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### Observations on the International Law Commission's Draft Rules on the Non-Navigational Uses of International Watercourses (Articles 1-4)

Robert D. Hayton

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OBSERVATIONS ON  
THE INTERNATIONAL LAW COMMISSION'S DRAFT RULES ON  
THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES  
(Articles 1-4)

Robert D. Hayton  
Professor of International Law  
Emeritus  
City University of New York

THE LAW OF INTERNATIONAL WATERCOURSES:  
The United Nations International Law  
Commission's Draft Rules on the Non-Navigational  
Uses of International Watercourses

Second Nicholas R. Doman  
Colloquium on International Law

University of Colorado  
School of Law  
Boulder, Colorado

October 18, 1991

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O B S E R V A T I O N S    O N

THE INTERNATIONAL LAW COMMISSION'S DRAFT RULES ON THE NON-NAVI-  
GATIONAL USES OF INTERNATIONAL WATERCOURSES  
(ARTICLES 1-4)

by

Robert D. Hayton\*

A.    General Observations

The opportunity to participate in this Second Nicholas R. Doman Colloquium is more than a simple pleasure for those of us who have remained deeply involved in the "international watercourses" topic from the beginning. Above all, the now retiring International Law Commission (ILC) Special Rapporteur for the topic, Professor Stephen McCaffrey, merits resounding praise for his thoroughness, persistence and courage. He picked up where three previous special rapporteurs had left off and has succeeded in leading the Commission to the completion of its "first reading" of an entire set of articles, which articles we are here to examine.

Accelerated developments in recent years, especially in the fields of environmental law and the law of the sea, undoubtedly contributed to the acceptance by the ILC of previously resisted concepts. It became increasingly difficult for traditional international lawyers to take exception to legal propositions that reckoned forthrightly with natural phenomena, and interferences by the hand of man, that affect and will increasingly affect the development, use, protection and control of shared natural resources.

Although the once-called "new breed" of lawyers, that is, the natural resources lawyers, have for many years insisted that the formulation of principles and rules applied to natural resources must be grounded in the physics, chemistry and biology of the resource in question (and its interrelationships with other resources), international lawyers by and large have come more recently to that indispensable realization. For that reason alone, the other members of the Commission also deserve commendation for perceiving these behavioral realities, facilitated by the diligent and scholarly presentations repeatedly made to them by the special rapporteurs.

Research into State practice and the proper inferences available from the treatise writers was by no means neglected. In 1970 the United Nations General Assembly decided that the topic of international watercourses appeared ripe for codification. The Commis-

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\* Prof. Emeritus, the City Univ. of New York; Rapporteur, International Law Assoc. Water Resources Committee; member of the New York Bar.

sion was able to begin serious study of the topic in the mid-1970s.<sup>1</sup> The experiences of recent decades, as well as the extensive studies published, made considerable impact. But some questions remained unsettled, first and foremost, the conceptualization of "watercourse," which was only resolved during the 1991 session.

B. Part I, Introduction: The First Four Articles<sup>2</sup>

1. Article 1. Scope of the present articles

There had been only initial difficulty in arriving at the article on scope, which was tentatively adopted by the ILC in its present form in 1987.<sup>3</sup> It contains two paragraphs, the first of which specifies application "to uses of international watercourses and of their waters . . . and to measures of conservation related to the uses of those watercourses and their waters."

Early on, a few members of the Commission at that time endeavored to restrict the scope of the topic by any available means; thus, it was said that the intent of the General Assembly was for the ILC to take up only the watercourse, and not the water therein. There were other attempts to limit the topic, one of which, rejection of the "drainage basin" approach, will be discussed in the following section. Subsequently most such efforts were defeated or circumvented, abetted by the detailed and persuasive special rapporteurs' reports. Nonetheless, to remove any doubt, "and of their waters" was added. The Articles apply, therefore, to use of the watercourse itself--including by implication its bed, banks, dikes, etc., although express consideration of these elements might have provoked reaction because of the feared involvement of land use controls--and to the use of the waters flowing or collected in the courses.

The title of the topic as transmitted to the ILC from the General Assembly mentions only "uses." However, all water resources experts know well that there are other highly important aspects that must not be left out of consideration, including at the inter-

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<sup>1</sup> For a brief summary, see, e.g., The Work of the International Law Commission, United Nations, New York, 3rd. ed. (1980 91-94.

