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Chairman: Mr. YAMADA (Japan)

(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 3.15 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session (continued) (A/49/10 and A/40/335; A/51/275 and Corr.1 and Add.1)

Cluster III (articles 11-19 and article 33)

1. Mr. LOIBL (Austria), supported by Mr. de VILLENEUVE (Netherlands), said that article 33 was decisive for the future success of the convention. His delegation therefore welcomed the Finnish and Swiss proposals and hoped that the discussion would proceed along the lines indicated by those delegations.

2. Mrs. ESCARAMEIA (Portugal), drawing attention to her delegation's comments on article 17 in document A/51/275, which were also relevant to the discussion of article 33, said that the six-month rule could not be inflexible, as sufficient time must be allowed for an arbitral procedure should States parties decide to resort to it. Her delegation welcomed the suggestions made by Germany, with the support of Finland, for strengthening compulsory arbitration mechanisms, and agreed that no additional agreement should be required for an arbitration procedure to take place.

3. Ms. BARRETT (United Kingdom) said that her delegation, while welcoming a preliminary exchange of views on article 33, would determine its position on the article in the light of the other provisions of the convention. Her delegation therefore suggested that the article should be referred to the Drafting Committee together with the final clauses, because whatever position the Working Group adopted on the permissibility of reservations to the convention would have a significant bearing on the formulation of article 33.

4. Mr. HARRIS (United States of America) endorsed the views expressed by the United Kingdom representative. It was important to have an overall view of the obligations that would be assumed by the parties to the convention in order to determine whether those obligations should be subject to any dispute settlement mechanisms and, if so, which ones.

5. Some delegations had expressed the view that the provisions of article 33 should be tightened in order to bring them into line with current practice in the field of multilateral environmental treaties. In evaluating the article's dispute settlement provisions, two central questions should be kept in mind. First, were the parties required to enter into some type of dispute settlement process, whether conciliation, fact-finding, arbitration or formal adjudication?

And second, were the decisions reached through such mechanisms legally binding on the parties? The draft convention imposed on States a general obligation to enter into consultations and negotiations with a view to resolving disputes. If those means failed to produce a settlement, then article 33 provided for compulsory fact-finding and for non-compulsory mediation or conciliation.

6. Virtually all recent international environmental treaties required States parties to resolve disputes. Where they were unable to do so, the outcome depended on whether the States concerned had, upon becoming parties to the convention, agreed to settle disputes through the International Court of Justice, arbitration or another method. In the absence of such agreement, the parties were required to submit the dispute to non-binding conciliation. The question arose, therefore, whether compulsory fact-finding was truly less rigorous than compulsory conciliation. The International Law Commission's emphasis on fact-finding recognized that, in such a highly technical area, the resolution of questions of fact was central to an equitable settlement of disputes.

7. His delegation would not be opposed to including a provision allowing States parties to accept either compulsory and binding arbitration or resolution by the International Court of Justice. Where the parties did not agree to a common mechanism, disputes would be subject to compulsory conciliation, a process that led to a recommended solution. If such a provision was included, however, it would be necessary to specify the arbitration and/or conciliation procedures to be adopted.

8. Mr. PAZARCI (Turkey) said that his delegation wished to reply to the objections raised by several delegations to its proposal concerning draft articles 11 to 19 (A/C.6/51/NUW/WG/CRP.37). The first objection centred on the concept of the draft articles as a framework convention, while the second alleged that the notification principle already constituted a rule of international law because it was contained in the Rio Declaration on Environment and Development. On the first issue, his delegation wished to point out that there were differences of opinion in the Working Group on the nature of the draft convention. As to the second issue, his delegation believed that some delegations had drawn hasty conclusions. There were two ways in which a clause of a declaration could acquire the force of international law: if the declaration had the status of a treaty, or if the clause embodied a customary rule. In the first place, the Rio Declaration was not a treaty; hence, it could not be argued that notification constituted a treaty obligation. Secondly, the fact that a rule was contained in the Rio Declaration, or even in a number of other universal declarations, did not mean that it had the material, psychological and moral characteristics of a rule of customary international law. At the United Nations Conference on Environment and Development, delegations had been unable to agree on principle 19 concerning notification; it had therefore been referred to a consultative group, and had finally been adopted following a lengthy debate. The delegations which had initially opposed it had finally agreed to its inclusion precisely because the Rio Declaration was not a legally binding instrument; in other words, the principle did not reflect the opinio juris of the international community. Moreover, principle 19 of the Rio Declaration could not serve as a precedent for the adoption of the mechanism provided for in the draft prepared by the International Law Commission, as it provided only for prior notification, and not for any subsequent procedure.

