

*Article 7*

**Obligation not to cause appreciable harm**

35. This article has one paragraph which refers to 'appreciable harm', but does not define that concept. Although there is this lacuna but the concept is difficult to define and it may be better to leave precise meaning to specific agreement or any peaceful settlement of disputes which may later be adopted.

*Article 8*

**General obligation to cooperate**

36. As drafted, this article seems to be appropriate for adoption.

*Article 9*

**Regular exchange of data and information**

37. Article 9 was originally introduced by the Special Rapporteur in his Fourth Report<sup>11</sup> as Article 16. While commenting on Article 16, previously the AALCC had suggested that the scope of the article should include ecological and environmental issues. As drafted now, this article on regular exchange of data and information which has been renumbered as Article 9, contains within its scope ecological data and information. The AALCC is, therefore, of the view that the draft is satisfactory and should be supported.

*Article 10*

**Relationship between uses**

38. Article 10 was originally proposed by the Special Rapporteur in his Sixth Report<sup>12</sup> as Article 24 entitled 'Relationship between navigational and non-navigational uses; absence of priority among uses'. This article has been renumbered as Article 10 and it now has a smaller title. The article is well balanced in categorically removing any assumption of priority for navigational uses. The reference to special regard being given to the requirement of vital human needs is welcome as it provides a sound criterion for resolving priority in the case of conflicting uses.

**Part - III : Planned Measures**

39. This set of articles provides useful basis for disputes avoidance.

<sup>11</sup> A/CN. 4/412.

<sup>12</sup> A/CN. 4/427.

*Article 11*

**Information concerning planned measures**

40. Exchange of information would alleviate suspicion and provide early opportunity to resolve any misunderstanding between watercourse States. The Secretariat of the AALCC is of the view that the article is well balanced.

*Article 12*

**Notification concerning planned measures with possible adverse effects**

41. The watercourse State which intends to implement a planned measure should take into consideration, while notifying the other watercourse States, the provisions of Articles 13, 14, 15 and 17. Any delay in the execution of the project should not possibly have the cost escalation which may have an adverse effect on the notifying watercourse State. To avoid this, the notifying State should, at the earliest opportunity, notify the other watercourse States for them to assess whether such measures are likely to have adverse effects upon them.

*Article 13*

**Period for reply to notification**

42. It is proposed that a period of six months for reply is reasonable. Nevertheless, many watercourse States may not have the requisite resources and technology to study and evaluate the possible effects of the planned measures within the period and a possibility of extension should be considered.

*Article 14*

**Obligation of the notifying State during the period for reply**

43. The obligations specified in this article seem to us reasonable and acceptable.

*Article 15*

**Reply to notification**

44. Paragraph 1 which provides for the phrase 'as early as possible' should be made more specific by fixing a time-limit similar to Article 13.

*Article 16*

**Absence of reply to notification**

45. The provision seems to be reasonable and should be accepted.

*Article 17*

**Consultations and negotiations concerning planned measures**

46. This provision provides for well balanced safeguards for all parties concerned. However, good faith must require that negotiations should not be unduly protracted.

*Article 18*

**Procedures in the absence of notification**

47. Here again the Commission has attempted a well balanced provision which should be broadly acceptable.

*Article 19*

**Urgent implementation of planned measures**

48. While this article is broadly acceptable, it is suggested that the phrase 'other equally important interests' needs further explanation.

**Part - IV : Protection and Preservation**

*Article 20*

**Protection and preservation of ecosystems**

49. This provision should meet the broad support of all States in view of the need to protect the ecosystem of international watercourses.

*Article 21*

**Prevention, reduction and control of pollution**

50. This article was originally introduced by the Special Rapporteur in his Fourth Report<sup>13</sup> as Article 16(17). Paragraph 1 of Article 21 defines 'Pollution of an international watercourse' in a manner which should be acceptable. The phrase 'appreciable harm' in paragraph 2 has been the subject of some comments with regard to Article 7 which are equally applicable here. In the absence of a dispute settlement mechanism and of clear established standards, the concept 'appreciable harm' cannot be objectively assessed. What is 'appreciable' to one party could be mere inconvenience to the other and what is insignificant for one purpose could be catastrophic for another. Nevertheless, it would be difficult to find a better standard than that of 'appreciable harm'. It would, however,

<sup>13</sup> A/CN. 4/412.

be advisable for States concluding particular watercourse agreements to specify a more detailed provision on what could be considered appreciable harm. Further, it should be pointed out that the article does not prohibit all pollution but only that which causes 'appreciable harm'. Thus, paragraph 2 is not intended to impose strict liability on the State for all harm caused by pollution.

*Article 22*

**Introduction of alien or new species**

51. This is an innovative article designed to avoid serious detrimental harm to a watercourse through the introduction of new or alien species. We believe it should be widely supported.

*Article 23*

**Protection and preservation of the marine environment**

52. This Draft Article is very important since it deals with the problem of protection and preservation of marine environment; hence we recommend its adoption.

**Part - V : Harmful Conditions and Emergency Situations**

*Article 24*

**Prevention and mitigation of harmful conditions**

53. The thrust of the obligation to prevent and mitigate harmful conditions should need general support.

*Article 25*

**Emergency situations**

54. Article 25 is almost identical to Article 23 as proposed by the Special Rapporteur in his Fifth Report.<sup>14</sup> The only difference is that paragraph 1 of Article 25 defines 'emergency' which was lacking in the earlier text. It is proposed in Article 25 that a watercourse State 'shall without delay and by the most expeditious means available notify other.....' In theory, it might appear to be a very simple communication network requirement, but many States, particularly those that are least developed, may not possess that kind of technology or remote sensing satellite capability to detect imminent danger in advance. Due to lack of resources and technology, many

<sup>14</sup> A/CN. 4/421.