

INTERNATIONAL LAW ASSOCIATION

NEW DELHI CONFERENCE (2002)

WATER RESOURCES COMMITTEE

Members of the Committee

Dr Gerhard Loibl (Austria): *Chair*
Professor Joseph W Dellapenna (USA): *Rapporteur*
Professor Malgosia Fitzmaurice (UK): *Secretary*

Dr Slavko J Bogdanovic (HQ/Federal Republic of Yugoslavia)
Professor Charles B Bourne (Canada)
Dr Janos Bruhacs (Hungary)
Dr Dante Caponera (Italy)
Alternate: Dr Stefano Burchi
Dr Rodolfo Cruz-Miramontes (Mexico)*
Dr L Del Castillo de Laborde (Argentina)
Mr Anil B Divan (India)
Alternate: Dipankar Prasad Gupta
H E Ambassador Aziza Fahmi (HQ/Egypt)
Professor Robert D Hayton (USA)
Dr Harald Hohmann (Germany)

HE Ambassador A K H Morshed (Bangladesh)
Professor Andre Nollkaemper (Netherlands)
Alternate: Mr K W Cuperus
Professor Kazimierz Rowny (Poland)
Alternate: Professor Jerzy Menkes
HE Ambassador Robbie Sabel (Israel)
Alternate: Ambassador Alan Baker
Professor Surya P Subedi (UK)
Mr Surya Nath Upadhyaya (Nepal)*
Professor Christoph Vedder (Germany)
Dr Patricia Wouters (Canada)

Consultants

Professor Alan Boyle (UK)
Professor Paolo Canelas de Castro (Portugal)
Professor Stephen McCaffrey (USA)
Ms. Marcella Nanni (Italy)
Professor Attila Tanzi (Italy)

* These persons attended no meetings of the Committee and did not contribute otherwise to its deliberations.

THIRD REPORT

PART ONE

The Water Resources Committee 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—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 the Water Resources Committee 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 the Water Resources Committee 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 the Water Resources Committee and Professor Joseph Dellapenna was appointed rapporteur. Dr. Patricia Wouters succeeded the late Professor Albert Utton as secretary. The Water Resources Committee did not present a report at the Taipei Meeting, but continued to meet actively. In its Second Report, prepared for the London Conference in 2000, the Water Resources Committee presented the *Campione Consolidated Rules* and an article on Adequate Stream Flows, and a progress report on its project to revise and update the *Helsinki Rules* and the other rules supplementing the *Helsinki Rules*. The *Campione Consolidation* did not represent new work, but rather a compilation and consolidation of the prior work of the Water Resources Committee as approved by the Association over a period of 34 years.

At the London Meeting, Professor Charles Bourne stepped down from the Chair of the Committee and was succeeded by Professor Gerhard Loibl. The Association adopted a resolution thanking Professor Bourne for his long years of service to the Committee and the Association. Additionally, the Association, at the recommendation of the Working Session of the Water Resources Committee, took no action on the Article on Adequate Stream Flows after some participants at the Working Session in London spoke against adopting a new rule when a project for the overall review and revision of the Association's work on international water law was already underway. The Committee, which had discussed the draft article on Adequate Stream Flows at some length in several of its meetings and had approved it, does not interpret this action as in any sense expressing disapproval of the substance of the draft article, but merely a question of the appropriateness of the Association considering the draft article in isolation while the revision project is already underway. The Association also took note of the *Campione Consolidation* (which by its nature did not require further action by the Association given that all of its contents had already been approved by the Association). Finally, the Association requested the Water Resources Committee to continue to consider possible new rules on water resources, working on the basis of the Rapporteur's 4th Report to the Committee of January 2000. Dr. Wouters had stepped down as Secretary in February 2000, and was replaced after the London meeting by Professor Malgosia Fitzmaurice.

PART TWO

Revision of the Helsinki and other International Law Association 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 should 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 International Law Association Rules. These discussions cumulated in the London Meeting where the Association requested the Water Resources Committee to proceed to complete the review and revision process either by 2002 or by 2004.

The Water Resources Committee met twice between the London and New Delhi Conferences. It met in Washington, DC, in April 2001, and in London in January 2002. The Rapporteur presented draft reports for consideration by the Water Resources Committee at each meeting. Some of the rules already approved by the Association are being carried forward with very little revision. 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 Committee has made considerable progress in its work. The goal is to review comprehensively and revise to the extent needed the Association's work to assure that it correctly states the current law and to indicate emerging developments. The goal of completing the project by 2004 appears achievable.

PART THREE

The Present Status of the ILA Revised Rules on Equitable and Sustainable Use in the Management of Waters

The Committee met to work on the ongoing revision project in April 2001 in Washington, DC, and in January 2002 in London. At the London meeting of the Committee, a new working title of the revised rules was approved: "The Revised ILA Rules on Equitable and Sustainable Uses in the Management of Waters." The Water Resources Committee does not consider this a final title for the project and will propose an appropriate name for the revised rules near the completion of the project.

The Committee has now considered six drafts prepared by the rapporteur, and has made considerable progress in integrating the modern customary international law, particularly the international law relating to environmental law and to sustainable use, into the earlier draft rules. Entirely new chapters have been added to delineate the overall general principles applicable to the management of water and regarding public participation. The chapter on environmental protection has been heavily reworked, and a number of scattered articles dealing with floods, droughts, and serious accidents have been collected and coordinated in a chapter on extreme situations. A first effort has been made to redraft the chapter on the effects of war to make that chapter consistent with the most recent developments in the international law of armed conflict. The revision of the chapter on administration also is in a relatively early stage. Changes to the chapters on equitable utilization and on legal remedies have been modest, mostly being changes designed to make the chapter stylistically consistent with the rest of the revised rules. The work on the chapter on dispute resolution has barely begun, although the Committee intends to develop this topic at some length.

The Committee has not appended a copy of the rapporteur's sixth draft to this report for his work has not yet reached the stage where it is ready for formal reporting to the Association for action. Instead, the rapporteur has agreed to prepare a tentative seventh draft before the New Delhi Conference for discussion at the Committee's Working Session in New Delhi. That tentative draft will be made available on the Association's webpage (www.ila-hq.org) under the Water Resources Committee. Additional copies will be distributed with registration materials in New Delhi. Based on the discussions in New Delhi, the rapporteur will prepare a final version of the seventh draft to be considered by the Committee at its next meeting.