

# INTERNATIONAL LAW ASSOCIATION

## LONDON CONFERENCE (2000)

### COMMITTEE ON WATER RESOURCES LAW

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Professor Joseph W Dellapenna (USA): *Rapporteur*  
Dr Patricia Wouters (Canada): *Assistant Rapporteur & Secretary*

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### SECOND REPORT

#### PART ONE

The Water Resources Committee (WRC) presented its first report at the 1996 Helsinki Conference of the Association. At that time, the Association, on the recommendation of WRC, adopted two sets of articles, namely the Articles on Private Law Remedies for Transboundary Damage in International Watercourses and the Supplemental Rules on Pollution. It also then approved the Resolution proposed by WRC on the Further Consideration by the General Assembly of the United Nations of the Draft Articles on the Law of the Non-Navigational Uses of International Watercourses proposed by the International Law Commission, and requested the Secretary General of the Association to transmit the Resolution to the Secretary General of the United Nations Organization with the suggestion that it be circulated to members of the Organization. It concluded with the request that WRC continue its work, the scope of which should be considered with the Director of Studies of the Association.

Shortly after the Helsinki Conference, Professor Robert Hayton resigned as rapporteur of WRC and Professor J. W. Dellapenna was appointed rapporteur and Dr. Patricia Wouters assistant rapporteur. Since then the Committee has lost two of its members: Dr. E. J. Manner of the Finnish Branch, who had since 1954 been a member of all three committees of the Association on international water resources, died in February 1999; and Professor A. E. Utton of the United States Branch, who was secretary of WRC since 1991, died in September 1998. Dr. Wouters succeeded Professor Utton as secretary.

Since the Helsinki Conference of 1996, WRC has adopted an article on Adequate Stream Flows at its meeting held at Erasmus University, Rotterdam, in March 1998, and a consolidation of the ILA Rules on International Water Resources, 1966-1999, at its meeting held at Campione d'Italia, Italy, in June 1999. These documents are set forth below. WRC continues its work on a revision of the ILA Rules contained in The Campione Consolidation just mentioned, and on the Settlement of International Water Disputes.

## PART TWO

### Article on Adequate Stream Flows

**Consistent with the principle of equitable utilization, basin States shall, individually and, where appropriate, in co-operation with other basin States, take all reasonable measures to ensure stream flows adequate to protect the biological, chemical and physical integrity of international watercourses, including their estuarine zones.**

The study resulting in the adoption of this article was undertaken by Professor Utton with the assistance of his son, John, a lawyer in New Mexico specializing in water law. It has been published as an article in 10 *Colo. J. Int'l Envir. L. & Pol'y* 7 (1999).

The conclusion of the study as presented by Professor Utton to WRC is stated as follows:

“There is an early and extensive treaty practice which provides for the regulation of flows of international watercourses for a variety of purposes such as hydro-power, commercial fisheries, log-floating and flood control, but does not deal with modern environmental protection as such.

“More recent treaty practice such as the Mekong Treaty explicitly requires minimum streamflows, and the important work of the ILC and the resulting UN Convention recognize the range of environmental issues and obligate states to take measures to protect the environment. Although the question of maintenance of adequate flows is not explicitly addressed, often the environment protection obligations would require the maintenance of adequate flow levels in international watercourses in order to protect the ecological, chemical and physical integrity of the watercourse itself.

“This practice in regard to international rivers is reinforced by an extensive

treaty practice which obligates littoral states to protect the marine environment, including estuaries, from land based activities.”

The Article adopted by WRC, however, does not impose a mandatory obligation to maintain adequate stream flows; as its opening words indicate, the obligation is subject to its being consistent with the principle of equitable utilization. The maintenance of adequate stream flows is undoubtedly a very important factor to be taken into account, but equity and reasonableness in the light of all relevant factors remain the prime consideration .

The Article on Adequate Stream Flows appears as Article 10 in The Campione Consolidation of the ILA Rules on International Water Resources, 1966-1999, set out below.

PART THREE  
**THE CAMPIONE CONSOLIDATION  
OF THE ILA RULES ON  
INTERNATIONAL WATER RESOURCES**

**1966-1999\***

**CHAPTER I**

**GENERAL**

Article 1

The general rules of international law as set forth in these Chapters apply to the use of the waters of an international drainage basin except as may be provided otherwise by convention, agreement, or binding custom among the basin States.

Article 2

1. An international drainage basin is a geographical area extending over two or more States determined by the watershed limits of the system of waters, including surface waters and groundwater flowing into a common terminus.

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\* The Articles that follow are a consolidation prepared by the Water Resources Committee at Campione d'Italia in June 1999 under the chairmanship of Professor Charles Bourne. These articles comprise the rules on international water resources as adopted by the International Law Association between 1966 and 1999.

The Water Resources Committee is now considering revision of these rules to reflect developments that have occurred since the original rules were adopted.

2. The water of an aquifer that is intersected by the boundary between two or more States is international groundwater and such an aquifer with its water forms an international basin or part thereof. Those States are basin States whether or not the aquifer and its water form with surface waters part of a hydraulic system flowing into a common terminus.

3. As used in these Rules,

“aquifer” means all underground strata capable of yielding water on a practicable basis, including fissured or fractured rock formations and the structures containing deep, so-called “fossil waters”;

“basin State” means a State the territory of which includes a portion of an international drainage basin.

## ***CHAPTER II***

### ***GENERAL PRINCIPLES***

#### Article 3

Each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin.