Unlike the Commission's draft, the Rio Declaration made no provision for a notification which amounted to seeking prior agreement from other watercourse States. Indeed, such an obligation had specifically been rejected by the arbitral tribunal in the Lake Lanoux case.

9. The considerations which he had just outlined showed that there was no international legal obligation which could serve as a precedent for the adoption of the notification principle and of a procedure whereby prior agreement must be sought from other watercourse States. In view of the need to strike a balance among opposing interests, it would appear unwise to institute such a mechanism.

10. Ms. GAO Yanping (China) said that while her delegation was not opposed to a preliminary exchange of views on article 33, it endorsed the stance taken by the United Kingdom and the United States, namely, that the article should be considered in the light of the convention as a whole. Her delegation's initial view was that article 33 should be re-examined. In accordance with international practice and Article 33 of the Charter of the United Nations, State parties to a dispute were entitled to seek a solution by any peaceful means of their own choice. As currently drafted, however, article 33 of the new convention did not give States parties sufficient freedom of choice. Furthermore, it was unclear why article 33, subparagraph (b), provided for compulsory fact-finding, but not for compulsory mediation, conciliation, arbitration or judicial settlement.

11. Mr. KASSEM (Syrian Arab Republic) said that article 33 should be amended to provide for compulsory dispute settlement mechanisms - including mediation, conciliation, arbitration or judicial settlement - which could be initiated at the request of any State party to the dispute. In the absence of such a provision, the other articles of the convention would be rendered meaningless.

12. Mr. TANZI (Italy) said that in some respects, article 33 constituted an excellent basis for dispute settlements. The obligation to enter into consultations and negotiations, as laid down in subparagraph (a) of the article, was in keeping with Article 33 of the Charter of the United Nations and the Manila Declaration. His delegation endorsed the unilaterally activable fact-finding mechanism provided for in article 33, subparagraph (b), regarding it as the first step in a dispute settlement procedure.

13. In other respects, however, article 33 was open to improvement. Even if his delegation was prepared to consider a provision establishing compulsory judicial or arbitral settlement, as proposed by Finland, it would be more appropriate and realistic to give States parties to the convention an array of choices in the context of compulsory judicial settlement. The 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, concluded within the United Nations Economic Commission for Europe, was a model in that regard; becoming a party to the Convention did not automatically imply that a State was bound by a compulsory adjudication or arbitration system, although it had the option of accepting such a system. Strengthening the system of conciliation would help to establish a middle ground between the two opposing points of view that had emerged during the debate on article 33.

14. Mr. SVIRIDOV (Russian Federation) said that article 33 was of key significance in determining the relationship of States to the future convention.

The draft prepared by the International Law Commission was well balanced, in that it provided for both compulsory and supplementary dispute settlement procedures. The first category included consultations and negotiations and, in the case of specific watercourses, recourse to existing joint machinery, subject to agreement by the States concerned. Article 33, subparagraph (b), provided for a compulsory fact-finding procedure; however, the Commission had wisely given States the freedom to resort to mediation or conciliation. Lastly, article 33, subparagraph (c), allowed for the possibility of judicial settlement or arbitration. His delegation believed that the latter procedures should be initiated only with the consent of all parties to the dispute. While article 33 was acceptable as drafted, his delegation could go along with the United States and United Kingdom proposals to defer consideration of the article to a later stage.

