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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 3.05 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 335; A/51/275 and Corr.1 and Add.1)

Cluster IV (articles 20-28) (continued)

Article 21

1. Mrs. LADGHAM (Tunisia) proposed that the words "or human activity" should be added at the end of paragraph 1. She was also in favour of deleting the word "significant" for the reasons already stated in connection with article 7.
2. Mr. AKBAR (Pakistan), Mrs. MEKHEMAR (Egypt), Mr. HARAJ (Iraq), Mr. KASSEM (Syrian Arab Republic) and Mr. REBAGLIATI (Argentina) agreed that the word "significant" should be deleted.
3. Mr. de VILLENEUVE (Netherlands) said that article 21, paragraph 3, was not entirely satisfactory, as it referred to only one of many means that could be used to prevent, reduce and control pollution. His delegation had therefore proposed the amendment to paragraph 3 contained in document A/C.6/51/NUW/WG/CRP.50 on the ground that it provided States with more insight concerning measures which they might wish to take without placing any greater burden on them. However, his delegation wished to simplify the final sentence of the amendment so that it would read: "In addition, they shall, individually or jointly, prevent pollution at source of international watercourses from point sources and diffuse sources".
4. Mrs. VARGAS de LOSADA (Colombia) said that her delegation had no substantive objections to the Commission's text of article 21. It could not accept the amendment because some countries, particularly developing countries, would find it difficult to assume some of the responsibilities it entailed.
5. Mr. REBAGLIATI (Argentina), supported by Mrs. ESCARAMEIA (Portugal) and Mr. LOIBL (Austria), said that in the light of the concerns expressed by the previous speaker, the Netherlands amendment could be modified so as to render it more acceptable to all States.
6. Mr. PRANDLER (Hungary) supported the Netherlands proposal.

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7. Mr. YIMER (Ethiopia) said that the Netherlands proposal was unnecessarily detailed and sought to impose stringent obligations which developing countries would find it difficult to fulfil. Moreover, the ideas which it contained could be covered by bilateral and multilateral agreements. He therefore supported the current wording of the article and emphasized the importance of retaining the word "significant", which should not be deleted from any draft article.

8. Mr. VARŠO (Slovakia) said that the objective of the framework convention was not to protect nature and the environment. However, the effects of using international watercourses should be taken into account, and the word "significant" should therefore be retained.

9. Mr. CALERO RODRIGUES (Brazil) said that the Netherlands amendment was useful. However, paragraph 2 of the draft article would be improved if it were amended to read "Watercourse States shall, at the initiative of one of them, ...". He also felt that the sentence following subparagraph (b) of the Netherlands proposal might be better placed in paragraph 2, in that it seemed to define the obligation laid down therein.

10. Mr. MAZILU (Romania), supported by Mr. PAZARCI (Turkey), Mr. CHAR (India), Mr. LALLIOT (France) and Ms. GAO Yanping (China), said that it would be advisable to retain the current wording of article 21 with a view to achieving a consensus, as it was well balanced and not too detailed.

11. Mr. de VILLENEUVE (Netherlands) said there was a need to ensure that the quality of the water in international watercourses matched their agreed uses, in which case a closer link between paragraphs 2 and 3 merited consideration. The objective of his delegation's amendment was not to place heavier burdens on States, but to elaborate on the optional measures available to them. He was therefore ready to consider the Brazilian proposal and to seek a middle ground with a view to improving the text.

12. Ms. BARRETT (United Kingdom) said that her delegation was keen to support the Netherlands proposal, which was constructive and made the text more flexible, but agreed that it was too detailed. One compromise solution would be to omit the final sentence following the proposed subparagraph (b).

13. Mr. MANNER (Finland) introduced his delegation's proposed amendment to article 21, paragraphs 1 and 2 (A/C.6/51/NUW/WG/CRP.48). The amendment was not substantive, and was aimed merely at improving the text by combining the wording of the paragraphs in a different order, although it did omit the word "significant".