#### Article 4

1. What is a reasonable and equitable share within the meaning of Article 3 is to be determined in the light of all the relevant factors in each particular case.

2. Relevant factors which are to be considered include, but are not limited to:

- (a) the geography of the drainage basin, including in particular the extent of the drainage area in the territory of each basin State;
- (b) the hydrology of the basin, including in particular the contribution of water by each basin State;
- (c) the interdependence of the underground waters and other waters, including any interconnections between aquifers, and any leaching into aquifers caused by activities in areas under the jurisdiction of basin States;
- (d) the climate affecting the basin;
- (e) the population dependent on the waters of the basin in each basin State;
- (f) the economic and social needs of each basin State;
- (g) the past utilization of the waters of the basin, including in particular existing utilization;
- (h) the comparative costs of alternative means of satisfying the economic and social needs of each basin State;
- (i) the availability of other resources;
- (j) the avoidance of unnecessary waste in the utilization of waters of the basin;

- (k) the practicability of compensation to one or more of the co-basin States as a means of adjusting conflicts among uses; and
  - (l) the degree to which the needs of a basin State may be satisfied, without causing substantial injury to a co-basin State.
3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable share, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

#### Article 5

A use or category of uses is not entitled to any inherent preference over any other use or category of uses.

#### Article 6

A basin State may not be denied the present reasonable use of the waters of an international drainage basin to reserve for another State a future use of such waters.

#### Article 7

1. An existing reasonable use of water may continue in operation unless the factors justifying its continuance are outweighed by other factors leading to the conclusion that it be modified or terminated so as to accommodate a competing incompatible use.
2. (a) A use that is in fact operational is deemed to have been an existing use from the time of the initiation of construction directly related to the use or, where such construction is not required, the undertaking of comparable acts of actual implementation.  
(b) Such a use continues to be an existing use until such time as it is discontinued with the intention that it be abandoned.
3. A use will not be deemed an existing use if at the time of becoming operational it is incompatible with an already existing reasonable use.

#### Article 8

A basin State shall refrain from and prevent acts or omissions within its territory that will cause substantial injury to another basin State, provided that the application of the principle of reasonable and equitable utilization as set forth in the above Articles does not justify an exception in a particular case.

#### Article 9

In the case of a breach of a State's international obligations relating to the

waters of an international drainage basin, the State shall cease the wrongful conduct and shall pay compensation for the damage resulting therefrom.

#### Article 10

Consistent with the principle of reasonable and equitable utilization, States shall, individually and, where appropriate, in cooperation with other basin States, take all reasonable measures to ensure stream flows adequate to protect the biological, chemical, and physical integrity of international watercourses, including their estuarine zones.

#### Article 11

Basin States shall cooperate in a spirit of good faith and good neighborliness in matters relating to the waters of the basin.

#### Article 12

The rights and obligations of States under the Chapters below are subject to the principle of reasonable and equitable utilization set forth in the above Articles.

### **CHAPTER III**

### **POLLUTION**

#### **Article 13**

As used in this chapter,

“pollution” includes both continental sea-water pollution and water pollution;

“water pollution” means any detrimental change resulting from human conduct in the natural composition, content, or quality of the waters of an international drainage basin;

“continental sea-water pollution” means any detrimental change in the natural composition, content or quality of sea water resulting from human conduct taking place within the limits of the national jurisdiction of a State, including *inter alia* the discharge or introduction of substances directly into the sea from pipelines, extended outlets, or ships, or indirectly through rivers or other watercourses whether natural or artificial, or through atmospheric fall-out;

“damage” includes *inter alia*:

- (a) loss of life or personal injury
- (b) loss of or injury to property; and
- (c) the costs of reasonable measures to prevent or minimize such loss or injury;

“damage to the environment” means:

- (a) harm to the environment of an international drainage basin, the costs of reasonable measures to prevent or minimize this harm, and any other loss or damage caused by these measures; and
  - (b) the costs of reasonable measures of reinstatement or restoration of the environment of the drainage basin actually undertaken or to be undertaken; and
- “person” means any natural or juridical person.

#### Article 14

1. Consistent with applicable international rules and standards, States in using the waters of an international drainage basin shall, insofar as technically and economically feasible, ensure that:

- (a) waste, pollutants, and hazardous substances are handled, treated, and disposed of in the manner that produces the least transboundary environmental harm;
- (b) the development and use of water resources within their jurisdiction do not cause substantial damage to the environment of other States or of areas beyond the limits of national jurisdiction;
- (c) the management of their natural resources (other than water) and other environmental elements located within their own boundaries does not cause substantial damage to the natural condition of the waters of other States;
- (d) activities within their territory do not create any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin that would cause substantial damage in the territory of another basin State or to any of its rights under international law, or to the marine environment, special attention being given to the long-term effects of the pollution of groundwater;
- (e) all reasonable measures are taken to abate existing water pollution in an international drainage basin to such an extent that no substantial damage of the kind described in paragraph (d) is caused; and
- (f) further steps are taken to reduce any water pollution to the lowest level that is practicable and reasonable under the circumstances.

2. The provisions of this Article apply to pollution originating within or outside the territory of a State, if it is caused by that State’s conduct.

## Article 15

Notwithstanding the provisions of Articles 12 and 14 above, States shall not discharge or permit the discharge of substances generally considered to be highly dangerous into the waters of an international drainage basin.

