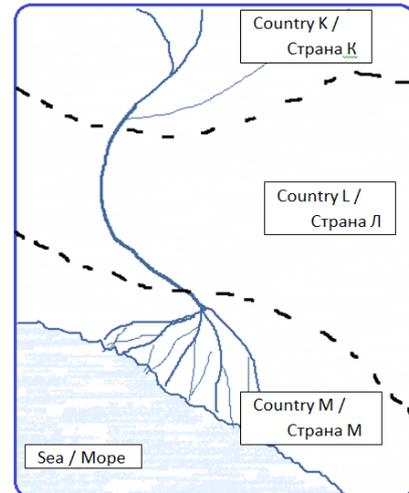


International Water Law

Participant Exercise 2:

Duty to Cooperate / Notify

The Grey River is a large international watercourse system shared by three riparian States (States K, L and M), rising in State K and reaching the sea in the territory of State M. In January 2007, all three States concluded the Agreement Relating to the Equitable Use of the Grey River, which entered into force on 1 January 2008. All three States are Parties to the 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and to 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes. All three States have signed up to the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (not in force).



The 2007 Agreement requires, *inter alia*, that:

‘A Party planning any project, programme or activity with regard to the River System which may have a significant adverse effect upon any one or more of the other Parties, or which may adversely affect such River System, shall without undue delay notify such other Parties and provide all available data and information with regard thereto.’

It further provides that:

‘Unless otherwise agreed, a Party so notified shall respond to the notifying Party within one month indicating whether the notified Party intends to participate in the environmental impact assessment procedure. The notified Party shall provide its comments on or objections to the environmental impact assessment documentation within three months of receipt, unless otherwise agreed by the Parties concerned.’

Elsewhere, the 2007 Agreement provides that:

‘Parties shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of the Grey River and the marine environment of the Grey Sea.’

The 2007 Agreement also provides for the establishment of a Joint Technical Commission to facilitate cooperation and communication amongst the riparian States of the Grey River, but neither national delegations nor a secretariat has been appointed and this body is not yet functioning.

On 1 April 2008, several TV channels in State L showed an interview with the Water Resources Minister of State L discussing plans for the large-scale diversion of waters from the Grey River. On 2 April 2008, the Water Resources Minister of State L, which is situated roughly half-way along the course of the Grey River (below State K, but above State M), telephoned his counterpart in State M to notify her of State L’s vision of developing detailed plans for the large-scale diversion of waters from the main course of the Grey River in order to irrigate a large area

of agricultural lands outside of the basin. State L considers this project essential in order to maintain self-sufficiency in food production – a central plank in State L’s policy of ‘food security’. The Minister explained that further details in respect of the proposed diversion project would be available by June. However, he was in a position to assure State M that State L would implement engineering works to make sure that surplus waters would be returned to the Grey River.

On 1 June 2008, State L forwarded a draft Environmental Impact Statement (EIS), prepared as a result of the conduct of an Environmental Impact assessment (EIA) of the proposed diversion, to State M along with various other technical documents describing the specific features of the project. On 31 August 2008, State M submitted replies to State L expressing grave concerns about the potential impacts of the project for the ecosystem of the Grey River, which it believes the EIS fails to address. Specifically, it is concerned about the ecological impacts of reduced flows during the dry season and the danger of biota transfer by virtue of the surplus waters returned to the Grey River. In addition, State M has learned that this project may merely be intended to be the first of several phases and that subsequent phases may involve further large-scale diversions for irrigation purposes. State L contends that the three month time period for making replies to a notification has expired and, consequently, that it does not have to consider the concerns raised by State M.

State K has also become aware of State L’s plans to divert waters from the Grey River and, on the basis of the technical documents supplied to State M in June 2008 (which State M shared with State K), has formally submitted its concerns about the potential risks that the proposed project represents for the ecological integrity of the Grey River System. State K, which suffers from a severe lack of technical and human capacity in respect of water resources impacts and environmental management, made a submission to State L on 1 January 2009. State L contends that there is no clear evidence that State K would suffer any significant adverse effect and, anyway, that its submission was made more than three months after the relevant technical information became available to it. Consequently, State L insists that it had no duty to notify State K nor to consider the concerns submitted.

On the basis of the rules of international law relevant for determining the rights and duties of each riparian State, each team is asked to:

1. Advise State K (Team K)
2. Advise State L (Team L)
3. Advise State M (Team M)