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A/CN.4/451

First report on the law of the non-navigational uses of international watercourses, by Mr. Robert Rosenstock, Special Rapporteur

Topic:

Law of the non-navigational uses of international watercourses

Extract from the Yearbook of the International Law Commission:-

1993, vol. II(1)

DOCUMENT A/CN.4/451

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[*Original: English*]
[*20 April 1993*]

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Multilateral instruments cited in the present report

	Source
Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 25 February 1991)	ECE, *Environmental Conventions*, United Nations publication, 1992, p. 95.
Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 17 March 1992)	Ibid., p. 161.

Introduction

1. The Special Rapporteur does not doubt that by preparing an instrument along the lines of the draft articles provisionally adopted after first reading,[1] the Commission will be making a significant contribution towards ameliorating some of the water-related problems humankind will confront in the next few decades as a result of increased use and needs generated by the drive for development and the expanding population.

2. An incalculable debt is owed to the former Special Rapporteur, Mr. McCaffrey, to his predecessors, to Mr. Hayton, and to the members of the Commission who worked so hard to complete the first reading in a timely fashion. A standard has been set which is more aspirational than achievable.

3. The Special Rapporteur believes that what is necessary at this stage is, in large measure, fine tuning. In sum, there appears to be no basis to disagree with the written comments of one Government that the draft is a remarkable achievement. This is not to deny that not all States were equally affirmative or that there was a tendency of some States to pull or push the draft one way or another depending, *inter alia*, on their respective geographic situations vis-à-vis key watercourses. Questions have, moreover, been raised as to the final form the Commission's product should take, and several States have urged that the Commission should reconsider the question of including provisions for the settlement of disputes.[2]

4. There have, of course, been developments in the world since the Commission completed its first reading. In this connection, particular reference is made to the outcome of the United Nations Conference on Environment and Development,[3] the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, and the Convention on Environmental Impact Assessment in a Transboundary Context. It is opined, however, that nothing in these instruments requires fundamental change in the text of the draft as it stands after completion of the first reading. The main impact of these instruments is to underline the importance of the Commission expediting its work and avoiding taking a narrow view of what is comprehended by the topic.

5. This initial report of the Special Rapporteur will be confined to parts I and II of the draft, except to the extent that issues or comments of Governments with regard to other parts affect or potentially affect those two parts.

[1] For the texts of draft articles 1 to 32 provisionally adopted on first reading, see *Yearbook . . . 1991*, vol. II (Part Two), pp. 66-70. For the reader's convenience, the articles to which the comments in this report refer are reproduced in footnotes 6, 7, 9, 17 and 21 to 23 below.

[2] The comments and observations received from Governments are reproduced in the present volume (document A/CN.4/447 and Add.1-3), p. 147.

[3] See Agenda 21 (*Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (A/CONF.151/26/Rev.1 (Vol. I, Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II, which states: "The widespread scarcity, gradual destruction and aggravated pollution of freshwater resources . . . demand integrated water resources planning and management" (para. 18.3). To respond to this situation, Agenda 21 stresses the importance of "holistic management of freshwater" (para. 18.6), based on a balanced consideration of the needs of people and the environment. By inclusion of the notion of a "holistic" approach this report is not departing from a fundamentally anthropocentric approach, but rather seeking to recognize that in the long run that which harms flora and fauna impoverishes humankind. Agenda 21 does not attempt to grapple in any detail with the international or transboundary implications of these concerns but rather leaves it to the Commission to come up with the framework for the necessary global response to the problems identified.

CHAPTER I

Issues of a general character

A. Draft convention or model rules

6. It is not always necessary for the Commission to defer to the end the question of the form its work should take. Indeed, in the present case, as well as others in related fields, it may expedite the work to resolve this issue at the earliest practicable stage, as several Governments have suggested in their comments.[4] At a minimum, a brief preliminary exchange on this point would seem appropriate before any further drafting is undertaken. Conversely, if there is a determined insistence to defer the question of form to a later stage, then there is no wish to delay substantive work by insisting on resolving the issue of form at this stage.