## Article 16

States should establish, as soon as possible international standards for the control of continental sea-water pollution, having regard to all relevant factors, including the following:

- (a) the geography and hydrography of the area (inland waters, territorial sea, contiguous zone, and continental shelf);
- (b) climatological conditions;
- (c) quality and composition of affected sea waters;
- (d) the conservation of the maritime environment (flora and fauna);
- (e) the resources of the sea-bed and the subsoil and their economic value for present and potential users;
- (f) the recreational facilities of the coastal area;
- (g) the past, present and future utilization of the coastal area and sea water;
- (h) the economic and social needs of the coastal States involved;
- (i) the existence of alternative means for waste disposal;
- (j) the adaptation of detrimental changes to beneficial human uses; and
- (k) the avoidance of unnecessary waste-disposal.

## Article 17

1. In order to ensure an effective system of prevention and abatement of water pollution of an international drainage basin, basin states should set up appropriate international administrative machinery for the entire basin. In any event, they should:

- (a) coordinate or pool their scientific and technical research programs to combat water pollution;
- (b) establish harmonized, coordinated, or unified networks for permanent observation and pollution control; and
- (c) establish joint water quality objectives and standards for the whole or part of the basin.

2. Basin States should consider establishing joint or parallel quality standards and environmental protection measures applicable to their international groundwater and aquifers in the basin for the purpose of preserving them from degradation and of protecting the geologic structure of the aquifers, including recharge areas, from impairment.

*CHAPTER IV**NAVIGATION*

## Article 18

1. This Chapter refers to those rivers and lakes portions of which are both navigable and separate or traverse the territories of two or more States.

2. Rivers or lakes are “navigable” if in their natural or canalized state they are currently used for commercial navigation or are capable by reason of their natural condition of being so used.

3. In this Chapter, the term “riparian State” refers to a State through or along which the navigable portion of a river flows or a lake lies.

## Article 19

Subject to any limitations or qualifications referred to in these Rules, each riparian State is entitled to enjoy rights of free navigation on the entire course of a river or lake.

## Article 20

“Free navigation” used in this Chapter, includes the following freedoms for vessels of a riparian State on a basis of equality:

- (a) freedom of movement on the entire navigable course of the river or lake;
- (b) freedom to enter ports and to make use of plants and docks; and
- (c) freedom to transport goods and passengers, either directly or through transshipment, between the territory of one riparian State and the territory of another riparian State and between the territory of a riparian State and the open sea.

## Article 21

A riparian State may exercise rights of police, including but not limited to the protection of public safety and health, over that portion of the river or lake subject to its jurisdiction, provided that the exercise of these rights does not unreasonably interfere with the enjoyment of the rights of free navigation defined in Articles 19 and 20.

## Article 22

Each riparian State may restrict or prohibit the loading by vessels of a foreign State of goods and passengers in its territory for discharge there.

## Article 23

A riparian State may grant rights of navigation to nonriparian States on rivers or lakes within its territory.

## Article 24

Each riparian State shall, to the extent of the means available or made available to it, maintain in good order that portion of the navigable course of a river or lake within its jurisdiction.

## Article 25

The rules stated in this Chapter are not applicable to the navigation of vessels of war or of vessels performing police or administrative functions, or, in general, exercising any other form of public authority.

## Article 26

In time of war, other armed conflict, or public emergency constituting a threat to the life of the State, a basin State may take measures derogating from its obligations under this Chapter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. The basin State shall in any case facilitate navigation for humanitarian purposes.

**CHAPTER V****TIMBER FLOATING**

## Article 27

The floating of timber on an international river or lake is governed by the provisions of this Chapter except in cases in which the floating is governed by rules of navigation according to applicable law or custom binding upon the riparians.

## Article 28

The States riparian to an international river or lake utilized for navigation may determine by common consent whether and under what conditions timber floating may be permitted upon that river or lake.

## Article 29

1. Each State riparian to an international river or lake not used for navigation should, with due regard to other uses, authorize other riparian States to use that river or lake and its banks within its territory for the floating of timber.

2. This authorization should extend to all necessary work along the banks by the floating crew and to the installation of such facilities as may be required for the timber floating.

## Article 30

If a riparian State requires a permanent installation for timber floating inside the territory of another riparian State or if it is necessary to regulate the flow of the waters, all questions connected with these installations and measures should be determined by agreement between the States concerned.

**CHAPTER VI****FLOOD CONTROL**

## Article 31

As used in this Chapter,

“floods” means the rising of water levels that would have detrimental effects on life and property in co-basin States; and

“flood control” means the taking of all appropriate steps to protect land areas from floods or to minimize damage therefrom.

## Article 32

Basin States shall co-operate in measures of flood control in a spirit of good neighborliness, having due regard to the interests and well-being of each other.

## Article 33

Co-operation with respect to flood control may, by agreement between basin States, include among others:

- (a) collection and exchange of relevant data;
- (b) preparation of surveys, investigations, and studies, and their mutual exchange;
- (c) planning and designing of relevant measures;
- (d) execution of flood control measures;
- (e) operation and maintenance of works;
- (f) flood forecasting and communication of flood warnings; and
- (g) setting up of a regular information service charged to transmit the height of water levels and the discharge quantities.

## Article 34

1. Basin States should communicate amongst themselves as soon as possible on any occasion such as heavy rainfalls, sudden melting of snow or other events likely to create floods and dangerous rises of water levels in their territory.

2. Basin States should set up an effective system of transmission in order to fulfil the provisions contained in paragraph 1, and should ensure priority to the communication of flood warnings in emergency cases. If necessary a special system of translation should be built up between the basin States.