<sup>2</sup> The brief time allotted for this presentation does not permit delving into the complex past of the articles' development, or the instructive earlier Reports of the special rapporteurs. Valuable background may be found in the Yearbooks of the ILC, esp. for the years since 1979, which reproduce the ILC's and the rapporteurs reports;

<sup>3</sup> The following observations and quotations are from the Draft Report of the ILC on the work of its forty-third session, Chap. III, A/CN.4/L.463, July 1991, which will appear printed as Chap. III of the 1991 annual Report of the ILC to the General Assembly, Supp. No. 10 (A/46/10), except that the articles with commentaries are so bulky that a separate booklet is planned.

national level. These involve, *inter alia*, stream regulation (flood control, etc.), water-related disease, water and hydraulic installation safety, and other "harmful effects" of water. These may directly or indirectly affect water use. They are also often critical in their own right. With that in mind, the Commission declares that the articles apply also "to measures of conservation," qualifying that with the phrase: "related to the uses of those watercourses and their waters."

It is, apparently, still not acceptable to embrace regulation of water resources conditions and behavior absent a relationship to one or more uses. Besides, the General Assembly specified "uses." But preservation of ecosystems or of wild and scenic rivers, for example, is not necessarily coupled with use of the water, and may stand in opposition to use. The emerging doctrines of minimum flow and public trust are similarly not perforce use-oriented. Finally, it is no longer the conception that environmental protection or improvement measures are taken solely for the benefit of human beings, or their governments.

The term "conservation" was chosen surely because of its long-standing acceptance, and also because it lends itself to broad interpretation, including "deliberate, planned or thoughtful preserving, guarding or protection . . . planned management of a natural resource to prevent exploitation, destruction or neglect."<sup>4</sup> In this way, husbanding of shared water resources easily implies pollution controls and regulation (formerly "river training"), even notification, exchange of information and data, and an obligation not to cause appreciable harm. Article 1's commentary expressly notes that "solving other watercourse problems" is intended, citing "living resources, flood control, erosion, sedimentation and salt water intrusion."<sup>5</sup> Also included in "measures of conservation," according to the commentary: "the various forms of co-operation . . . concerning the utilization, development and conservation of international watercourses, and promotion of the optimal utilization thereof." Some States may, nonetheless, attempt later to tie conservation measures more closely to water use.

The second paragraph of the first Article addresses itself to the General Assembly's exclusion of navigational uses from the topic. Navigation was excluded, some would say, because that aspect had been fully addressed by the International Law Association (ILA) in the Helsinki Rules,<sup>6</sup> whereas the other uses had not yet been suf-

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<sup>4</sup> From (Merriam) Webster's Third International Dictionary.

<sup>5</sup> The Commission found general support in the replies to the questionnaire circulated to the Member States of the U.N.; some replies identified those specific problems.

<sup>6</sup> ILA, Report of the Fifty-Second Conference, Helsinki, 1966 (1967), p. 447, at 505 (Chap. 4).

ficiently dealt with and in any event not by an official, inter-governmental body. On the other hand, between and among a number of States, especially outside of Europe, considerable disagreement persists with respect to some fine points and even the reach of the right of "free navigation."<sup>7</sup> Avoidance of this nettlesome problem certainly swayed some delegations. Navigational uses were not to be included.

The Commission itself realized, however, that uses can and often do conflict. Though cast in negative language, the result is that the rules are to apply "in so far as other uses affect navigation or are affected by navigation." Subsequently "navigation" as such is not dealt with in the Articles, except by implication in one later article.<sup>8</sup>

## 2. Article 2. Use of terms

Throughout the International Law Commission's years of consideration of the topic, there had been lack of agreement on the meaning of "international watercourse." Definition of the term was repeatedly deferred. In 1970, the Finnish Delegation to the General Assembly, prime mover in the Sixth (Legal) Committee of the Assembly in favor of tasking the ILC with the codification and progressive development of this topic, attempted to gain acceptance of the drainage basin concept. This effort was unsuccessful, and "international watercourses" was the compromise term.<sup>9</sup>

The basin concept was further pressed within the Commission, ultimately to no avail. Even some of the Commission members not anxious to constrict the topic found themselves perturbed by the seemingly all-encompassing sweep of "basin," possibly involving the regulation of things non-water within that hydrographic boundary. Eventually it will be understood that certain land use controls are indispensable to rational development, use, protection and control of shared water resources systems, as they are at the national level. Frankly, in those days, few international lawyers were comfortable with technical concepts or knowledgeable about hydrology, hydrogeology or related sciences. Moreover, speaking in the Sixth Committee's annual review of the ILC's work, foreign offices were intent upon keeping their countries' freedom of action unfettered insofar as possible. And the members of the Commission, while not representing their governments, can hardly be blamed for being sensitive to national positions, including that of their own country.

