CHAPTER 7

Exceptions to Notification under the Bank Policy

7.1 Early Practice

The initial flexible approach adopted by the Bank in the early 1950s for projects on international waterways required proposing and obtaining management approval of procedures for dealing with the international aspects of the project. As discussed earlier, each project on international waterways was dealt with according to its own facts and circumstances. That ad hoc approach continued until 1965 when OM 5.05 was issued adding some rules and procedures regarding presentation of the loans and credits to the Executive Directors. It may be recalled that OM 5.05 itself did not include explicit provisions on notification. However, the OM required informing the Executive Directors, inter alia, if the other riparians gave their no-objection to the project.533 As discussed before, for the other riparians to give a no-objection, they need to be notified of the project that the Bank intended to finance. Thus, notification gradually became the main element of the Bank policy.

OM 5.05 stated that the information to be submitted to the Executive Directors should also indicate, inter alia, that “the project is not harmful to the interests of other riparians and their absence of consent is immaterial or their objections are not justified.”534 As discussed earlier, the phrase that “the project was not harmful to the interests of other riparians” was sometimes interpreted in isolation of the total content of the sub-paragraph to create an exception to the notification requirement, when the staff deemed the project not harmful to the interests of the other riparians. This issue was not clarified until OMS 2.32 was issued in 1985. That OMS included two explicit new exceptions to the notification requirement, clearly and explicitly indicating that those are the only exceptions allowed under the policy.

533 As stated earlier, paragraph 3 of OM 5.05 of 1965 states that the SAR and the Report and Recommendation of the President should “state that the Bank/IDA has considered the international aspects of the project and is satisfied that: (i) the issues involved are covered by appropriate arrangements between the borrower and other riparians; (ii) the other riparians have stated (to the borrower or to the Bank/IDA) that they have no objection to the project; or (iii) the project is not harmful to the interests of other riparians and their absence of express consent is immaterial or their objections are not justified.”

534 See id.
However, the issuance of OMS 2.32 with the two exceptions to notification did not put to rest the issue of other exceptions to the notification requirement. As discussed in the previous Chapters, there were some suggestions within the Bank that in projects on international waterways where there was “no issue, no conceivable harm,” notification was not required by the Bank policy. However, as explained earlier, this view is not supported by the provisions of any of the policies issued in 1985, or the revision added thereafter.\(^{535}\) The fact that there were two exceptions to the notification requirement specified under the 1985 OMS, and that a third specific exception was added 10 years later, negates any argument for the legal validity of this general approach to exceptions. The discussion below elaborates on those exceptions to the notification requirement under the Bank policy.

### 7.2 Exceptions to the Notification Requirement

The 1985 OMS brought about the needed clarifications and elaborations to the Bank policy in a number of areas. It specified the waterways and projects to which it applied, and set forth the general rule for notification of all riparians and how, when and by whom it can be undertaken. It also laid down detailed procedures regarding the likely responses, and how to deal with each such response. As noted above, one element introduced by the 1985 OMS has been the inclusion of two exceptions to the notification requirement. These exceptions have been incorporated with minor changes in the various directives for Projects on International Waterways issued since that time. A third exception, to be also discussed in Part 7.2.3 of this Chapter, was added in 1994.

#### 7.2.1 Rehabilitation of Existing Schemes

The first exception to the notification requirement for projects on international waterways relates to the rehabilitation of existing schemes under certain specified conditions.\(^{536}\) The scheme has to be an on-going or existing one. The project would involve rehabilitation, construction or other changes which (a) would not adversely change the quality or quantity of water flows to the other riparians, and (b) would not be adversely affected by the other riparians’ possible water use. The policy further clarifies that the exception applies only to minor additions or alterations to the on-going scheme. It does not cover works or activities that would exceed the original scheme, change its nature, or so alter or expand its scope and extent as to make it appear a new or different scheme.

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\(^{535}\) See supra n. 372. See infra, Part 7.2.3 of this Chapter for a discussion of the third exception to the notification requirement.

\(^{536}\) See paragraph 7(a) of OP 7.50.