions of substantive law which do not cover but general directions of legal conduct and their unquestionable ineffectiveness to deal with real, concrete questions. In actual, therefore, terms everything is left to the hands of the Commissions, which have undertaken the task to develop practices and rules of conduct and to the machinery of settlement of disputes which, on the basis of the legal body that has been created and the general rules of law applying in the matter, is called to contribute to the eventual clarification of the applicable rules and their crystallization. A last word on that matter: it seems to us that the actually strong machineries of application of the weak agreements may be considered as an element tending to further weaken the national persistence upon sovereignty and to substantiate, together with the other contributing factors, the basin approach in the area.

Athens, Dec. '78.