But this age-old absolute territorial sovereignty doctrine need not be belavored here. Suffice it to say that, especially for persons raised and educated in upstream States, the attitude that "the river is mine" is still common and deeply held. Scientists

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<sup>7</sup> See *ibid.*, esp. Arts. XIII and XIV.

<sup>8</sup> Art. 10 (beyond the scope of this paper), denying "inherent priority" to any particular use, and requiring resolution of "a conflict between uses."

<sup>9</sup> GA Resol. 2669 (XXV), 8 December 1970.

and natural resources administrators and specialists may understand the hydrologic cycle, that water is a "fugitive resource" (second only to the atmosphere) that ignores man's political boundary lines, but it requires a good deal of study and often some sobering experience to appreciate fully the need to cooperate affirmatively with respect to an interjurisdictional water resources situation--call it what you will.

"Basin" was consequently abandoned, with profound regret on the part of some Commission members. In its place, the second Special Rapporteur, now Judge Stephen Schwebel, put forward the "system" concept, based on sound technical usage. This, too, was criticized as being merely a subterfuge for the basin idea. The record in State practice and doctrine was marshalled, however, and in 1980 the Commission adopted a Note describing tentative understanding of what was meant by the term "international watercourse system." This was the Commission's working hypothesis, subject to refinement and change, in explanation of the use of "system" and related terms in the several articles tentatively adopted at the same session.<sup>10</sup> The system approach at least for the time being had prevailed.

Subsequently sufficient resistance was encountered to the technically accurate but ungainly term "international watercourse system," so that the Commission decided to place "system" within square brackets, pending a final determination, which is to say, approval of this special article on use of terms. Opposition to "system" (and to "basin") by some members was kept alive.

A great deal of thought went into Special Rapporteur Stephen McCaffrey's (final) Seventh Report--devoted to this ultimate article--based on several years of discussion within the Commission, and with colleagues, where he presented to the Commission two alternative definitions.<sup>11</sup> Most members of the Commission had come to respect the validity and usefulness of the system concept. Though the phrase "international watercourse system," Professor McCaffrey's "Alternative A," remained lengthy, it was favored by the Special Rapporteur because of its clear emphasis on the fact of system throughout the Articles. And, after all, that phrasing had been previously approved, albeit tentatively, by the Commission in 1980. This alternative would, as drafted, first define "watercourse system," in terms of its "hydrographic components, including rivers, lakes, groundwater and canals, constituting by virtue of their physical relationship a unitary whole."<sup>12</sup> An international

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<sup>10</sup> See Yearbook of the International Law Commission, 1980, vol. II (Part Two), pp. 108-109, doc. A/35/10, with elucidation.

<sup>11</sup> A/CN.4/436, 15 March 1991, pp. 4-49.

<sup>12</sup> The Commission's 1980 Note of understanding had also listed components constituting a unitary whole, including groundwater.

watercourse system, then, would be a watercourse system "parts of which are situated in different States."

Professor McCaffrey's "Alternative B" read similarly, except that the word "watercourse" is defined as "a system of waters composed of hydrographic components . . . ." The system approach was, thus, retained, but "system" was shifted from the term being defined and made the key word in the definition. Also, thereafter in all of the Articles, "watercourse" would appear, not "water-course system."

It should be noted that this Seventh Report, though short, is "loaded" with hydrogeologic information, along with economic, legal and management precedents, so that no member of the Commission could "escape" comprehension of the hydrologic cycle and, above all, of groundwater's crucial importance.

In the Commission's Drafting Committee, discussion of the appropriate language for the article on the use of terms resulted in some modification. Article 2 as adopted first defines "international watercourse": "a watercourse, parts of which are situated in different States" (subparagraph (a)). Subparagraph (b) reads: "'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."

The inversion of the order (international watercourse, then watercourse) works very well here. Instead of listing some of the hydrographic components, the approved version, retaining system as the key concept, employs a well-known and appropriate phrase identifying surface waters and groundwaters, not incidentally placing "underground waters" on the same level as rivers, lakes, etc. This is a very satisfactory result, remembering that the Commission was in no position to depart from the General Assembly's terminology (that is, "international watercourses"). That allows subsequent Articles to use simply "watercourse" or "international watercourse," with the system concept "built in." Although dropping the word "system" throughout the other Articles loses the desired stress, it is better drafting.