14. Mr. HARRIS (United States of America) said he wondered whether the standard of care expected from Governments should be set forth in both articles 21 and 22. The commentary referred to that standard as due diligence, which was specified in draft article 7. Although he was not necessarily saying that it should also be specified in articles 21 and 22, its omission might raise questions as to whether different standards were intended. Otherwise, he agreed that the Netherlands proposal could be shortened to a form more readily acceptable and more appropriate to a framework convention.

15. Mr. LALLIOT (France) said that the inclusion in article 21 of the obligation to exercise due diligence might pose problems.
16. Mrs. DASKALOPOULOU-LIVADA (Greece) said that the Netherlands proposal introduced helpful clarifying elements that could also be found in other international instruments, particularly the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, concluded within the United Nations Economic Commission for Europe. That Convention also provided guidelines as to what constituted "best environmental practice". Her delegation had no strong position regarding article 21 and believed that a compromise between the Commission's version and the Netherlands proposal should be possible.
17. She agreed with the United States representative that many delegations, including her own, would be opposed to incorporating the standard of "due diligence". In that connection, her delegation reaffirmed its stance regarding article 7.
18. Mr. CHAR (India) said that whatever standard of care was incorporated into article 7 would have a significant effect on other articles; for that reason, his delegation attached the greatest importance to article 7.
19. The CHAIRMAN said that the issue of "due diligence" could be resolved in the context of article 7.
20. Ms. BARRETT (United Kingdom) said that her delegation was keenly interested in the United States proposal to make it clear that the standard of care required was that of due diligence; her Government welcomed the explanation given by the Commission in paragraph (4) of its commentary to article 21 but believed that the text itself should be clearer in that regard. Specifically, a reference to "due diligence" should be included in article 21, paragraph 2, since it was that paragraph which spelt out the obligations assumed by States. As other delegations were reluctant to amend the text proposed by the Commission, her delegation proposed that a footnote should be inserted in the summary record of the current meeting, stating that the Working Group endorsed paragraph (4) of the Commission's commentary to article 21.
21. With regard to the Finnish proposal to clarify the definition of pollution in article 21, paragraph 1, her Government considered the current definition to be too vague, and had instructed her delegation to put forward alternative definitions based on that contained in the United Nations Convention on the Law of the Sea or other conventions. Lastly, the proposal to delete the word "significant" from paragraph 2 would not help to solve the problem of loose drafting in paragraph 1.
22. Mr. NUSSBAUM (Canada) said that his delegation endorsed the goals that the Netherlands proposal was intended to achieve and welcomed the suggestions made by Brazil and Colombia. Replying to the United Kingdom representative, he suggested that any discussion on the question of liability should be deferred until the Working Group had completed its consideration of article 7. Replying to the representative of Slovakia, he said that, according to current projections, one fourth of the world's water supply could be unsafe by the year 2000, which underscored the importance of the provisions under discussion.

23. Mr. HARAJ (Iraq) said that article 21 contained a clear definition of pollution and could be accepted by his delegation.

24. Mr. ŠMEJKAL (Czech Republic) said that his delegation was satisfied with article 21 as currently drafted, but could accept the United States proposal to introduce the notion of "due diligence".

25. Mr. PULVENIS (Venezuela) stressed the importance of the Netherlands proposal and said that there should be a basis for compromise between that proposal and the draft prepared by the Commission.

26. Mr. LABUSCHAGNE (South Africa) said that his delegation associated itself with the previous statements in support of article 21 and believed that the term "significant" should be retained.

27. Mr. AKBAR (Pakistan) reaffirmed his delegation's support for article 21, with the exception of the word "significant".

Article 22

28. Mr. SABEL (Israel) said that, while his delegation had no difficulties with article 22, it questioned whether the reference to the "ecosystem of the watercourse" might not be too broad, as the term "ecosystem" also encompassed the flora and fauna of a watercourse system. A way should be found to make it clear that the detrimental effects referred to in article 22 meant "any detrimental alteration in the composition or quality of the waters of an international watercourse", as stated in article 21, paragraph 1. Perhaps article 22 could be subsumed under article 21, or a reference to water quality could be included in article 2 (Use of terms).