15. Mr. RODRIGUEZ-CEDEÑO (Venezuela) said that his delegation generally supported article 33 as drafted, although minor improvements might be necessary. The question of dispute settlement should be considered first in the context of agreements applicable between watercourse States. His delegation also believed that it was essential to maintain the obligation provided for in article 33, subparagraph (a), namely, that of expeditiously entering into consultations and negotiations. The reference to existing joint machinery was equally important, as it reflected the need for direct negotiations between the parties.

16. The second phase of dispute settlement (article 33, subparagraph (b)) was also appropriate; if negotiations conducted in good faith did not lead to a resolution, fact-finding could be initiated unilaterally, and mediation or conciliation could be initiated by agreement between the States concerned. That provision could be placed in an annex, as suggested by the Commission in its 1991 draft.

17. His delegation also endorsed article 33, subparagraph (c), which made recourse to arbitration or judicial settlement subject to the consent of all the parties involved. Owing to the nature of the convention and the sensitivity of its subject-matter, parties should endeavour to resolve their disputes through existing machinery before turning to a judicial body which, in any case, would require the consent of the States concerned. The exclusion of compulsory judicial methods, such as arbitration, would favour the universality, and hence the widest possible acceptance, of the convention.

18. Ms. FLORES (Mexico) said that article 33 was part of a well-balanced set of draft articles and the current wording should be retained. With regard to the Finnish proposal, Mexico was one of the States which recognized the compulsory jurisdiction of the International Court of Justice, but in the current instance the adoption of that proposal might be counter-productive and prevent many States from acceding to the Convention. Recourse to compulsory judicial settlement was a matter for specific agreements between States rather than for a framework convention. Her delegation was surprised that the representative of Turkey should assert that there was no obligation in international law concerning prior notification; the opposite was the case, and that was the trend followed by the Commission in the draft articles.

19. Mr. CHAR (India) said that it would be premature to comment on article 33 before the Working Group had completed its consideration of all the draft

articles. However, his delegation did have serious reservations about the article because dispute settlement should be a matter for bilateral agreements. In particular, it could not accept the proposal for a fact-finding commission.

20. Mr. HAMDAN (Lebanon) said that it was clearly difficult to reconcile delegations' approaches to what was a very important issue. His delegation tended to agree with that of Italy that the aim in article 33 should be to produce a convention which would play an effective role in international relations. It also agreed with the delegations which had argued that the convention under consideration should take a different approach to compulsory dispute settlement.

21. The United States representative had rightly referred to the various environment agreements which left room for the parties to agree on the dispute settlement method and avoided the compulsory approach. However, disputes were unlikely to arise under the environment conventions whereas the use of international watercourses was an area in which the interests of States often conflicted. Notwithstanding the Charter provisions on the mandatory peaceful settlement of disputes such an approach was often difficult in practice, and the recent trend was to interpret international law broadly when vital interests were at stake; that applied, for example, to Article 51 of the Charter concerning the right of self-defence.

22. The watercourse convention should seek to minimize frictions and oblige States parties to resolve their disputes peacefully, if necessary by binding arbitration or judicial settlement. In that connection, the proposals of the Syrian Arab Republic and of Finland were similar on the substantive issues and could perhaps be merged in a single paper.

23. Mr. SABEL (Israel) said that, in article 12, the adjective "available" should be retained and the suggested alternative of "necessary" rejected. "Available technical data" was an objective criterion, whereas "necessary" was a subjective term which was more likely to lead to disagreements. Furthermore, not all of the data was available in the early stages of the planning of a project, but that was no reason for delaying the provision of whatever was available. It might also be useful to add a reference to the updating of the data.

24. With regard to article 33, his delegation believed as a matter of principle in the mandatory nature of the peaceful settlement of disputes. It would be useful to mention various alternative methods of dispute settlement, such as those referred to in Article 33 of the Charter and the Manila Declaration, but it would be wrong to lay down a single mandatory procedure which might be appropriate for some disputes. His delegation could support the United Kingdom proposal to defer the issue until the Working Group discussed the final clauses.