There is one problem, however, with this subparagraph (b): the addition of "and flowing into a common terminus." To my knowledge, such a phrase had not previously been employed by the Commission. It is true that prominence was given to the phrase in Article II of the Helsinki Rules: <sup>13</sup>

"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."

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<sup>13</sup> Op. cit. supra, note 6, at 484-485.

That language excludes certain important transnational groundwaters. When the Helsinki Rules were written, understanding of what has come to be called the "underground environment" was quite inadequate in the minds of those drafting the "black letter" and the commentary. Since that time the comprehension of water resources lawyers has advanced markedly. Surface streams contribute in the usual case to the recharge of aquifers (the equivalent of "lake" or "river, that is, the container or, here, the course in "watercourse"), not identified in Helsinki. There only the contribution of the aquifer to the surface body was envisioned. Underground waters may not, especially in arid zones, be interconnected with a surface stream or lake and yet by transnational, because the international boundary cuts through the aquifer; recharge may nonetheless occur from precipitation onto the surface, including from flash floods or snow melt.

It is unfortunate that these important transboundary groundwaters are intended to be excluded from the purview of the ILC's Articles simply because they appear not to "flow into a common terminus," in the original sense of the Helsinki Rules. In fact, it can be said that such unconnected (with the surface) waters do flow into a common terminus, namely the aquifer, exactly as in the case of an international lake, except that the water isn't visible on the surface.

The International Law Association has adopted many sets of articles completing and supplementing Helsinki, all of which have been taken into account by the ILC's special rapporteurs. In 1986 four articles, with extensive buttressing in the commentaries, were adopted by the ILA on The Law of International Groundwater Resources, which clearly set forth these relationships and expressly posit the basin, or system, nature of such transboundary aquifers within the meaning of the Helsinki Rules.<sup>14</sup> The Commission obviously shied away, here, from hydrogeologic reality.

The ILC's conscious exclusion of so-called "confined" aquifers, as explained in the commentary, and the failure to deal with other interjurisdictional groundwater situations is vexing. An aquifer's geometry may mean that it is laterally completely contained behind aquacludes, impeding for practical purposes significant outflow of water; surface streams may nonetheless recharge that aquifer with contaminated water. If the aquifer extends across an international frontier and its waters are relied upon for use in an adjacent State (pumped wells or artesian), an international water resources problem arises, despite the fact that the aquifer is "confined" laterally.

If by "confined" "non-tributary" is meant, then the immediate surface waters, if any, are not significantly recharging the aquifer. Usually this vertically "isolated" status is not absolute, and some recharge is in fact taking place, if not from "overhead," then from a more distant place, perhaps in the mountains from rainfall, snow melt or small catchment areas. Such recharge would usually take

<sup>14</sup> ILA, Report of the Sixty-Second Conference, Seoul, 1986, p. 238 at 251ff. See also R. Hayton and A. Utton, "Transboundary

place within the hydrographic basin, indeed flowing into a common terminus.

original "Rivers"

Clearly, as in the case of the/ILA/ Committee, the Commission's perception of common terminus is that of a surface stream flowing out to sea (without, incidentally, regard for the directly related terminus itself, the estuary, where groundwater frequently appears), or into a landlocked lake. Undoubtedly as a restatement of customary law, more groundwater principles could not have been brought forth 25 years ago, but the "common terminus" view is simply not adequate in light of today's knowledge of the behavior of water.

Moreover, what happens to a case involving an aquifer, recharged by polluted surface waters in one watercourse State (upstream), that flows not into the main international surface stream or lake but discharges its waters out to sea, contaminating the coast of another State and, incidentally also adversely affecting the marine environment? The aquifer in question is not "confined," as that term is used, but it simply "eschews" the surface terminus. Though the understanding within the Commission, including of groundwater's critical role, is remarkable as compared with only a few years ago, the traditional imagery and the preoccupation with surface waters is, partially at least, still with us.

But perhaps that was the price that had to be paid for dropping the third, final paragraph of the Commission's 1980 Note of understanding, which read:<sup>15</sup>

"To the extent that parts of the waters in one State are not affected by or do not affect uses in another State, they shall not be treated as being included in the international watercourse system. Thus, to the extent that the uses of the waters of the system have an effect on one another, to that extent the system is international, but only to that extent; accordingly, there is not an absolute, but a relative, international character of the watercourse."