29. Mr. TANZI (Italy) said that the wording of article 20 was stronger than that of article 22 in terms of protecting the ecosystem of the watercourse, in that article 20 did not refer to detrimental effects resulting in significant harm to other watercourse States.

30. Mr. AKBAR (Pakistan) said that, as in respect of article 21, his delegation's only difficulty with article 22 was the use of the term "significant", which it wished to see deleted from the convention.

31. Mrs. FERNÁNDEZ de GURMENDI (Argentina) said that her delegation associated itself with the comments made by the representative of Pakistan and also suggested that in article 22, line 2, the words "flora and fauna" should be inserted after "species, alien or new".

32. Ms. GAO Yanping (China) said that, while her delegation deemed article 22 to be generally acceptable, it proposed that the words "which may have effects detrimental to the ecosystem of the watercourse" should be amended to read "which may have adverse effects on the ecological balance of the watercourse".

33. Mr. NGUYEN DUY CHIEN (Viet Nam) said that his delegation could go along with article 22 as currently drafted, but wished to associate itself with the statements made by previous speakers regarding the deletion of the word "significant" in articles 21 and 22.

34. Mr. YIMER (Ethiopia) recalled that the Chairman had requested delegations, in commenting on the remaining articles of the convention, to refrain from restating their positions regarding the use of the word "significant". For its part, his delegation could not agree to the deletion of the term.

35. The CHAIRMAN said it was his understanding that delegations could express their overall acceptance of the draft articles without prejudice to their positions concerning the word "significant".

Article 23

36. Mr. YIMER (Ethiopia) requested clarification regarding the use of the term "marine environment".

37. The CHAIRMAN, replying to the representative of Ethiopia, read out the first sentence of paragraph (1) of the International Law Commission's commentary to article 23.

38. Mr. MANNER (Finland) drew the attention of the Ethiopian representative to article 194, paragraph 1, of the United Nations Convention on the Law of the Sea, which read: "States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, ..."

39. Mr. YIMER (Ethiopia) said that, in the light of the preceding statements, article 23 should be redrafted to make it clear that it dealt with land-based sources of pollution of the marine environment.

40. Mr. de VILLENEUVE (Netherlands) said that his delegation endorsed article 23 as drafted.

41. Mr. HARRIS (United States of America) said that article 23 had been drafted in such a way as to reflect, as closely as possible, the approach taken in the United Nations Convention on the Law of the Sea, and should therefore be retained as drafted.

42. Mrs. ESCARAMEIA (Portugal) drew attention to Portugal's comments on article 23, contained in document A/51/275, in which it proposed that the phrase "individually or jointly" should be replaced by "individually and jointly". The reasons for the proposed amendment to article 23 were the same as those for the proposed amendments to articles 20 and 21.

43. Mr. CHAR (India) said that his delegation endorsed the statement made by the United States representative and supported article 23 as drafted.

Article 24

44. Mr. PRANDLER (Hungary) stressed the importance of article 24. Paragraph (1) of the Commission's commentary to the article was cast in terms that were intended to be sufficiently general to be appropriate for a framework agreement. Nevertheless, the article as currently drafted did not meet those expectations. His country participated in joint management mechanisms with seven neighbouring States; on the basis of that experience, his delegation

believed that the institutional provisions of article 24 should be strengthened. He read out a detailed proposed amendment which would be circulated as a conference room paper.

45. Mr. SVIRIDOV (Russian Federation) said that the Commission had been right to include the notion of sustainable development in article 24 and to give States the freedom to choose a joint management mechanism. He drew attention to his delegation's amendment (in document A/C.6/51/NUW/WG/CRP.36): the addition of "and the quality of its water" to paragraph 2 (b) was designed to reflect the main concern of the Convention, namely the use of the water of a watercourse.

46. Mr. PAZARCI (Turkey) said that the wording of article 24 was too imperative in places, since the management of the watercourse should be based on the common and free will of the watercourse States. He therefore suggested that "shall" should be replaced by "may". Furthermore, States should not be required to enter into consultations "at the request of any of them", especially if there was no question of any harm to the watercourse. The phrase should therefore be deleted.