## Article 35

1. The use of the channel of rivers and lakes for the discharge of excess waters shall be free and not subject to any limitation provided this is not incompatible with the object of flood control.

2. Basin States should maintain in good order their portions of water courses including works for flood control.

3. Basin States may undertake schemes of drainage, river draining, conservation of soil against erosion, and dredging, and the removal of stones, gravel, or sand from the beds of its portions of an international drainage basin, provided that, in executing any of these activities, they avoid any unreasonable interference with the object of flood control, and provided that the activities are not contrary to any legal restrictions that may exist otherwise.

4. Basin States should ensure the prompt execution of repairs or other emergency measures for minimization of damage by flooding during periods of high waters.

## Article 36

A basin State is not liable to pay compensation for damage caused to another basin State by floods originating in that basin State unless it has acted contrary to what could be reasonably expected under the circumstances, and unless the damage caused is substantial.

**CHAPTER VII*****PROTECTION OF WATER RESOURCES AND WATER  
INSTALLATIONS IN TIMES OF ARMED CONFLICT***

## Article 37

Water which is indispensable for the health and survival of the civilian population should not be poisoned or rendered otherwise unfit for human consumption.

## Article 38

Water supply installations that are indispensable for the minimum conditions of survival of the civilian population should not be cut off or destroyed.

## Article 39

The diversion of waters for military purposes should be prohibited when it would cause disproportionate suffering to the civilian population or substantial damage to the ecological balance of the area concerned. A diversion that is carried out in order to damage or destroy the minimum conditions of survival of the civilian population or the basic ecological balance of the area concerned or in order to terrorize the population should also be prohibited.

## Article 40

The destruction of water installations containing dangerous forces, such as dams and dikes, should be prohibited when it may involve grave dangers to the civilian population or substantial damage to the basic ecological balance.

## Article 41

The causing of floods as well as any other interference with the hydrologic balance by means not mentioned in Articles 37 to 40 above should be prohibited when it involves grave dangers to the civilian population or substantial damage to the ecological balance of the area concerned.

## Article 42

1. The prohibitions contained in Articles 37 to 41 above should be applied also in occupied enemy territories.
2. The occupying power should administer enemy property according to the indispensable requirements of the hydrologic balance.
3. In occupied territories, seizure, destruction, or intentional damage to water installations should be prohibited when their integral maintenance and effectiveness would be vital to the health and survival of the civilian population.

## Articles 43

The effect of the outbreak of war on the validity of treaties or of parts thereof concerning the use of water resources should not be termination but only suspension. This suspension should take place only when the purpose of the war or military necessity imperatively demand the suspension and when the minimum requirements of subsistence for the civil population are safeguarded.

## Article 44

1. It should be prohibited to deprive, by the provisions of a peace treaty or similar instrument, a people of its water resources to such an extent that a threat to the health or to the economic or physical conditions of survival is created.

2. When, as the result of the fixing of a new frontier, the hydraulic system in the territory of one State is dependent on works established within the territory of another State, arrangements should be made for the safeguarding of uninterrupted delivery of water supplies indispensable for the vital needs of the people.

**CHAPTER VIII**  
**ADMINISTRATION OF INTERNATIONAL WATER RESOURCES**

## Article 45

As used in this Chapter, “international water resources administration” means any form of institutional or other arrangement established by agreement among two or more basin States for the purpose of dealing with the conservation, development, and utilization of the waters of an international drainage basin.

## Article 46

Basin States shall use their best efforts to achieve integrated management of the waters of their international drainage basins.

## Article 47

1. When undertaking a joint management of the waters of an international drainage basin, States should settle all matters concerning this management by an agreement on the establishment of an international administration. When necessary, a joint agency or commission should be established and authorized to manage all relevant aspects of the management.

2. The establishment of an international water resources administration in accordance with paragraph 1 above is without prejudice to the existence or subsequent designation of any joint agency, conciliation commission, or tribunal formed or referred to by co-basin States in the case of a question or dispute relating to the present or future utilization of the waters of an international drainage basin.

## Article 48

1. In order to provide for an effective international water resources administration, the agreement establishing that administration should expressly state, among other things, its objective or purpose, nature and composition, form and duration, legal status, area of operation, functions and powers, and its financial implications.

2. The Guidelines set forth in Annex A to these Rules should be taken into account when an international water resources administration is to be established.

## Article 49

Unless otherwise agreed, each basin State party to an agreement establishing an international water resources administration shall bear a share of its costs proportionate to the benefits that it derives from that administration.

## Article 50

Member States of an international water resources administration should in appropriate cases invite other States, including non-basin States or international organizations which by treaty, other instrument, or binding custom enjoy a right or have an interest in the use of the waters of an international drainage basin, to participate in the activities of the administration.

**CHAPTER IX****REMEDIES**

## Article 51

1. States, individually or jointly, shall ensure the availability of prompt, adequate, and effective administrative and judicial remedies for persons in another State who suffer or may suffer substantial damage arising from the inequitable or unreasonable use of the waters of an international drainage basin in their territories.

2. For the purpose of giving effect to this obligation, States shall ensure cooperation between their competent courts and authorities, and shall take measures to ensure that any persons who suffer or may suffer damage resulting from the use in another State of the waters of an international drainage basin shall have access to such information as is necessary to enable them to exercise their rights under these articles in a prompt manner.

3. States should provide, by agreement or otherwise, for such matters as the jurisdiction of courts, the applicable law, and the enforcement of judgments.

