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SUMMARY RECORD OF THE 23rd MEETING

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 A/49/335; A/51/275 and Corr.1 and Add.1)

Cluster IV (articles 20-28) (continued)

Article 28

1. Mr. PAZARCI (Turkey) said that the definition of "emergency" in article 28 was so wide-ranging that it might pose a problem for developing countries, and he therefore suggested that the definition should be narrowed down.

2. Mr. CROOK (United States of America), Mr. KASSEM (Syrian Arab Republic), Mr. PRANDLER (Hungary) and Mr. AKBAR (Pakistan) wished to retain the article as drafted.

3. Ms. MATROOS (Botswana) said she understood that "when necessary" in paragraph 4 implied that the obligation to develop contingency plans jointly was optional, and yet as the sentence progressed it appeared to be dealing with a mandatory measure.

4. Mr. PRANDLER (Hungary) explained that the qualification "when necessary" meant that when an emergency occurred, it was obligatory to develop contingency plans, as it was imperative that States should cooperate.

5. Mr. ŠMEJKAL (Czech Republic) pointed out that there was no provision in the article for the equitable sharing of the cost of measures necessitated by an emergency.

6. Mrs. FERNÁNDEZ de GURMENDI (Argentina) asked the Expert Consultant to clarify the implications of the inclusion of "other States" as well as "watercourse States" in paragraph 1.

7. Mr. ROSENSTOCK (Expert Consultant) referred to paragraph (2) of the commentary to the article (A/49/10), where it was pointed out that "other States" would usually refer to coastal States suffering from the effects of, say, a chemical spill. Similarly, floods or diseases originating in a watercourse State could spread to other States, which was why the definition of an emergency was extended to cover non-watercourse States. It was true that there were no specific provisions in the article on the question of sharing the

costs of dealing with an emergency, although the contingency plans mentioned in paragraph 4 could include prior agreements on burden-sharing. The point was that when a catastrophe struck, action had to be taken immediately, with no delay for wrangling over the sharing of costs.

8. Mr. LAVALLE VALDÉS (Guatemala) inquired whether the reference to non-watercourse States referred only to States parties to the convention or applied also to States that were not parties to the convention; if the latter, it would not be necessary to change the text to refer specifically to States parties to the convention.

9. Mr. ROSENSTOCK (Expert Consultant) replied that the hope was that not only watercourse States, but others too, would adopt the convention.

Cluster V (articles 29-32 and article 2)

Article 29

10. Mr. CROOK (United States of America) drew attention to the amendment proposed by the United States in document A/C.6/51/NUW/WG/CRP.1. The commentary to the article made it clear that the text was intended to be without prejudice to existing international law and was not to lay down any new rules. However, despite purporting not to extend the applicability of any instrument to States not party to that instrument, the article could be interpreted as making States parties to the watercourse convention subject to certain rules contained in Protocol I of 1977 Additional to the Geneva Conventions, which the United States did not accept as customary law. He therefore called on the Working Group to address that matter in the preamble or to revise article 29 in line with the amendment proposed by his delegation.

11. Speaking on behalf of the United Kingdom delegation, he said that it, too, had similar reservations about article 29, considering that the matter belonged to the area covered by the laws of armed conflict. It the matter was to be addressed in the watercourse convention, the United Kingdom delegation would like it to be done by means of a clause making explicit the intention that the article was without prejudice to the application to international watercourses of the principles and rules of international law on armed conflict.

12. Mr. SABEL (Israel) and Mr. LEE (Republic of Korea) said that they supported the United States amendment.

13. Mr. ENAYAT (Islamic Republic of Iran) said the draft proposed by the International Law Commission was well balanced. The essential point was that article 29 was not an enunciation of existing rules. The accompanying commentary made it quite clear that the article was without prejudice to existing law and that it did not "purport to extend the applicability of any instrument to States not parties to that instrument". To limit the scope of the article to watercourse States, as had been suggested, would be an a contrario interpretation, which would permit illegal acts. Besides, watercourse States were already bound by article 26, which dealt with terrorism and sabotage.

14. Ever since the International Law Commission had begun its consideration of the matter, it had sought to apply the provisions not only to watercourse States

but also to other States, although, as was again made clear in the commentary, a State not party to the convention would not be bound by its provisions per se. He pointed out that that part of the commentary could also be found on page 77 of volume II of the 1991 Yearbook of the International Law Commission, that the original idea had been included in a resolution adopted at the 1976 conference of the International Law Association, and that it was also to be found in the sixth report of the Special Rapporteur, Mr. McCaffrey. Lastly, he cited the view of the Chairman of the Drafting Committee in 1991, Mr. Pawlak, that the inclusion of a reference to the principles and rules of international law was vital, and that the provisions should not be confined to watercourse States, since an attack could be carried out by a State that was not a watercourse State.