47. Mr. YIMER (Ethiopia) said that he disagreed with the representative of Hungary: the article did not contain too little detail. As the commentary made clear, the intention was for the watercourse States to enter into negotiations but the outcome was not prejudged, and the text referred only to a management mechanism, which did not necessarily mean an institution. The details should be left to the watercourse States concerned. His delegation endorsed the amendments proposed by the representative of Turkey.

48. Mr. CALERO RODRIGUES (Brazil) said that he doubted whether it would be advisable to make any changes in article 24; he agreed with what the representative of Ethiopia had said about the Hungarian proposal. However, he disagreed with the representatives of Turkey and Ethiopia on the question of the mandatory nature of the article. If one watercourse State thought it was advisable to have a management agreement, it would be normal for the other States to enter into consultations, without the result being prejudged. His delegation reserved its position on the amendment of the Russian Federation.

49. Mr. MAZILU (Romania) said that he was inclined to support the Brazilian position since the text was well balanced. However, his delegation could accept the replacement of "shall" by "may" and it supported the Russian amendment.

50. Mrs. ESCARAMEIA (Portugal) said that in principle her delegation was in favour of retaining the Commission's text. The Hungarian proposal was perhaps an ideal one but too detailed. As a compromise, therefore, her delegation could accept the replacement of "shall" by "may". It supported the Russian proposal.

51. Mr. VARŠO (Slovakia) said that his delegation was in general satisfied with article 24 but thought that the Turkish proposal warranted consideration. Perhaps the question of "shall" or "may" could be settled in the Drafting Committee. The detailed Hungarian proposal went beyond what was required in a framework convention. The aim of article 24 was to bring the watercourse States together for consultations, but it was then for them to decide what management arrangements to make. His delegation endorsed the comments made by the representatives of Ethiopia, the Russian Federation and Brazil.

52. Mr. LALLIOT (France) said that the draft articles in cluster IV went too far for a framework convention, and further detail was certainly not needed. His delegation would make a proposal in that regard in the Drafting Committee.

53. Mr. MANONGI (United Republic of Tanzania) said that article 24 did not place a stricter obligation on watercourse States than the general obligation to cooperate contained in article 8. It was therefore correct to make only the obligation to consult mandatory and to leave other matters to the States concerned. His delegation supported the Commission's text.

54. Mrs. FERNANDEZ de GURMENDI (Argentina) endorsed the Brazilian position and suggested that in paragraph 2 (b) the qualification "rational and optimal" should be replaced by "equitable and reasonable", the language used in article 5.

55. Mrs. DASKALOPOULOU-LIVADA (Greece) said that her delegation could have supported the Hungarian proposal, but since it would be difficult for the Working Group to agree to such an amendment, it might be better to retain the Commission's text. The representative of Brazil was right to argue that "shall" should not be replaced by "may"; if the fundamental obligation to cooperate was removed, the article became superfluous.

56. Mr. HAMDAN (Lebanon) said that his delegation agreed that the obligation contained in article 24 was a general obligation to consult consistent with earlier articles, but the matter should not be left entirely to the discretion of the watercourse States. It supported the Argentine proposal concerning paragraph 2 (b).

57. Mr. HARRIS (United States) said that his delegation agreed with the many delegations which preferred to retain the Commission's text. In fact, failing an indication to the contrary, it could be taken that the United States delegation supported the Commission's text of all the draft articles in clusters IV and V. Many of the changes suggested by delegations ought perhaps to be made in the Drafting Committee.

58. Mr. LEE (Republic of Korea) said that his delegation would require more time to consider the Hungarian proposal. It was against the replacement of "shall" by "may", since mandatory consultation was required. The Working Group should bear in mind the close relationship between articles 24 and 33.

59. Mr. NGUYEN DUY CHIEN (Viet Nam) said that his delegation supported the Commission's text. It was not excessive to make the obligation to consult mandatory; consultation should in fact be a routine matter.