## Article 52

1. Any person who suffers or may suffer damage resulting from the use in another State of the waters of an international drainage basin shall be entitled in that State to the same extent and on the same conditions as a person in that State:

- (a) to participate in any environmental impact assessment procedure;
- (b) to institute proceedings before an appropriate court or administrative authority of that other State in order to determine whether the damaging use or activity should be permitted;
- (c) to obtain preventive remedies;
- (d) to obtain compensation; and
- (e) to obtain information necessary for the above purposes.

2. Public bodies and non-governmental associations established in a State which are or may be affected by damage, including damage to the environment, caused by the use of waters of an international drainage basin in another State shall be entitled on condition of reciprocity to initiate proceedings or participate in procedures in that other State to the same extent and on the same conditions as public bodies and non-governmental associations established there.

**CHAPTER X*****PROCEDURES FOR THE PREVENTION AND SETTLEMENT  
OF DISPUTES***

## Article 53

This Chapter relates to procedures for the prevention and settlement of international disputes as to the legal rights or other interests of basin States and of other States in the waters of an international drainage basin.

## Article 54

Consistently with the Charter of the United Nations, States are under an obligation to settle international disputes as to their legal rights or other interests by peaceful means in such a manner that international peace and security, and justice are not endangered.

## Article 55

1. States are under a primary obligation to resort to means of prevention and settlement of disputes stipulated in the applicable treaties binding upon them.

2. States are limited to the means of prevention and settlement of disputes stipulated in treaties binding upon them only to the extent provided by the

applicable treaties.

#### Article 56

In using the waters of an international drainage basin, States individually or jointly as appropriate shall ensure prior assessment of the impact of programmes or projects that may have a significant transboundary effect on the environment or on the sustainable use of the waters.

#### Article 57

1. With a view to preventing disputes from arising between basin States as to their legal rights or other interests, each basin State shall furnish relevant and reasonably available information to the other basin States concerning the waters of the international drainage basin within its territory and its use of and activities with respect to these waters.

2. Expenses for the collection and exchange of information, including the preparation of surveys, investigations and studies, and for establishing a regular information service shall be borne jointly by the basin States co-operating in these matters.

#### Article 58

1. When a basin State, regardless of its location in an international drainage basin, proposes to undertake, or to permit the undertaking of, a project that may substantially affect the interests of any co-basin State, it shall give that State notice of the project. The notice shall include information, data and specifications adequate for assessment of the effects of the project.

2. After having received the notice required by paragraph 1, a basin State shall have a reasonable period of time, which shall be not less than six months, to evaluate the project and to communicate its reasoned objection to the proposing State. During that period the proposing State shall not proceed with the project.

3. If a basin State does not object to the project within the time permitted under paragraph 2, the proposing State may proceed with the project in accordance with the notice.

4. If a basin State objects to the project, the States concerned shall make every effort expeditiously to settle the matter consistent with the procedures set forth in this Chapter. The proposing State shall not proceed with the project while these efforts are continuing, provided that they are not unduly protracted. If these efforts are unduly protracted, or an objecting State has refused to have resort to third party procedures for settlement of the remaining differences, the proposing State may, on its own responsibility, proceed with the project in accordance with the notice.

5. If a State has failed to give the notice referred to in paragraph 1 of this

Article, the alteration by the State in the regime of the drainage basin shall not be given the weight normally accorded to temporal priority in use in the event of a determination of what is a reasonable and equitable share in the use of the waters of the basin.

6. The notice and other communications referred to in this Article shall be transmitted through appropriate official channels unless otherwise agreed.

#### Article 59

Basin States shall consult one another on actual or potential problems concerning the waters of the international drainage basin so as to reach by methods of their own choice a solution consistent with their rights and duties under international law. This consultation, however, shall not unreasonably delay the implementation of plans that are the subject of the consultation.

#### Article 60

In case of a dispute between States as to their legal rights or other interests, as defined in Article 53 above, they shall promptly enter into negotiations with a view to reaching a solution that is reasonable and equitable under the circumstances.

#### Article 61

1. If a question or dispute arises which relates to the present or future utilization of the waters of an international drainage basin, the basin States should refer the question or dispute to a joint agency and request the agency to survey the international drainage basin and to formulate plans or recommendations for the most efficient use thereof in the interests of all the States concerned.

2. The joint agency should be instructed to submit reports on all matters within its competence to the appropriate authorities of the States concerned.

3. The member States of the joint agency in appropriate cases should invite non-basin States that by treaty enjoy a right in the use of the waters of the basin, to associate themselves with the work of the joint agency, or permit them to appear before the agency.

#### Article 62

If a question or a dispute is one which is considered by the States concerned to be incapable of resolution in the manner set forth in Article 61, they should jointly seek the good offices or request the mediation of a third State, of a qualified international organization, or of a qualified person.

#### Article 63

1. If the States concerned have not been able to resolve their dispute through negotiation or have been unable to agree on the measures described in Articles 61 and 62, they should form a commission of inquiry or an *ad hoc* conciliation commission, which shall endeavor to find a solution, likely to be accepted by the States concerned, of any dispute as to their legal rights.

2. The conciliation commission should be constituted in the manner set forth in Annex B to these Rules.

#### Article 64

The States concerned should agree to submit their legal disputes to an *ad hoc* arbitral tribunal, to a permanent arbitral tribunal, or to the International Court of Justice if:

- (a) a commission has not been formed as provided in Article 63, or
- (b) a commission has not been able to recommend a solution, or
- (c) a solution recommended by a commission has not been accepted by the States concerned, or
- (d) an agreement has not been otherwise arrived at.