Every lawyer should see the "catch 22" in this maybe yes, maybe no status of transnational watercourses, nowhere else to be found in the literature, as well as repudiating the basic premise of physical unitary whole.

The Commission's Articles contain a number of general obligations, such as to cooperate with other watercourse States, to share available information and data, and to consult. But any

Groundwaters: the Bellagio Draft Treaty, 29 Natural Resources J. 664, and works and practice there cited.

<sup>15</sup> Op. cit. supra, note 10 at 108.

State could, perhaps as a dilatory device, deny any such obligations on the grounds that the watercourse is not, or not yet, international; thus, the Articles do not apply. Plainly this could lead to protracted disputes on the question of whether the watercourse is international. Meanwhile, the resource problem is not being dealt with, planning for needed measures lacks adequate basis, or the harmful project, in reality or potentially, is being carried on without reference to the law of the non-navigational uses of international watercourses. One can only be relieved that that relativistic, dispute fostering pre-condition did not become part of the approved Articles. This alone must be considered a triumph for lawyerlike deliberation and drafting by the Commission. In any event, many of the Articles would in practice not apply unless there were an "actual or possible effect upon another watercourse State or the regime of the watercourse . . . ."16

Subparagraph (c) of Article 2 on the use of terms defines "watercourse State" as "a State in whose territory part of an international watercourse is situated. This term works very well in the Articles, and is not especially remarkable, remembering always that "watercourse" means a system of surface and underground waters.

### 3. Article 3. Watercourse agreements

Paragraph 1 of the third Article is permissive, allowing the formation of watercourse agreements for the purpose of applying and adjusting the whole set of Articles to the "characteristics and uses" of particular watercourses or parts of watercourses.

It deserves mention that there has lingered in some circles a feeling that each watercourse is so peculiar that no overall or general principles or rules could possibly serve. That this proposition runs completely counter to other, related bodies of law is sometimes not perceived. The best example may be the law of real property, from which water law is historically derived, and which contains many general principles and rules applicable to real estate. But each parcel varies from all others in size, shape, soils, slopes, location, drainage, latitude, economic value, even in the availability of water. Every piece of real property is unique, as we learned in law school. Yet numerous property law propositions apply despite the variabilities.

Similarly, though each water resources system is in significant ways different from most, if not all, others, a number of important principles and rules have evolved. In the field of international watercourses, the Commission's Articles constitute a commendable effort to articulate those propositions as "residual" or customary international law. One should not be dismayed by the differences, but it is always much preferable to have written agreement between or among the watercourse States to spell out the special needs, requirements and intentions of the parties.

<sup>16</sup> See McCaffrey's Seventh Report, op. cit. supra, note 11, at 46; see also his convincing discussion of the inadvisability of the "relative international character" notion, id. at 43-46.

The Article, in paragraph 2, also obliges watercourse States to define the waters covered by such an agreement. Agreements encompassing entire international watercourse systems may be entered into, as well as agreements for only a portion of the system, a specific project, or a particular program (such as monitoring, warning or fishery management schemes), with the proviso that thereby the use of the waters by other watercourse States is not to an appreciable extent adversely affected. The provision does not by its terms address the question of present uses as distinct from planned uses. The quantity "appreciable" has been deliberately chosen as being less than "substantial" (as in the ILA rules) and more than "perceptible." <sup>17</sup>

Paragraph 3 requires the watercourse States to consult with a view to concluding such agreements, whenever one of them "considers that adjustment or application of the provisions" of the Article is required because of the watercourse's characteristics and uses.

In the absence of such specific agreement involving a particular international watercourse, the Commission's Articles are designed to apply, and when negotiation of agreements is undertaken the Articles provide the point of departure, the "guidelines" for the negotiating States. The Commission has espoused this employment of its Articles by States over a number of years, that is, these are to be regarded as "residual rules" embodied in a "framework agreement." The decision as to just how the Articles would be officially actuated at the intergovernmental level, assuming eventual approval by the General Assembly, in the last analysis resides with the General Assembly itself; it has several alternatives other than a formal framework convention.

The watercourse agreements contemplated in Article 3 would be, in all probability, modification in part and implementation in part, binding on the parties as agreed, according to the law of treaties. Indeed, watercourse agreements could be, and have been, themselves "framework" treaties; one example is the 1969 Brasilia Treaty among the five Plata Basin States.