25. Mr. REBAGLIATI (Argentina) said that it was difficult to envisage an objective solution to the problem dealt with in article 33. What was needed therefore was a compromise solution which would ensure broad acceptance of the future convention. It would be a pity if the dispute settlement procedure prevented a State from ratifying the convention when its substance was acceptable. While important, that procedure was not a central aspect of the text, and it should therefore be possible to find a compromise.

26. There was general agreement that States had an obligation to resolve their disputes by peaceful means and that it was, in principle, for the States parties to a dispute to choose the settlement procedure. The Commission's draft articles set out clear rules on that point, and the notion of a fact-finding commission was an interesting innovation. What was needed was something more than mere settlement by the parties to the dispute and something less than a compulsory jurisdiction.

27. His delegation would prefer the word "solutions" in subparagraph (a) to appear in the singular; the qualification "equitable" should be deleted.

28. Mr. ROSENSTOCK (Expert Consultant) said that the Commission's thinking on article 33 had been accurately summed up by the representative of Venezuela, the United States and Mexico. The representative of Argentina was also right to say that dispute settlement was not a central aspect of the convention.

29. The Commission had reviewed the global conventions on the environment and other topics, but had found no broad practice of compulsory binding dispute settlement. It had also borne in mind that consent and cooperation between States were the tonic note struck throughout the draft articles. In view of the complexity of possible disputes, fact-finding had seemed useful and had been made compulsory but not binding.

30. The Commission had also considered the various conventions with opting-in and opting-out clauses. The main reason why it had not followed that model was that the draft articles were intended as a framework convention: in most cases States would enter into bilateral agreements including appropriate dispute settlement mechanisms.

31. Mr. VORSTER (South Africa) said that his delegation had noted the argument that regional solutions were not necessarily always appropriate, but the system established in the Southern African Development Community (SADC) might be of interest to the Working Group. The SADC protocol on shared watercourse systems provided for compulsory binding dispute settlement by a tribunal to be established under the main SADC agreement. Accordingly, the South African delegation had no difficulty in supporting the Finnish proposal, although it could see that such a solution might not be acceptable to all delegations; it did not wish at the current stage to comment on the time schedule specified in the proposal.

32. Mr. LALLIOT (France) said that article 33 was too long and detailed for a framework convention. Subparagraph (b) (vi), for example, even specified how the expenses of the Fact-Finding Commission should be distributed. In its excellent work the International Law Commission had invoked the general structure of the existing method of dispute settlement but it should have concentrated only on the essential principles thereof. This delegation proposed that the article should be reduced to a single paragraph, which might read: "The watercourse States shall take all appropriate measures to end peacefully and as quickly as possible any disputes between them with respect to the non-navigational uses of the watercourse in question". An alternative solution would be to retain the chapeau and subparagraphs (a) and (b) while deleting all six of the subparagraphs of subparagraph (b).

33. His delegation was ready to examine the Swiss proposal but would like to see it in writing; it had no objection to deferring the question of dispute settlement until the Working Group considered the final clauses.

34. Mr. HARAJ (Iraq) said that article 33 was one of the most important of the draft articles. However, the dispute settlement machinery proposed by the Commission would not be effective because it depended on acceptance by all the States parties to a dispute, so that opposition by one State would prevent a solution. His delegation was in favour of mandatory provisions on arbitration and judicial settlement and it therefore supported the proposal by the Syrian Arab Republic. It had submitted its own proposal to the secretariat in writing. Recourse to the International Court of Justice was a trend which the United Nations was trying to consolidate. Some of the Secretary-General's proposals in that regard had already been put into effect, and the trend had been further encouraged by the adoption of General Assembly resolution 47/120 on "An Agenda for Peace".

35. Mr. LEE (Republic of Korea) said that his delegation supported the Commission's draft articles because they struck a balance between the available procedures and because they were themselves procedural in nature and allowed States to enter into agreements of their choice. As the United Kingdom representative had pointed out, it would be better to defer consideration of the issue until other related matters had been dealt with.