#### Article 65

In the event of arbitration, the States concerned should have recourse to the Model Rules on Arbitral Procedure prepared by the International Law Commission of the United Nations at its tenth session in 1958.

#### Article 66

Recourse to arbitration implies the undertaking by the States concerned to consider the award to be given as final and to submit in good faith to its execution.

#### Article 67

The means of settlement referred to in this Chapter are without prejudice to the utilization of means of settlement of disputes recommended to, or required of, members of regional arrangements or agencies and of other international organizations.

## ANNEX A

**GUIDELINES FOR THE ESTABLISHMENT OF AN  
INTERNATIONAL WATER RESOURCES ADMINISTRATION**

(In implementation of Article 48, paragraph 2, on International Water Resources Administration)

In establishing an international water resources administration, member States should consider, on the basis of the requirements of each particular case, the elements contained in the following guidelines:

1. Form and duration of an international water resources administration will depend on all relevant factors identified in these guidelines, including:

- (a) its duration, which may be *ad hoc* or permanent; and
- (b) its constitution, which may take the form of:
  - (a) separate national commissions or agencies;
  - (b) a joint commission or agency composed of national representatives, interest groups or representatives of users;
  - (c) a mixed commission or agency;
  - (d) a commission or agency vested with supernational decision-making powers.

2. Procedures for decision-making will include:

- (a) a quorum (for the validity of the meeting) which will depend on the importance of the decision to be taken;
- (b) the principle of either unanimity, simple or qualified majority, or another combined form of decision-making.

3. The legal status of an international water resources administration *vis-a-vis* both its member States and other States not parties to the administration as well as *vis-a-vis* international and other organizations should be defined. Such legal status will cover:

- (a) the managing body;
- (b) the staff;
- (c) assets, equipment and other properties;
- (d) the whole administration as such, including the power to sue and to be sued.

4. The territorial competence (*ratione loci*) of an international water resources administration should be defined. The choice will depend on a number of factors, such as: the extent of the drainage area with respect to each member State; the contribution of water by each basin State to the hydrology of the

basin; the economic and social requirements of the basin States; local interests; the other relevant factors to be considered in each particular case, having regard to Article 4 of the Campione Consolidation of the ILA Rules.

Territorial competence may include:

- (a) the whole drainage basin, including surface waters, underground waters, or both;
- (b) more than one drainage basin (multi-basin);
- (c) part of a drainage basin (sub-basin);
- (d) an area otherwise defined and clearly delimited;
- (e) all or part of boundary waters.

5. The functions and powers of an international water resources administration should be defined. These may vary from case to case, depending upon various factors including:

- (a) the kind of co-operation envisaged;
- (b) the desired degree of involvement in international administration;
- (c) the specific fields for which it is proposed to establish the administration.

Such functions and powers may include, without being limited to, one or more of the following:

- (a) Advisory, consultative, co-ordinating, or policy-making functions. In these cases, the agreement should specify the procedural rules for deciding on conflicting rights and interests, including notification, objections and timing.
- (b) Executive function, which may include carrying out of studies, exploration, investigation and surveys, preparation of feasibility reports, inspection and control of construction, operation, maintenance or financing.
- (c) Regulatory function, the implementation of the decisions of the administration, as well as law-making. Decisions in these matters may take effect directly or after acceptance by member States.
- (d) Judicial function, which may include arbitration or final dispute settlement.

6. As regards the objects and purposes (*ratione materiae*) of an international water resources administration, these may include one or more of the following:

- (a) collection and exchange of hydrological, technical and other data, which may be undertaken by member States separately or jointly, and their standardization;
- (b) plan formulation, which may include the exchange of plans prepared separately by member States or jointly formulated plans;
- (c) co-ordination of plans;
- (d) construction of waterworks, which may be undertaken by member States separately or jointly, or which may be entrusted to a non-member State or to some organization;

- (e) waterworks operation and maintenance, which may be entrusted to each member State concerned separately or to a joint administration;
- (f) control of one or more beneficial uses of water which may include:
  - (i) domestic and community uses;
  - (ii) agricultural uses, including the watering of animals and agro-allied industrial uses,
  - (iii) industrial uses including cooling;
  - (iv) hydropower generation and transmission;
  - (v) navigation;
  - (vi) timber floating;
  - (vii) fishing; and
  - (viii) other beneficial uses of common interest;
- (g) control of one or more harmful effects of water which may include:
  - (i) flood control measures, which may imply flow regulations and training;
  - (ii) embankment construction and maintenance;
  - (iii) drought warning, prevention, reduction, and control;
  - (iv) soil erosion control;
  - (v) land reclamation, including salinity control and drainage;
  - (vi) dredging, maintenance and improvement of the navigable section of an international watercourse;
  - (vii) siltation control;
  - (viii) other harmful effects of common interests;
- (h) water quality control, including such coastal sea areas of the member States which may be adversely affected, and which may include:
  - (i) prevention and abatement of water pollution resulting from one or more beneficial uses, and harmful effects, and the measures to be taken separately or jointly by member States;
  - (ii) health preservation, including human beings and genetic resources (animals and plants), and the measures to be taken separately or jointly by member States;
  - (iii) environmental protection with reference to the waters of the basin, including minimum standards and measures to be taken separately or jointly by member States.