7. There is much to be said for both approaches, that is to say, a framework convention and model rules. The utility of the former approach is in large measure a function of the width and extent of its ratification; the utility of the latter is largely a function of the strength and depth of the endorsement of the rules that the Commission is prepared to recommend and the General Assembly is likely to endorse. There would, in short, seem to be little point in advocating the framework convention approach in the absence of some expectation of widespread acceptance and, even more so, no defensible point in advocating any other approach at this stage unless such advocacy is combined with a willingness to support a recommendation for very strong endorsement of the Commission's final product by the General Assembly. It can also be argued that a model law would facilitate including more specific guidance. To the extent that this is so, it is at least in part offset by the vaguer nature of any obligation flowing from the

[4] See the comments by Canada and the United Kingdom (footnote 2 above).

instrument. If the model law approach were to be adopted, it would be useful to expand the commentaries, to the extent possible, in order for States to conclude more readily when they are dealing with statements *de lege lata* and when not. The difficulty of this last suggestion is recognized, however.

B. Dispute settlement

8. Particular attention is drawn to the fact that a number of Governments have urged the Commission to review the question of including dispute settlement provisions.[5] This report fully endorses Mr. McCaffrey's view that, in the light of the nature of the issues, the Commission would be making an important contribution by recommending a tailored set of provisions on fact-finding and dispute settlement in the event that it decides to recommend a draft treaty and, arguably, also if it opts for model rules.

9. The comments on specific articles set out in chapters II and III below are to be understood as being without prejudice to the question of form.

[5] See the comments by Costa Rica, Greece and Switzerland (ibid).

CHAPTER II

Issues relevant to part I (Introduction) of the draft articles

Comments on specific articles

ARTICLE 1 (SCOPE OF THE PRESENT ARTICLES)[6]

10. There does not appear to be anything in the text, in the commentary or in the comments of Governments to require changes to this article or even to the commentary, though in the latter connection it might be worth noting explicitly in the commentary that the enjoyment of the riches of an ecosystem is as much a use thereof as any other. Some Governments, in their comments, would reopen the question of the term "watercourses". In view of the compromise reached, no useful purpose would seem to be served at this late stage in going back over the pros and cons of using the term "drainage basin". The suggestion for the use of the term "transboundary waters" in the light of its use in the Convention on the Protection and Use of Transboundary Watercourses and International Lakes seems to be a matter of drafting since there is no substantive difference between the terms used in article 1 and the term "transboundary waters" as used in that Convention.

ARTICLE 2 (USE OF TERMS)[7]

11. In the interest of building on what has been achieved, the temptation has been resisted, with one exception, to tinker with article 2. It is recommended that the phrase "flowing into a common terminus" in subparagraph (*b*) should be deleted. The notion of "common terminus" does not seem to add anything beyond possible confusion to what is covered by the rest of the subparagraph and, if retained, the phrase risks creating artificial barriers to the scope of the exercise. Were these comments to yield to the temptation to tinker, it would be in the direction of including "unrelated" confined groundwater.[8] In the event that preliminary exchanges in the Commission indicate a receptivity to such a change, a draft could readily be prepared accordingly. It does not seem that such a change would require much, if any, change to any other articles. On balance, the article as it stands seems to provide a viable compromise between two conceptual approaches which at the theoretical level clash, but which in practice must and can be harmonized. Subject to one, or possibly two, of the questions discussed above, it is recommended that the Commission should treat article 2 as a valid working hypothesis for the second reading and revert to it only to the extent that work on subsequent articles uncovers an unexpected need to re-examine article 2. The definition of the term "pollution" currently contained in article 21 could usefully be transferred to article 2. Such a shift is helpful to what is being proposed for article 7, but is not essential, and to accept it in no way implies agreement to, or enhances the utility of any change in, parts II or III of the current draft.

[6] Article 1 reads as follows:

"*Article 1. Scope of the present articles*

"1. The present articles apply to uses of international watercourses and of their waters for purposes other than navigation and to measures of conservation related to the uses of those watercourses and their waters.

"2. The use of international watercourses for navigation is not within the scope of the present articles except in so far as other uses affect navigation or are affected by navigation."