60. Mr. KASSEM (Syrian Arab Republic) said that the article did not go too far: the only mandatory obligation was to consult, which was a direct consequence of the obligation to cooperate. The fact that the draft articles were intended as a framework convention did not mean that the obligations contained therein must be vague and lacking in concrete effect.

61. Mr. PULVENIS (Venezuela) endorsed the position of the United States.

62. Mr. RAO (India) and Mr. AKBAR (Pakistan) said that their delegations were opposed to changing the Commission's text.

63. The CHAIRMAN said he realized that the issues under discussion were very important but progress was too slow. He appealed to delegations to keep their statements short and to the point and to focus on policy issues. Drafting suggestions should be made in the Drafting Committee. Together with the Chairman of the Drafting Committee, he was determined to comply with the decision of the General Assembly that the draft articles should be adopted by 25 November.

Article 25

64. Mr. de VILLENEUVE (Netherlands) drew attention to his delegation's amendments to article 25 (A/C.6/51/NUW/WG/CRP.50). It was proposing the amendments because the term "where appropriate" was not clear in the context and because flow regulation was a matter which should be studied carefully, given its impact elsewhere in the watercourse.

65. Mr. PAZARCI (Turkey) said that he was not sure that the article was needed, since regulation of the flow of a watercourse could be covered under the draft article on management.

66. Mr. CANDELAS de CASTRO (Portugal) said that his delegation supported the proposals of the Netherlands.

67. Mr. KASSEM (Syrian Arab Republic), said article 25 was too important to be omitted. He supported the Netherlands amendments.

68. Mr. HAMDAN (Lebanon), Mr. ENAYAT (Islamic Republic of Iran), Ms. BARRETT (United Kingdom) and Mr. SABEL (Israel) said that they, too, supported the Netherlands amendments.

69. Mr. SVIRIDOV (Russian Federation) said article 25 was acceptable in principle, but the wording in paragraph 3 was rather too strong, and he suggested that the word "control" should be replaced by "affect".

70. Mr. MAZILU (Romania) said that the article was well balanced and should be retained, although "control" should be replaced by "affect", as proposed by the representative of the Russian Federation.

71. Mr. RAO (India) said he favoured retaining the International Law Commission's draft of paragraph 3, including the word "control".

72. Mr. HARRIS (United States of America) said he could not support the Netherlands amendments, which imposed an obligation to take specific measures at the request of another State, whether or not they were appropriate, and therefore upset the balance of the Commission's draft.

73. Mr. YIMER (Ethiopia) said he agreed that the Netherlands proposal would impose an unacceptable obligation on other States; he therefore opposed it. However, he proposed moving paragraph 3, which defined the term "regulation", to the beginning of the article, and renumbering the other paragraphs accordingly.

74. Mr. HABİYAREMYE (Rwanda) supported the Ethiopian proposal.

75. Mr. CALERO RODRIGUES (Brazil) said he agreed with the United States representative that the first part of the Netherlands amendment would change the thrust of paragraph 1. Elsewhere in the draft articles, States were entitled to request consultations, whereas under the proposed amendment they would be requesting "opportunities for regulation". The commentary to the article made it clear that "where appropriate" was included so that States would not be obliged to go looking for opportunities for regulation, but only to respond to them. He had no objection to the second part of the Netherlands amendment as such, but felt it was an unnecessary statement of the obvious.

76. Mr. HAMDAN (Lebanon) said that article 25 was intended to oblige watercourse States to cooperate in their response to any needs or opportunities for regulation. He asked the Expert Consultant to clarify the need to include "where appropriate", since the article dealt with the specific application of the general obligation to cooperate, which would only apply to watercourse States.

77. Mr. ROSENSTOCK (Expert Consultant) replied that the article recognized that regulation was often, but not always, relevant to watercourse States, and that a response was only necessary when opportunities or needs already existed. He shared some of the doubts about the effectiveness of the draft, which he saw as an attempt to avoid needless interference by States in the affairs of other States. He thought the second part of the Netherlands amendment restricted the ability of States to reach agreement; after all, they might agree on less than optimal use. There was no need to hark back constantly to earlier articles, for the problem was basically a drafting matter.