15. Mr. PRANDLER (Hungary) said that the article was formulated in general terms and did not prejudge the positions of respective States, and therefore his delegation could accept the current draft. However, he would be prepared to look at any new drafting suggestions if the concerns expressed about protocols to the Geneva Conventions were not sufficiently allayed by the remarks in the commentary that certain fundamental protections were afforded by the "Martens clause", which had achieved the status of general international law.

16. Mr. ROSENSTOCK (Expert Consultant), observing that the United States amendment sought to reflect the commentary more adequately, said that the only potentially substantive difference bore on the scope of the article, namely, whether it referred, as the amendment stated, only to watercourse States, or to all States or all States parties. The rest of the changes proposed were merely drafting changes.

17. Mr. CALERO RODRIGUES (Brazil) said he agreed that there was virtually no difference between the two texts. The United States amendment reflected the idea in paragraph (2) of the commentary that the principles and rules of international law that applied were those that were binding on the States concerned. Article 29 as it stood focused on what was to be protected, while the United States proposal focused on who must provide protection. The only substantive difference was that the amendment made the article applicable to watercourse States only, whereas the Commission’s text could be interpreted as imposing an obligation of protection on non-watercourse States, a debatable point. Brazil could accept either proposal.

18. Mr. RAO (India) said that he had an open mind on that matter, but definitely thought the word "internal" should be replaced by "non-international", as proposed by the United States.

19. Ms. DASKALOPOULOU-LIVADA (Greece), Mr. CAFLISCH (Observer for Switzerland) and Mr. SANCHEZ (Spain) endorsed the existing text.

20. Ms. MEKHEMAR (Egypt) said that she supported the existing text because it was general and balanced.

21. Mr. KASSEM (Syrian Arab Republic) said that, since the United States amendment limited the scope of the article, he preferred to retain the Commission’s text, which was in keeping with existing international and treaty law.

22. Mr. CROOK (United States of America) said that the problem for his delegation had been that there was no general agreement as to the content of the principles and rules of international law that applied in armed conflicts; the amendment sought to make it clear that the only applicable rules were those that bound the particular State that was protecting a watercourse. The use of the term "watercourse States" had not been meant to exclude other countries, and he could agree to different language, such as "Parties shall ...". He did not regard that as a point of substance but as a drafting question.

23. Mr. AKBAR (Pakistan) said he preferred the existing text because it did not lay down any new rules but simply referred to existing rules.

24. Mr. HAMDAN (Lebanon) said that if there was no real difference between the two texts it was preferable to keep article 29 as drafted.

25. The CHAIRMAN said that since there was no difference in substance between the draft text and the United States amendment, article 29 could be referred to the Drafting Committee.

Article 30

26. The CHAIRMAN said that no written amendments to article 30 had thus far been received.

Article 31

27. Mr. CROOK (United States of America), speaking on behalf of the United Kingdom, said that the article as it stood was not acceptable in the view of the British delegation. The exception to the obligation to provide information was too narrowly drawn: it should also exempt data that should be confidential on industrial and commercial grounds, as had been done, for instance, in article 8 of the Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes and article 2 of the Espoo Convention on Environmental Impact Assessment in a Transboundary Context.

Article 32

28. Mr. CANELAS de CASTRO (Portugal), supported by Mr. CALERO RODRIGUES (Brazil) and Mr. CAFLISCH (Observer for Switzerland), said that since the first part of the article referred to two possibilities - the suffering of transboundary harm and the threat of suffering such harm - it would be more consistent to replace "occurred" by "occurs or may occur".

29. Mr. de VILLENEUVE (Netherlands) said that the scope of the article should perhaps be extended to make it incumbent upon a State party actually to introduce adequate administrative and legal procedures and not simply to provide equal treatment under the law. He would submit an amendment to that effect.

30. Mr. RAO (India) said that his delegation could not accept the article, because it interjected prematurely into the watercourse context a still-evolving principle drawn from the broad field of the environment. It should be either deleted or included in an optional protocol.

31. The problems referred to in article 32 would generally affect private individuals within a State's own territory, in contrast to a liability convention where problems such as air pollution might have implications beyond a State's borders. The mechanisms whereby individuals could take legal action against a State were not universally uniform, but differed according to the law of the region concerned. The European region had a highly developed system allowing individuals to make claims against their own and other countries, through common institutions and common conventions and with freedom of movement and free access for all - an ideal situation which did not exist elsewhere. In any case, access to the courts by foreigners was never an easy matter, requiring much expense, a knowledge of languages and an understanding of alien laws and regulations. If the intent of the article was that individuals should be left to fend for themselves to press a claim against a State, it was meaningless. Even where class actions were involved, especially by poor people, the State had to intervene to assist them to obtain justice.

32. Moreover, conflict of laws was a very complicated matter in itself. There was also the further question of how justifiable it was for any individual or group of individuals, on either side of a border, to seek to frustrate, through long court delays, an international agreement struck between two watercourse States regarding protection against significant harm.