[7] Article 2 reads as follows:

"*Article 2. Use of terms*

"For the purposes of the present articles:

"(*a*) 'International watercourse' means a watercourse, parts of which are situated in different States;

"(*b*) 'Watercourse' means a system of surface and underground waters constituting by virtue of their physical relationship a unitary whole and flowing into a common terminus;

"(*c*) 'Watercourse State' means a State in whose territory part of an international watercourse is situated."

[8] For an excellent discussion of the limitations of the approach taken, see R. D. Hayton, "Observations on the International Law Commission's draft rules on the non-navigational uses of international water courses: Articles 1-4", *Colorado Journal of International Environmental Law and Policy*, vol. 2 (1992), pp. 37-38. The comments by Governments submitted on behalf of the Nordic countries, Spain and the United Kingdom (see footnote 2 above) urge a similar approach.

ARTICLE 3 (WATERCOURSE AGREEMENTS)[9]

12. One change would appear to be advisable in article 3, namely the replacement of the word "appreciable" by the word "significant". The comments of Governments articulate their reasons for suggesting this change in a number of ways, including the practice to date in roughly comparable instruments.[10] The two arguments which are found to be particularly convincing are: (*a*) the word "appreciable" has two quite different meanings, that is to say (i) capable of being measured, and (ii) significant; (*b*) since the commentary makes clear that "appreciable" is to be understood as "significant",[11] it would be preferable for the article so to state rather than to have to read the commentary to understand the meaning of the term. This change to article 3 should be understood as implying the same change throughout the draft.[12] The complexity and risk of confusion of using one term in articles 3 and 4, for example, and another in article 7, far outweigh any benefit that might derive from any such attempt at hyper-fine-tuning.

13. The following possible texts are proposed for article 3, paragraph 2:

ALTERNATIVE A

"2. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or with respect to any part thereof or a particular project, programme or use, provided that the agreement does not adversely affect, to a *significant* extent, the use by one or more other watercourse States of the [waters of the][13] watercourse."

ALTERNATIVE B

"2. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or with respect to any part thereof or a particular project, programme or use, provided that the agreement does not *cause significant harm* to the use by one or more other watercourse States of the [waters of the][13] watercourse."

14. The perceived advantage of alternative B is the deletion of the word "extent". The function of this deletion is to make totally clear on the face of the text that the harm can be localized and still be significant. If this draft is accepted, it would be advisable, for the same reason, to make a drafting change in the current article 4, paragraph 2,[14] by replacing the phrase "may be affected to an appreciable extent" by the phrase "may incur significant harm". There do not appear to be any other changes required by alternative B that are not required by alternative A.[15]

15. The suggestion of some Governments in their comments that this article should also contain the notion that becoming party to the convention will not affect existing watercourse agreements may not be without problems and does not seem necessary. The Commission is not in a position to know with any certainty what bilateral or even multilateral agreements there are or whether some may be inconsistent with the fundamental premises of the draft. While there is nothing in the current text which would or should rule out any subsequent agreements, whether consistent with the current text or not, it seems excessive to presume the continued validity of *lex posterior* inconsistent with the current draft, without some indication of intent to that end by the State or States concerned. It hardly conduces to the stability of the regime if some assume that *lex posterior* is superseded and others that, contrary to the normal rules regarding successive treaties, it is not. States which decide to become parties to the current draft may be expected to be fully conversant with existing conventions or arrangements to which they are parties. States so situated are in a position to avoid any unintended application of this convention in a variety of ways, including by means of a clear statement of intent or understanding with regard to some or all existing agreements to which they are parties at the time they sign or become parties to the current treaty. A general statement to this effect at the time of signing or ratifying would suffice. This would avoid uncertainty.

16. Attention is also directed to paragraph 3 as currently drafted. It might in theory be possible to add to "characteristics and uses" the notion of agreements, so that the paragraph would read:

"3. Where a watercourse State considers that adjustment or application of the provisions of the

[9] Article 3 reads as follows:

"*Article 3. Watercourse agreements*

"1. Watercourse States may enter into one or more agreements, hereinafter referred to as 'watercourse agreements', which apply and adjust the provisions of the present articles to the characteristics and uses of a particular international watercourse or part thereof.