Article 26

78. Mr. de VILLENEUVE (Netherlands) suggested deleting the word "serious" from paragraph 2, since it did not add anything substantial; any reason to believe there might be significant adverse effects was a serious enough reason to enter into consultations.

79. Mr. REBAGLIATI (Argentina) said he agreed with the representative of the Netherlands, and added that the words "employ their best efforts" were too vague and should be deleted.

80. Mr. HARRIS (United States of America) observed the article 7 already imposed an obligation on States not to cause significant harm to other watercourse States, and that article 26 went further in imposing an obligation on States to protect installations even if that would have no effect on other watercourse States. As there were circumstances in which unforeseen damage to installations, such as damage caused by terrorist acts, did not necessarily affect other watercourse States, it was sufficient to oblige States to employ their best efforts rather than impose a stricter standard.

81. Mr. MAZILU (Romania) said that the Commission's text should be retained in full.

82. Mr. EPOTE (Cameroon) agreed that the full text should be retained, especially with regard to the obligation on States to "employ their best efforts". Installations could be damaged by forces beyond the control of a State, and a State could have great difficulty, despite showing good faith, in repairing such damage.

83. Mr. ROSENSTOCK (Expert Consultant) drew attention to paragraph (2) of the commentary to the article, which stated that watercourse States were obliged to employ their best efforts "within their individual capabilities".

84. Mr. RAO (India), Mr. YIMER (Ethiopia) and Mr. SVIRIDOV (Russian Federation) all voiced their support for the Commission's draft as it stood.

Article 27

85. Mrs. VARGAS de LOSADA (Colombia) drew attention to the written amendment submitted by her Government to article 27, contained in document A/51/275. She agreed that all appropriate measures had to be taken, but they had to be consistent with the level of economic development of the States concerned.

86. Mr. HAMDAN (Lebanon) said he supported the Colombian amendment.

87. Mr. YIMER (Ethiopia) said that article 27 was not essential, as it merely added details to provisions contained in article 7 and in the articles on planned measures in part III.

88. Mr. PULVENIS (Venezuela) said that the concerns expressed by the representative of Colombia were justified in the case of some of the conditions listed in article 27, such as catastrophic flood, but other conditions in the list needed to be controlled, and that obligation would be weakened by the proposed amendment. The language of the article was flexible enough, in its use of the words "appropriate" and "prevent or mitigate", to meet the concerns voiced by the representative of Colombia. The article was well balanced, and he therefore opposed the proposed amendment.

89. Mr. MORSHED (Bangladesh) agreed that the conditions listed in the article were of a very varied nature, some of them being long-term, persistent phenomena such as drought or desertification, while others were fairly transient, such as ice conditions or water-borne diseases. Furthermore, there was some overlap with other articles; for example, water quality was affected by floods and salt-water intrusion and could therefore be considered an aspect of pollution. He tentatively suggested that not all of the conditions belonged on the same list.

90. Mr. NGUYEN DUY CHIEN (Viet Nam) agreed with the representative of Venezuela that the concerns of the representative of Colombia were largely unfounded, and the draft should be retained as it stood.

91. Mr. ROSENSTOCK (Expert Consultant) said that, in general, article 27 was intended to cover conditions which were not as urgent or uncontrollable as the emergency situations dealt with in article 28. The distinction was not always clear-cut, however, as situations could develop rapidly; for example, a missed or late rainy season could lead to drought, or upstream flooding could cause the

sudden appearance of water-borne diseases. Nevertheless, it was not inconsistent to cover an issue in more than one article, but rather ensured comprehensive coverage. A flood, for instance, could be considered an emergency or simply a harmful condition; it was dealt with in article 27 as a condition that might or might not have an effect on other watercourse States.

92. Ms. BARRETT (United Kingdom) said her delegation wished to propose an amendment which addressed the concerns about the wide variety of conditions listed in article 27. The scope of the article would be narrowed if the phrase "related to an international watercourse" was inserted after "to prevent or mitigate conditions". The article would then cover drought or desertification only when they were related to an international watercourse.

The meeting rose at 6.10 p.m.