7. In establishing an international resources administration, one or more of the following financial and economic matters should be considered:

- (a) internal financing of the administration, including cost sharing and sharing criteria;
- (b) development financing of projects and works, in particular including:
  - (i) cost sharing and criteria for sharing (based on *e.g.* at-site benefit analysis, system development);
  - (ii) procedures and criteria for compensation;
  - (iii) sharing of benefits including the assessment and collection of revenues and criteria for sharing;

(c) external financing, with particular reference to the powers of the administration necessary to enter into agreements for this purpose.

8. The agreement establishing an international water resources administration should contain provisions for the settlement of disputes arising out of its interpretation and implementation.

## ANNEX B

### MODEL RULES FOR THE CONSTITUTION OF THE CONCILIATION COMMISSION FOR THE SETTLEMENT OF A DISPUTE

(In implementation of Article 63, paragraph 2)

#### Article 1

The members of the Commission, including the President, shall be appointed by the States concerned.

#### Article 2

If the States concerned cannot agree on these, each State shall appoint two members. The members thus appointed shall choose one more member who shall be the President of the Commission. If the appointed members do not agree, the member-president shall be appointed, at the request of any State concerned, by the President of the International Court of Justice or, if he does not make the appointment, by the Secretary-General of the United Nations.

#### Article 3

The membership of the Commission should include persons who, by reason of their special competence, are qualified to deal with disputes concerning international drainage basins.

#### Article 4

If a member of the Commission abstains from performing his office or is unable to discharge his responsibilities, he shall be replaced by the procedure set out in Article 1 or 2 of this Annex, according to the manner in which he was originally appointed. If, in the case of –

1. a member originally appointed under Article 1, the States fail to agree as to replacement; or
2. a member originally appointed under Article 2, the State involved fails to replace the member,

a replacement shall be chosen, at the request of any State concerned, by the President of the International Court of Justice or, if he does not choose the replacement, by the Secretary-General of the United Nations.

#### Article 5

In the absence of agreement to the contrary between the parties, the Conciliation Commission shall determine the place of its meetings and shall lay down its own procedure.

### **A CONCORDANCE TO THE CAMPIONE CONSOLIDATION OF THE ILA RULES ON INTERNATIONAL WATER RESOURCES (1966-1999)**

The text of the documents adopted by the International Law Association between 1966 and 1986, from which the Campione Consolidation of the ILA Rules on International Water Resources, 1966-1999, are derived, are conveniently collected in the book published by the Finnish Branch of International Law Association, entitled *THE WORK OF THE INTERNATIONAL LAW ASSOCIATION ON THE LAW OF INTERNATIONAL WATER RESOURCES* (eds. E. J. Manner and Veli-Martti Metsälampi, Helsinki 1988). These documents and those adopted by the ILA since 1986, and the abbreviations used in the Concordance are listed below.

#### **Abbreviations of Documents**

ADM	1976	Administration of International Water Resources, Madrid, 1976
CR	1986	Complementary Rules Applicable to International Water Resources, Seoul, 1986
FC	1972	Flood Control, New York, 1972
GR	1986	Law of International Groundwater Resources, Seoul, 1986
HR	1966	Helsinki Rules, Helsinki, 1966
MINW	1974/75	Maintenance and Improvement of Naturally Navigable Waterways Separating or Transversing Several States, New Delhi, 1974/75
MP	1972	Marine Pollution of Continental Origin, New York, 1972
PAC	1976	Protection of Water Resources and Water Instalations in Times of Armed Conflict, Madrid, 1976
R	1996	Articles on Private Law Remedies for Transboundary Damage in International Waterways, Helsinki, 1996
RE	1980	Relationship of International Water Resources with Other Natural Resources and Environmental Elements, Belgrade, 1980

RF	1980	Regulation of the Flow of Water of International Watercourses, Belgrade, 1980
SRP	1996	Supplemental Rules on Pollution, Helsinki, 1996
WP	1982	Water Pollution in an International Drainage Basin, Montreal, 1982

## Articles Sources

- 1 HR 1966, Art. 1
- 2 (1) HR 1966, Art. 2
- (2) GR 1986, Art. 1; fn to Art. 1; HR 1966, Art. 3
- 3 HR 1966, Art. 4
- 4 (1) HR 1966, Art. 5(1)
- (2) HR 1966, Art. 5(2) with the additions:  
Art. 5(2)(c) from GR 1986, Art. 2(3); and  
Art. 5(2)(m) from SRP 1996, Art. 3
- (3) HR 1966, Art. 5(3)
- 5 HR 1966, Art. 6
- 6 HR 1966, Art. 7
- 7 HR 1966, Art. 8
- 8 CR 1986, Art. 1
- 9 MP 1972, Art. 5; WP 1982, Art. 9
- 10 Resolution of the ILA Water Resources Committee adopted at Rotterdam meeting, March 1998
- 11 FC 1972, Art. 2; RF 1980, Art. 2; WP 1982, Art. 4; GR 1986, Art. 3(3)
- 12 This article is new, replacing such words as “consistent with the principle of equitable utilization” found in many of the Rules on international water resources adopted by the ILA, for example, in HR 1966, Art. 10; RF 1980, Art. 2; RE 1980, Art. 1; WP 1982, Art. 1; CR 1986, Art. 1; SRP 1996, Art. 1.
- 13 MP 1972, Art. 1; R 1996, Art. 1; HR 1966, Art. 9
- 14 A consolidation of the substantive provisions of HR 1966, Arts. 10 and 11; MP 1972; RE 1980; WP 1982; GR 1986; SRP 1996.
- 15 WP 1982, Art. 2
- 16 MP 1972, Art. 3(a)
- 17 (1) WP 1982, Art. 7; GR 1986, Art. 4
- (2) GR 1986, Art. 3(2)
- 18-26 HR 1966, Arts. 12-20
- 27-30 HR 1966, Arts. 21-24
- 31-36 FC 1972, Arts. 1-5, and 7
- 37-44 PAC 1976, Arts. 1-8
- 45 ADM 1976, Art. 1
- 46 SRP 1996, Art. 4
- 47 (1) RF 1980, Art. 3