"2. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or with respect to any part thereof or a particular project, programme or use, provided that the agreement does not adversely affect, to an appreciable extent, the use by one or more other watercourse States of the waters of the watercourse.

"3. Where a watercourse State considers that adjustment or application of the provisions of the present articles is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements."

[10] Comments urging this change were made, *inter alia*, by Canada, Germany, Switzerland, the United Kingdom, and the United States of America (see footnote 2 above).

[11] Article 3 was previously adopted as article 4. For the commentary, see *Yearbook . . . 1987*, vol. II (Part 2), pp. 26-30, especially p. 29, paragraphs (15) and (16).

[12] That is to say, in articles 7 and 12, article 18, paragraph 1, article 21, paragraph 2, article 22 and article 28, paragraph 2.

[13] Since "watercourse" is defined as a "system of . . . waters" it seems unnecessary to repeat the reference to "waters". The Drafting Committee should consider this simplification throughout the draft.

[14] See footnote 17 below.

[15] That is to say, in articles 7 and 12, article 18, paragraph 1, article 21, paragraph 2, article 22 and article 28, paragraph 2.

present articles is required because of the characteristics, uses of, or *existing agreements concerning* a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements or reaching an understanding."

Such a change would avoid the "blank-cheque" concern expressed above. In the light of the framework nature of the current text, which foresees that specific situations are likely to be the subject of particular arrangements, there may be some merit in including wording to this effect. It may, however, be an unnecessary complication of the draft in the light of the means by which States can protect themselves in particular cases. The suggested redraft is, moreover, a diversion of the main purpose of paragraph 3, which is to provide for developments which take place after States become parties to the current draft rather than to take account of pre-existing circumstances. Nevertheless, a redraft of paragraph 3, along the lines indicated could be made without adverse effect and no additional drafting changes to other articles appear necessary. It could be left to the Drafting Committee to decide on the utility of such a change.

17. There are also various suggestions made in the comments of States to reorder the articles. The suggestions reflect the view that the draft is first and foremost a framework for cooperation, with agreements watercourse States may enter into being but one possible means to this end. Placing articles 8 and 26 ahead of article 3 would have no effect on the substance of the draft but would make the flow of the articles more logical. The removal of articles 8 and 26 from parts II and III respectively does not appear to create any problems. It is consequently recommended that the Drafting Committee should seriously consider reordering the articles.[16]

[16] At the time article 26 is considered in substance, it will be necessary to examine the extent to which the terms "equitable and reasonable", "rational and optimal" and "sustainable development" are sufficiently clearly synonymous to avoid creating uncertainty or confusion. There are other suggestions concerning the content of article 26 in the comments of Germany, Switzerland, Turkey, the United Kingdom and the United States of America (see footnote 2 above).

ARTICLE 4 (PARTIES TO WATERCOURSE AGREEMENTS)[17]

18. Article 4 as drafted is appropriate and no change is recommended other than drafting adjustments consequential to changes to article 3 ("significant" *vice* "appreciable"). Paragraph 1 of article 4 covers the situation in which an agreement relating to the entire watercourse is involved, and paragraph 2 covers a case in which only a portion of the watercourse is affected.

19. While the term "applies to" in paragraph 1 is doubtless not the only way to make the distinction, it should be clear that "applies to" relates to the scope of the agreement and is not synonymous with and does not serve the same function as "affects appreciably". Rather, what the text says is that, if there is such an agreement being negotiated, all watercourse States are entitled to participate without any requirement of establishing that they will be appreciably affected. It is, in effect, a presumption, and one which is considered entirely appropriate and in keeping with the thrust of the overall draft.

20. It would seem inappropriate not to include all watercourse States in the former case and equally inappropriate in the case covered by paragraph 2 to insist on the inclusion of watercourse States not affected by the agreement. The deletion of paragraph 2, as suggested in the comments of Governments, would have the effect of creating the latter inappropriate situation, which would indeed be likely to burden lower riparian States unduly. It would not be too difficult a drafting endeavour to merge the two paragraphs with phrases such as "in whole or in part" and "to the extent it is affected thereby". No discernible benefit is apparent from such a redrafting, and the resulting paragraph would be heavy and more difficult to comprehend than the current text.