36. Mr. MANNER (Finland) noted that recourse to a fact-finding commission was the only provision of article 33 binding on the parties to a dispute. While no one could object to the establishment of such a commission, his delegation had proposed the inclusion of a rule requiring the parties to submit the dispute to either arbitration or judicial settlement. In the light of the discussion, it supported the Swiss proposal that a compulsory settlement procedure should begin with mediation or conciliation.

37. His delegation was glad that the United States representative had mentioned three environmental protection conventions, which contained binding mediation or conciliation procedures. Compulsory arbitration or judicial settlement should be the last resort, although the parties to a dispute could agree to use that mechanism immediately. The binding procedures contained in most of the environment treaties depended on the will of the parties. Finland also endorsed the point made by the representative of Lebanon that the settlement procedures depended on the nature of a treaty. It was therefore important for the draft articles to include compulsory settlement procedures. It might be remembered that the widely ratified United Nations Convention on the Law of the Sea contained a compulsory procedure - arbitration - agreed upon by all the contracting parties.

38. Mrs. DASKALOPOULOU-LIVADA (Greece) said she supported the proposal put forward by the representative of Finland. The incorporation of compulsory arbitration in internationally binding instruments was the only way to guarantee good-neighbourly relations and, indeed, peace and security. The text before the Working Group did not go far enough in establishing such compulsory procedures, which either party should be able to invoke at any time. The Finnish amendment would meant that article 33 would have a full spectrum of dispute-settlement measures, ranging from negotiations to arbitration and judicial settlement. In

the context of that amendment, she would be prepared to accept the role of the Fact-Finding Commission, though she would have preferred a conciliation commission in its place.

39. Mr. ŠMEJKAL (Czech Republic) said that the provisions in article 33 were too minutely detailed for a framework convention. He would have preferred a more concise version covering the basic principles, along the lines of article 14 of the United Nations Framework Convention on Climate Change. The focus on the Fact-Finding Commission was too narrow, but he agreed with the basic approach and felt that the stronger measures proposed by Finland were inappropriate, given the nature of the convention.

40. Mr. SÁNCHEZ (Spain) said that article 33 failed to reach a balance between the principle of resolving disputes by peaceful means, of which Spain was a fervent supporter, and detailing the procedures needed to do so. Given the subsidiary nature of the article, the proliferation of detail, on time limits for instance, was inappropriate and, in the context of the convention, likely to hinder progress and make ratification unnecessarily problematic. He therefore supported the suggestions made by the representatives of France and Switzerland.

41. Mr. de VILLENEUVE (Netherlands) said he was surprised that standard clauses used in similar conventions were giving rise to objections, which were taking up valuable time. He supported the views expressed by the representatives of Finland and Switzerland; the comments by the United States representative were also helpful.

42. Mr. ENAYAT (Islamic Republic of Iran) said that most agreements between Iran and other countries contained clauses allowing for the peaceful settlement of any disputes. He agreed with the representative of France that it would be preferable to delete all the subparagraphs of subparagraph (b).

43. Mr. LAVALLE VALDÉS (Guatemala) said he was surprised at the prominence given in article 33 to disagreements over facts, when disagreement was just as likely to arise over the interpretation of the convention. He would like provision to be made for an obligatory, though not necessarily binding, procedure for matters which were not disputes over the facts themselves.

44. He was concerned that a so-called Fact-Finding Commission (in passing, he wondered why "fact-finding" was used rather than simply "inquiry") should have powers to make recommendations, as proposed in subparagraph (b) (v). That was surely the role of a conciliation commission; the Fact-Finding Commission should by definition restrict itself to verifying the facts, whereas the powers described in subparagraph (b) (iv) were almost identical to the wide-ranging and independent powers of a conciliatory body under international law. Furthermore, he wondered if the findings of the Fact-Finding Commission would be open to challenge. Although the Expert Consultant had said the findings would not be binding on the parties, if they were to be considered as such, the Commission would be assuming a judicial function.