#### 4. Article 4. Parties to watercourse agreements

The fourth article, on the making of watercourse agreements, is remarkable, for it sets out clearly the right of every watercourse State to participate in the negotiation of, and under certain circumstances to become a party to such agreements.

Even within system-specific framework agreements there usually

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<sup>17</sup> This distinction comes up later (Art. 7), but for an extensive, multilingual examination of the treaty and doctrinal record, see Special Rapporteur Schwebel's Third Report, A/CN.4/348, 11 December 1981, pp. 92-99, and documents and works there cited.

has been a need, sooner or later, for more specialized agreement embracing a portion of the system or basin only, or for more intense collaboration respecting pollution controls, river regulation or aquifer protection. And pairs of watercourse States, or other combinations of less than the total number of watercourse States, may find agreement between or among themselves on issues of priority to them more attainable, including politically, than an attempt to achieve system-wide agreement on those matters. However, when only some of the watercourse States enter into negotiations for such purposes, or with a view to a system-wide agreement, the Commission has taken a firm position on their obligations vis-à-vis the other system States.

Article 4's first paragraph stipulates that 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 . . ." It is also entitled to participate in any "relevant consultations." A watercourse State is not obliged to participate, but it can not legally be excluded from the negotiations or from becoming a party, if the agreement comprehends the whole system geographically. It is part of the "birthright" as one of the watercourse States.

It is not necessary that the subject matter of the system-wide agreement be all-embracing, apparently, only that one or more concerns or programs are to be embodied in that agreement. Since such matters may well involve present or future interest of the other watercourse State or States, the opportunity to take part in the negotiations, involving perhaps financial contribution, sharing of benefits and use of territory, inter alios, is unlikely to be shunned by a wise government. Whether to become a party to the agreement, once negotiated, is naturally a subsequent decision; separate guarantees of compensation or information sharing may under some circumstances suffice.

The other circumstance even more likely to arise is addressed in the Article's second paragraph: The case of two or more watercourse States consulting or negotiating with respect to possible agreement dealing geographically with less than the entire system --presumably not including the territory of one or more system States--or the object of which is one project (or possibly a series of projects) or a program, and one or more watercourse State is not participating. The paragraph entitles such a non-participating State to participate if its "use of an international watercourse may be affected to an appreciable extent" by the implementation of that agreement. It also is entitled to become a party to the proposed agreement "to the extent that its use is thereby affected."

Such entitlements are apt to complicate the negotiation process,

to be sure. On the other hand, no watercourse State is obliged to join the process. Negotiations, presumably in good faith, do not guarantee complete agreement among all the concerned governments. All but one watercourse State, for example, could be satisfied with the text of agreement and decide to proceed to signature. The omitted State now, it would seem, has the choice of signing despite its lack of complete agreement, or to pursue other "remedies," such as protest and peaceful settlement of disputes. It may be just as well that the ILC did not attempt to get into such possibilities in this Article, since it is propounding "residual" rules, which by their very nature are expected to be rather basic, if not entirely general. Besides, the whole question of accommodation of differences and dispute settlement is now left to another "area," presumably State responsibility.

### C. In Conclusion

The first four Articles of the Commission's draft must be commended overall, regardless of some deficiencies, pointed out above. This is just the "first reading." Member States of the United Nations, interested professional organizations and individual experts will make their views known. In all likelihood, when the comments are all in--January 1993 is the date when the governments' comments are expected to be due--and the Commission takes another look at its product, it is to be expected that a number of changes will be made. The Articles will be considered in the Sixth Committee during the 1991 General Assembly session.

There will be, as of the fall of 1991, a new Commission elected for another five-year term. While many of the currently serving members will doubtless be reelected, others will be new, perhaps bringing other views to bear. And if in due course the ILC deems it necessary to designate a Special Rapporteur for the topic, it will be a different member.

Rapporteur

These Articles represent not only enormous effort over a period of some seventeen years, but manifest progress over what we have had available up to now in international law. The Commission itself has "moved" from a somewhat reticent role to that of some leadership in the field. There is much yet to be done--some aspects have been treated too lightly or glossed over--but the work goes on. The Commission has taken full stock of not only the treaty practice but the significant contributions of the specialized individuals and groups, such as the Institut of International Law and the International Law Association. The ILA has recently created its third water resources committee which, under the chairmanship of Charles Bourne will go forward on this topic of international water resources law. It can be presumed that Professor McCaffrey, the Special Rapporteur who brought the enterprise to fruition, will continue his deep interest and that he will speak out in the future.