[17] Article 4 reads as follows:

"*Article 4. Parties to watercourse agreements*

"1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire international watercourse, as well as to participate in any relevant consultations.

"2. A watercourse State whose use of an international watercourse may be affected to an appreciable extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on, and in the negotiation of, such an agreement, to the extent that its use is thereby affected, and to become a party thereto."

CHAPTER III

Issues relevant to part II (General principles) of the draft articles

A. General comments

21. As has been indicated by various comments and commentators, articles 5 and 7 provide a key element of the entire draft. Some suggestions would eliminate article 7 or tip the balance more clearly in favour of article 5 and make "equitable and reasonable" virtually the sole criteria for use, that is to say, to subordinate article 7 to article 5. Others would regard appreciable or significant harm in all cases as evidence of inherently inequitable and/or unreasonable use and implicitly or explicitly subordinate article 5 to article 7. The current text of the articles themselves is not without ambiguity on this crucial issue and on the nature of the responsibility of the States from which the harm flows.

22. While these issues, in particular the nature of the responsibility of the State causing the effect, are clarified to some extent by the commentary,[18] it is submitted that a better job could be done to clarify these issues in an acceptable manner in the text of the articles themselves. To this end, a revision of article 7 is proposed. The intended result of the revision is a regime in which equitable and reasonable use is the determining criterion, except in cases of pollution as defined in the draft articles. In those cases, article 5 is subordinated to article 7, subject to the subordination being defensible by a clear showing of extraordinary circumstances, that is to say, in effect a rebuttable presumption.

23. It is clear that such a revision in article 7 in no way diminishes the desirability of making articles 5 and 6 as clear as possible. No way has been found, however, of adding detailed guidance to article 5 that would make sense in a framework agreement. In some cases territorial apportionment was agreeable to the watercourse States,[19] in others periodic rotation,[20] or sharing the benefits of a hydroelectric facility, apportionment or allotment of uses, compensation arrangements, and so forth. Each of these applications of reason and equity is specific to the facts of the particular situation and thus it does not seem appropriate to recommend them for inclusion in a framework treaty as being of general utility. It is possible, and indeed likely, that a commentary of some greater length could provide a description of the possibilities States could consider in reaching equitable and reasonable results. This is clearly a major area in which the problems could be alleviated by provision for third-party involvement should the States concerned be unable to reach a mutually acceptable solution.

[18] For the commentaries to articles 5 and 7 (initially adopted as articles 6 and 8), see *Yearbook... 1987*, vol. II (Part Two), pp. 31-36 and *Yearbook... 1988*, vol. II (Part Two), pp. 35-41, respectively.

[19] Indus Waters Treaty 1960 of 19 September 1960 between India and Pakistan, United Nations, *Treaty Series*, vol. 419, p. 125.

[20] Final Act of the delimitation of the international frontier of the Pyrenees between France and Spain (Bayonne, 11 July 1868), United Nations, Legislative Series, *Legislative Texts and Treaty Provisions concerning the Utilization of International Rivers for Other Purposes than Navigation* (Sales No. 63.V.4), p. 674, Treaty No. 186. For summary in English, see *Yearbook... 1974*, vol. II (Part Two), p. 182, document A/5409, paras. 979-984, particularly paras. 982 (*a*), 983 (*a*) and 984 (*a*).

B. Comments on specific articles

ARTICLE 5 (EQUITABLE AND REASONABLE UTILIZATION AND PARTICIPATION)

24. No change is recommended in article 5.

ARTICLE 6 (FACTORS RELEVANT TO EQUITABLE AND REASONABLE UTILIZATION)[21]

25. None of the changes to article 6 that have been suggested by the comments of Governments seem to be compelling in the light, *inter alia*, of the contents of the existing articles, including in particular the logic of the entire draft, of article 6, paragraph 1 (*d*), concerning existing uses; article 21, paragraph 1, concerning the quality of the water; article 6, paragraph 1 (*c*), and, paragraph 1 (*f*); article 10, paragraph 2; and the suggested revised article 7, so far as situations of particular dependence are concerned. These comments are without prejudice to the consideration of article 6 in connection with that of the

[21] Articles 5 and 6 read as follows:

"*Article 5. Equitable and reasonable utilization and participation*

"1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal utilization thereof and benefits therefrom consistent with adequate protection of the watercourse.