45. Mr. NUSSBAUM (Canada) said that article 33, as drafted by the International Law Commission, was a reasonable compromise which would facilitate the efficient resolution of disputes.

46. Unlike certain delegations, his delegation believed that articles 11 to 19 did reflect existing customary law. In support of that view, he cited, among other provisions, articles 5 and 6 of the 1982 Montreal Rules on Water Pollution, articles 29 and 30 of the 1966 Helsinki Rules on the Uses of the Waters of International Rivers, the 1972 Declaration of the Stockholm Conference on the Human Environment and the 1992 Rio Declaration on Environment and Development, as well as various cases referred to the International Court of Justice and the Lake Lanoux case mentioned by Turkey. The kinds of obligations outlined in articles 11 to 19 were clearly in line with existing international law, which contained a clear and unambiguous principle requiring prior notice, consultation and negotiation in cases where the proposed use of a watercourse might cause harm or injury to the rights or interests of another State.

47. Mr. MORSHED (Bangladesh) said that two important treaties recently concluded in South Asia included compulsory arbitration procedures, which was perhaps indicative of a general trend. Although it would be better to have compulsory and binding procedures incorporated in article 33, he would support the compromise represented by the text as it stood. He found the move to delete the word "equitable" from subparagraph (a) a retrograde step, since the United Nations Convention on the Law of the Sea spoke of "equitable solutions" to disputes.

48. Mr. PAZARCI (Turkey) insisted that there were no universally accepted rules on notification or the procedures to be followed. The evidence referred to by those who disagreed with that view dealt for the most part with regional agreements or the implementation of international agreements at the regional level. The commentary to article 12 of the International Law Commission's draft made it clear that the principle of notification applied only at the local or regional level.

49. Mr. RAO (India) said that the convention should provide a framework within which States could develop their own mutually acceptable dispute settlement procedures, as his Government was doing. As the Expert Consultant had observed, consent and cooperation were the watchwords; mandatory procedures might prove to be counter-productive. The facts were important, but more important still was the political will to settle disputes peacefully, and that could best be achieved by including dispute settlement procedures in an optional protocol or separate document.

50. The CHAIRMAN said that members would have the chance at a later stage to come back to article 33, but not in conjunction with the final clauses, as some delegations had requested, as that was within the mandate of the Drafting Committee. He took it that the Working Group wished to send articles 11 to 19 to the Drafting Committee.

51. It was so decided.

52. The CHAIRMAN announced that Ambassador Hayes of Ireland had agreed to become the coordinator for cluster III. He would himself be prepared to act as coordinator for cluster II.

Cluster IV (articles 20-28)

53. At the request of Mr. RAO (India), Mr. ROSENSTOCK (Expert Consultant) briefly introduced articles 20 to 28, which were for the most part self-explanatory. He said that the articles had been drafted with a view to both dealing with existing pollution and preventing pollution in the future. Article 22 did not deal with the introduction of all alien or new species into a watercourse, but only with those that might have a detrimental effect on the watercourse ecosystem. In article 24, where the concept of sustainable development was introduced, "management" was not obligatory. Articles 25 and 26 stressed the importance of cooperation in regulating water flow and protecting installations.

54. Mr. RAO (India) said that his country had no major problems with part IV of the draft articles, which was forward-looking and should provide inspiration and guidance for States when drafting their own environmental regulations. Notwithstanding the central role of watercourses in the totality of environmental concerns, their environmental effects would always be limited to local and regional areas. The States concerned should apply the articles to individual users of a particular river in the light of their own needs and circumstances. As all watercourse States shared common interests, concerned efforts should be made to promote the principles contained in the draft articles, which should not become a source of further conflict in the endeavour to accommodate different interests. Against that background, he was able to support the framework convention.

