

# **THE HELSINKI RULES ON THE USES OF THE WATERS OF INTERNATIONAL RIVERS \***

## **CHAPTER 1**

### **GENERAL**

#### **Article I**

The general rules of international law as set forth in these chapters are applicable 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 II**

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 and underground waters, flowing into a common terminus.

#### **Article III**

A "basin State" is a state the territory of which includes a portion of an international drainage basin.

\* Approved by the ILA in 1966. For the background and comments of the Articles see the ILA Report of the Fifty-second Conference, Helsinki 1966, pp. 477-531.

## CHAPTER 2

### EQUITABLE UTILIZATION OF THE WATERS OF AN INTERNATIONAL DRAINAGE BASIN

#### Article IV

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 V

1. What is a reasonable and equitable share within the meaning of Article IV 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 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 climate affecting the basin;
- d) the past utilization of the waters of the basin, including in particular existing utilization;
- e) the economic and social needs of each basin State;
- f) the population dependent on the waters of the basin in each basin State;
- g) the comparative costs of alternative means of satisfying the economic and social needs of each basin State;
- h) the availability of other resources;
- i) the avoidance of unnecessary waste in the utilization of waters of the basin;
- j) the practicability of compensation to one or more of the co-basin States as a means of adjusting conflicts among uses; and

- k) 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 VI

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

#### Article VII

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

#### Article VIII

1. An existing reasonable use 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.

## CHAPTER 3

### POLLUTION

#### Article IX

As used in this Chapter, the term "water pollution" refers to any detrimental change resulting from human conduct in the natural composition, content, or quality of the waters of an international drainage basin.

#### Article X

1. Consistent with the principle of equitable utilization of the waters of an international drainage basin, a State:

- a) must prevent any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial injury in the territory of a co-basin State, and
- b) should take all reasonable measures to abate existing water pollution in an international drainage basin to such an extent that no substantial damage is caused in the territory of a co-basin State.

2. The rule stated in paragraph 1 of this Article applies to water pollution originating

- a) within a territory of the State, or
- b) outside the territory of the State, if it is caused by the State's conduct.

#### Article XI

1. In the case of a violation of the rule stated in paragraph 1, a) of Article X of this Chapter, the State responsible shall be required to cease the wrongful conduct and compensate the injured co-basin State for the injury that has been caused to it.

2. In a case falling under the rule stated in paragraph 1, b) of Article X, if a State fails to take reasonable measures, it shall be required promptly to enter into negotiations with the injured State with a view toward reaching a settlement equitable under the circumstances.

## CHAPTER 4

### NAVIGATION

#### Article XII

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 XIII

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

#### Article XIV

"Free navigation", as the term is 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 trans-shipment, 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 XV

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 the exercise of such rights does not unreasonably interfere with the enjoyment of the rights of free navigation defined in Articles XIII and XIV.

### Article XVI

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

### Article XVII

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

### Article XVIII

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

### Article XIX

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 XX

In time of war, other armed conflict, or public emergency constituting a threat to the life of the State, a riparian State may take measures derogating from its obligations under this Chapter to the extent strictly requi-

red by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. The riparian State shall in any case facilitate navigation for humanitarian purposes.

## CHAPTER 5

### TIMBER FLOATING

#### Article XXI

The floating of timber on a watercourse which flows through or between the territories of two or more States is governed by the following Articles except in cases in which floating is governed by rules of navigation according to applicable law or custom binding upon the riparians.

#### Article XXII

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

#### Article XXIII

1. It is recommended that each State riparian to an international watercourse not used for navigation should, with due regard to other uses of the watercourse, authorize the co-riparian States to use the watercourse and its banks within the territory of each riparian State 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 XXIV

If a riparian State requires permanent installation for floating inside a territory of a co riparian State or if it is necessary to regulate the flow of the watercourse, all questions connected with these installations

and measures should be determined by agreement between the States concerned.

#### Article XXV

Co-riparian States of a watercourse which is, or is to be used for floating timber should negotiate in order to come to an agreement governing the administrative regime of floating, and if necessary to establish a joint agency or commission in order to facilitate the regulation of floating in all aspects.

### CHAPTER 6

#### PROCEDURES FOR THE PREVENTION AND SETTLEMENT OF DISPUTES

#### Article XXVI

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 XXVII

1. 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.

2. It is recommended that States resort progressively to the means of prevention and settlement of disputes stipulated in Articles XXIX to XXXIV of this Chapter.

#### Article XXVIII

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 XXIX

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

2. A State, regardless of its location in a drainage basin, should, in particular, furnish to any other basin State, the interests of which may be substantially affected, notice of any proposed construction or installation which would alter the regime of the basin in a way which might give rise to a dispute as defined in Article XXVI. The notice should include such essential facts as will permit the recipient to make an assessment of the probable effect of the proposed alteration.

3. A State providing the notice referred to in paragraph 2 of this Article should afford to the recipient a reasonable period of time to make an assessment of the probable effect of the proposed construction or installation and to submit its views thereon to the State furnishing the notice.

4. If a State has failed to give the notice referred to in paragraph 2 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 of the waters of the basin.

### Article XXX

In case of a dispute between States as to their legal rights or other interests, as defined in Article XXVI, they should seek a solution by negotiation.

## Article XXXI

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

2. It is recommended that the joint agency be instructed to submit reports on all matters within its competence to the appropriate authorities of the member States concerned.

3. It is recommended that the member States of the joint agency in appropriate cases invite non-basin States which by treaty enjoy a right in the use of the waters and an international drainage basin to associate themselves with the work of the joint agency or that they be permitted to appear before the agency.

## Article XXXII

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 XXXI, it is recommended that they seek the good offices, or jointly request the mediation of a third State, of a qualified international organization or of a qualified person.

## Article XXXIII

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 Article XXXI and XXXII, it is recommended that they 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. It is recommended that the conciliation commission be constituted in the manner set forth in the Annex. \*

\* See the ILA Report of the Fifty-second Conference, Helsinki 1966, p. 531.

## Article XXXIV

It is recommended that the States concerned 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 XXXIII, or
- b) The commission has not been able to find a solution to be recommended, or
- c) A solution recommended has not been accepted by the States concerned, and
- d) An agreement has not been otherwise arrived at.

## Article XXXV

It is recommended that in the event of arbitration the States concerned 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 XXXVI

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 XXXVII

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