"2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present articles."

"*Article 6. Factors relevant to equitable and reasonable utilization*

"1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

"(*a*) geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;

"(*b*) the social and economic needs of the watercourse States concerned;

"(*c*) the effects of the use or uses of the watercourse in one watercourse State on other watercourse States;

"(*d*) existing and potential uses of the watercourse;

"(*e*) conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;

"(*f*) the availability of alternatives, of corresponding value, to a particular planned or existing use.

"2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation."

substance of article 26, which is not ripe for comment at this time.

26. Paragraph 2 of article 6 seems to be a sufficiently particular case and to require sufficiently specific action to merit retention, even though article 8 and article 10, paragraph 2, arguably impose a like obligation. Moreover, if there is to be any reconsideration of the inclusion of third-party involvement in this part of the draft, article 6, paragraph 2, may be as good a hook to hang it on as any.

ARTICLE 7 (OBLIGATION NOT TO CAUSE APPRECIABLE HARM)[22]

27. Pursuant to the general comments in paragraphs 21 to 23 above, the following redraft of article 7 is proposed:

> "Watercourse States shall exercise due diligence to utilize an international watercourse in such a way as not to cause significant harm to other watercourse States, absent their agreement, except as may be allowable under an equitable and reasonable use of the watercourse. A use which causes significant harm in the form of pollution shall be presumed to be an inequitable and unreasonable use unless there is: (*a*) a clear showing of special circumstances indicating a compelling need for ad hoc adjustment; and (*b*) the absence of any imminent threat to human health and safety."

ARTICLE 8 (GENERAL OBLIGATION TO COOPERATE)

ARTICLE 9 (REGULAR EXCHANGE OF DATA AND INFORMATION)

ARTICLE 10 (RELATIONSHIP BETWEEN USES)[23]

28. At the present time the inclination is not to recommend any changes in articles 8 to 10. There is a measure of sympathy, however, with the expression of concern by some Governments about the generality of article 8 and a recognition that the remainder of the draft only partly ameliorates the situation. Further reflection is called for on ways of making article 8 more precise without detracting from the ability of the draft as a whole to serve as a framework applicable to a wide variety of situations. It is noted in this connection that the Commission has already considered the matter in some detail and concluded "that a general formulation would be more appropriate".[24] It is neither prudent nor legally accurate to attempt to apply the principle of good faith expressly to part of an agreement: neither would it be prudent to add the notion of good neighbourliness to one provision of an instrument such as the one before the Commission. In any event, such additions would not appear to decrease the generality of article 8 to any appreciable, significant or important degree.

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[22] Article 7 reads as follows:

"Article 7. Obligation not to cause appreciable harm

"Watercourse States shall utilize an international watercourse in such a way as not to cause appreciable harm to other watercourse States."

[23] Articles 8 to 10 read as follows:

"Article 8. General obligation to cooperate

"Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity and mutual benefit in order to attain optimal utilization and adequate protection of an international watercourse."

"Article 9. Regular exchange of data and information

"1. Pursuant to article 8, watercourse States shall on a regular basis exchange reasonably available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature, as well as related forecasts.

"2. If a watercourse State is requested by another watercourse State to provide data or information that is not reasonably available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.

"3. Watercourse States shall employ their best efforts to collect and, where appropriate, to process data and information in a manner which facilitates its utilization by the other watercourse States to which it is communicated."

"Article 10. Relationship between uses

"1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses.

"2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to the principles and factors set out in articles 5 to 7, with special regard being given to the requirements of vital human needs."

[24] *Yearbook . . . 1988*, vol. II (Part Two), p. 41, paragraph (2) of the commentary to article 9.