SOME DEVELOPMENTS IN THE LAW OF INTERNATIONAL WATERCOURSES*

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1 INTRODUCTION

It is a particular pleasure and a distinct honor to contribute to this collection of essays in honor of Judge Lucius Caflisch. I came to know our honoree during the 1980s when he was on the faculty of the Graduate Institute of International Studies in Geneva and I was a member of the International Law Commission. We shared an interest in the law of international watercourses1 and after I became the Commission’s special rapporteur on that topic, Lucius would occasionally invite me to address his seminar dealing with these issues. In view of that “community of interest” and, more generally, my great debt to his thinking and scholarship2 in the field, it seemed only appropriate to explore in this brief essay some current developments in the law of the non-navigational uses of international watercourses. I will concentrate on two areas: first, the two-way operation of the so-called “no-harm” rule; and second, some of the implications of the human right to

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1 In this paper I will use the expression “international watercourse” in its broad sense, meaning any freshwater resources shared by two or more States, whether they take the form of surface water, groundwater or any combination of the two.
water – a subject that unites two of Judge Caflisch’s principal fields of interest. To lay a background for discussion of these issues I will first review the most basic principles of international watercourse law.

A. The World’s Freshwater and Basic Principles of International Law Governing Its Non-Navigational Uses

It is shocking but true that today, over one billion people lack access to safe water and some 2.4 billion are without adequate sanitation facilities, according to the World Health Organization (WHO). Moreover, while the amount of freshwater on Earth remains constant, the global population continues to increase. According to the United Nations Population Division, by July of 2005 the world will have 6.5 billion inhabitants, a figure which is projected to climb to over 9 billion by 2050. The result is less water on a per capita basis and growing competition for increasingly scarce water supplies. An aspect of this problem that is not always appreciated is that much of Earth’s freshwater is shared by two or more States. According to a United Nations study, the world’s 263 international drainage basins account for some 60% of global river flows. Around 40% of the world’s population lives in these river basins, which form at least a part of the territory of 145 countries.

When the decreasing availability of freshwater is combined with the extent to which it is shared internationally, the potential for disputes between countries over this precious resource becomes obvious. However, such disputes can be minimized, and sometimes avoided altogether, if there are reasonably clear rules governing States’ use of international watercourses and if those rules are followed more or less consistently.

In their practice over many years, States sharing freshwater resources have developed basic rules governing their fluvial relations. These rules

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6 Ibid.