- (2) ADM 1976, Art. 2(2)
- 48 ADM 1976, Art. 4 and Guidelines in Annex A thereto
- 49 RF 1980, Arts. 4 and 5; FC 1972, Art. 6
- 50 ADM 1976, Art. 3
- 51 (1),(2) R 1996, Arts. 2(1) and (2)
- (3) WP 1982, Art. 8
- 52 R 1996, Art. 3
- 53 HR 1966, Art. 26
- 54 HR 1966, Art. 27(1)
- 55 HR 1966, Art. 28
- 56 SRP 1996, Art. 3
- 57 (1) HR 1966, Art. 29(1); WP 1982, Art. 5(a)
- (2) FC 1972, Art. 6(1); RF 1980, Arts. 4 and 5(2)
- 58 (1) HR 1966, Art. 29(2); MINW 1974/75, Art. 1 (HR 1966,  
Art. 18<sup>bis</sup>, (1)); RF 1980, Art. 7; WP 1982, Art. 5(b); CR 1986, Art. 3(1)
- (2)(3)(4) CR 1986, Arts. 3(2), (3) and (4)
- (5) HR 1966, Art. 29(4)
- (6) CR 1986, Art. 3(5)
- 59 MINW 1974/75, Art. 2 (HR 1966, Art. 18<sup>bis</sup>, (2)); RF 1980, Art. 7; WP  
1982, Art. 6; GR 1986, Art. 3(2)
- 60 ADM 1976, Art. 2; MINW 1974/75, Arts. 2 and 3 (HR 1966, Art. 18<sup>bis</sup>,  
(2) and (3)); HR 1966, Art. 30; RF 1980, Art. 7; MP 1972, Art. 4; WP  
1982, Art.10
- 61 HR 1966, Art. 31
- 62 HR 1966, Art. 32
- 63 HR 1966, Art. 33
- 64 HR 1966, Art. 34
- 65 HR 1966, Art. 35
- 66 HR 1966, Art. 36
- 67 HR 1966, Art. 37
- Annex A ADM 1976, Art. 4 (2), Guidelines
- Annex B HR 1966, Art. 23, Annex

## PART FOUR

### Revision of the Helsinki and other ILA Rules on International Water Resources

One of the areas for which the International Law Association is best known is the articulation of cogent and compelling statements of the customary international law relating to fresh water resources. Working over a span of nearly 50 years, the Association has produced a series of rules addressing various topics relating to the overall field of international water law.

The Campione Consolidation did not consider whether the rules approved by

the International Law Association over the past 34 years need to be revised to correspond to the present state of the law. The question of whether and how to proceed with possible revision of the work of the Association regarding the waters of international drainage basins was discussed extensively in meetings of the Committee at Rome, Italy (June 1997), Rotterdam, The Netherlands (March 1998), Campione d'Italia (June 1999), and Dundee, Scotland (February 2000). At each of these meetings, the Rapporteur presented draft reports that developed possible revisions of parts of the ILA Rules. In the meeting at Dundee, the question of whether and how to proceed was resolved when the Committee adopted by consensus the following motion:

**The future work of the Committee will be the consideration of possible new rules on water resources, working on the basis of the Rapporteur's draft of January 2000.**

The scope of the project is probably not adequately reflected in the title of Rapporteur's draft mentioned in the motion: "The Revised Helsinki Rules on the Equitable and Sustainable Uses of the Waters of International Drainage Basins." As the motion indicates, the Committee will be considering "new rules." The new rules being considered to some extent revise and update the international rules on water resources already approved by the International Law Association, and to some extent address new matters not previously addressed by the Association.

The Rapporteur's drafts thus far have focused on the scope of the project, the general principles applicable to the project, the equitable utilization of internationally shared waters, and protection of the environment. Several members of the Committee submitted preparatory work on other parts of the "new rules." Dr. Harald Hohman of Germany introduced draft articles on flood control and Ambassador Robbie Sabel of Israel introduced draft articles on the rules applicable during armed conflict. Dr. Patricia Wouters introduced a preliminary report on the prevention and settlement of disputes.

The Committee has made considerable progress in its work. The goal is to review comprehensively and to revise to the extent necessary to assure that the ILA's Rules correctly state the law and to indicate emerging developments. Given another four years, and building upon the rules already approved by the International Law Association and consolidated at Campione, this goal seems achievable.

## PART FIVE

In the light of the above, the Committee recommends the adoption of the following resolution:

"The Sixty-Ninth Conference of the International Law Association, held in London, England, 24-29 July 2000,

Having considered the Report of the Committee on Water Resources,

1. Adopts the Article on Adequate Streams Flows;
2. Takes note of The Campione Consolidation of the ILA Rules on International Water Resources, 1966-1999; and
3. Requests the Committee on Water Resources to continue to consider possible new rules on water resources, working on the basis of the Rapporteur's 4<sup>th</sup> Report of January 2000.