55. Mr. PULVENIS (Venezuela) said that the problems addressed in part IV of the draft articles did not concern riparian States alone, as demonstrated by the importance attached by his own country to those articles, particularly article 23. He did not share the previous speaker's view that the environmental management of international watercourses had a limited effect on the overall environment. The draft articles were satisfactory in the context of a framework convention, as they provided guidelines upon which States could elaborate further. His delegation had proposed very limited amendments, which did not alter the balance of the text, and had also considered with interest Ethiopia's written comments concerning article 20. His delegation believed that article 20 could be improved by inserting the words "and, as appropriate, regenerate," after the words "protect and preserve".

56. Mrs. ESCARAMEIA (Portugal) said that her delegation's proposed amendment to article 20, contained in document A/51/275, should be revised to read "individually and/or jointly", because notwithstanding their joint responsibility, one country might be able to take additional measures that were not an available option for the other country concerned.

57. Mrs. MEKHEMAR (Egypt) said that the amendment proposed by the Portuguese delegation was constructive, because a State's individual responsibility did not preclude its collective responsibility.

58. Mrs. FERNANDEZ de GURMENDI (Argentina) said she was satisfied with part IV of the draft articles and supported the proposal of the Venezuelan representative concerning article 20. The words "and biodiversity" should be

inserted after the word "ecosystems" in that article with a view to ensuring full protection of the system.

59. Mr. ROSENSTOCK (Expert Consultant) said that according to paragraph (4) of the commentary to article 20, joint cooperative action was to be taken where appropriate. It would be more realistic if article 20 were to read "individually or, where appropriate, jointly", so that it would not lay down a rule that joint action should be taken in cases where a problem arose wholly within a watercourse State that was able and willing to assume individual responsibility for dealing with it. In his view, the words "individually and jointly" were no different from the word "jointly". He further believed that the concept of biodiversity was included in the notion of ecosystems as defined in the commentary and in the Biodiversity Convention. He doubted whether it would be realistic to include in an introductory article the concept of regeneration, which was addressed in article 21 in that prevention, reduction and control of pollution referred to restoration of the status quo ante.

60. Mr. PRANDLER (Hungary) said that the word "ecosystems" should be defined in article 2 and that article 20 could be further strengthened by including three additional elements, namely: the prevention, reduction and control of pollution; the need for ecologically sound and rational water management, conservation of water resources (including freshwater systems) and environmental protection; and the conservation and, where necessary, the regeneration of the ecosystems of international watercourses, as already proposed by the Venezuelan representative with the support of others.

61. Mr. de VILLENEUVE (Netherlands) said that he supported the proposals put forward by the representatives of Venezuela, Hungary and Portugal. The end of article 20 should be amended to read "the ecosystems related to international watercourses", in order to include ecosystems that were dependent on watercourses for their subsistence.

62. Mrs. GAO Yanping (China) said that, given the importance of protecting and conserving ecosystems, article 20 should be amended to read: "Watercourse States shall, individually and/or jointly, protect and maintain the ecological balance of international watercourses". Such wording would render the article more universally comprehensible and acceptable and align it further with the purpose of the convention.

63. Ms. Barrett (United Kingdom) said she was unconvinced by the amendment proposed by the Portuguese representative, because it was unclear and did not improve the text.

64. Mr. ELMUFTI (Sudan) said he agreed with the remarks made by the delegations of Venezuela and Egypt concerning use of the phrase "and/or". The current version of article 20 placed an obligation on all watercourse States to protect and preserve the ecosystems of all international watercourses. It should therefore be redrafted with a view to ensuring that watercourse States were obliged to protect and preserve only the ecosystems of international watercourses within their territory.

65. Mr. YIMER (Ethiopia) said he was satisfied with the existing wording of article 20, which should remain unamended. He would nevertheless appreciate an

explanation as to why the word "ecosystems" had been preferred to "environment". It would be desirable to define the term "ecosystem" in article 2.

66. Mr. ROSENSTOCK (Expert Consultant) said that paragraph (2) of the commentary to article 20 contained a reasonably clear and accurate definition of the term "ecosystem" that he would have difficulty in refining. He noted that the paragraph also explained the difference between the terms "ecosystem" and "environment".

The meeting rose at 6.05 p.m.