33. Mr. AKBAR (Pakistan) said that he, too, had many reservations regarding article 32 and through it should be deleted.

34. Mr. CALERO RODRIGUES (Brazil) said that the very divergent reactions to the text by the Netherlands and India showed that it probably struck the proper balance. Its aim was to set out what non-discrimination should mean and it expressed a widely accepted principle in very fair terms. His delegation believed it should be retained as drafted.

35. Mr. SVIRIDOV (Russian Federation) said that a very complicated issue was involved: the article went beyond establishing a State's obligation to provide individuals with access to legal procedures, for it obliged a State to provide foreign legal entities with equal legal and procedural protection. Article 32 was based on a very broad interpretation of a principle for which there were some precedents but which had not yet been developed in international customary law. His delegation could not support the text as it stood, and intended to propose a compromise text.

36. Mr. CAFLISCH (Observer for Switzerland) said that article 32 was probably based on the 1909 Treaty relating to boundary waters between the United States and Canada, a frequent source in treaty law. Switzerland supported the principle in article 32, which it felt must be included in the convention proper. The article would allow for the normal application of the rule regarding exhaustion of domestic remedies. It provided both for material non-discrimination and for non-discrimination in access to the courts, and his delegation did not see what needed to be added.

37. Mr. LAVALLE VALDÉS (Guatemala) said that article 32 tried to say too much in one paragraph. The expression "shall not discriminate" was a problem: the usual pejorative connotation of the word "discriminate" - which could in fact also mean the making of perfectly justifiable legal distinctions - made it

somewhat disconcerting when coupled with the proviso that States might agree otherwise. Also, the use of the conjunction "or" between "access to judicial or other procedures" and "a right to claim compensation or other relief" implied that they were mutually exclusive concepts although that was not necessarily the case.

38. Mr. MAZILU (Romania), supported by Mr. LEE (Republic of Korea), suggested that, in view of the objections raised to article 32, informal consultations should be held between the delegations concerned, as it was important to ensure that the framework convention was acceptable to the great majority.

39. Mr. EPOTE (Cameroon) said that it might be helpful if the Expert Consultant were to give an exact explanation of the meaning of article 32 with a view to eliminating any problems of comprehension. As he understood it, watercourse States which caused harm to natural or juridical persons that were not nationals or residents of watercourse States should not discriminate against such persons.

40. Mr. REYES (Mexico) said that his delegation was willing to consider the Portuguese proposal and pointed out that, as stated in paragraph (3) of the commentary to article 32, the rule concerning non-discrimination was a residual one.

41. Mr. ROSENSTOCK (Expert Consultant) confirmed the residual nature of the rule and said that the article had been properly interpreted by the representative of Cameroon. In his view, its meaning was clear, but he clarified that meaning further by giving examples and added that consideration could be given to the drafting issue raised by the representative of Guatemala.

42. Mrs. DASKALOPOULOU-LIVADA (Greece) said that her delegation had no objection to the provisions contained in article 32, which were standard in legal assistance agreements.

43. Mr. NUSSBAUM (Canada) said that the principle of non-discrimination was important to his delegation, which viewed it as a significant factor in the growing trend to rely on civil liability as a remedy for transboundary harm. However, given the comments of the representative of India and others, he supported the Romanian proposal for informal consultations.

44. Mr. VARŠO (Slovakia) said that article 32 contained too many elements in a single sentence and was also contradictory, since it appeared to suggest that States could agree to discriminate. He therefore suggested that it should be divided into four sentences, covering in turn respect for the principle of non-discrimination, agreement otherwise reached between watercourse States, access to judicial or other procedures, and compensation.

Cluster V (article 2)

45. Mr. PAZARCI (Turkey) said that, as defined in paragraph (a), the term "international watercourses" did not cover the link between watercourses and the territory of watercourse States. With a view to drawing a distinction between international watercourses, he therefore proposed the following definition: "International watercourses are divided into the following two categories: watercourses which form a boundary; transboundary watercourses which flow

successively through two or more States". Since a framework convention should deal only with surface waters, he also proposed that the words "and groundwaters" should be deleted from subparagraph (b).

46. Mrs. DASKALOPOULOU-LIVADA (Greece) supported the definition proposed by the representative of Turkey.

47. Mr. TAMRAT (Ethiopia), Mrs. VARGAS de LOSADA (Colombia) and Mr. AKBAR (Pakistan) supported the Turkish proposal concerning subparagraph (b).

48. Mrs. FERNÁNDEZ de GURMENDI (Argentina) said that in the Spanish text the term "aguas subterráneas" in subparagraph (b) was inappropriate, as such waters did not always flow into the common terminus of a watercourse. It would be preferable to use the term "aguas subálveas". Furthermore, the term "physical relationship" in subparagraph (b) was insufficiently clear, as it could refer to canals or basins. Her delegation would therefore prefer the term "physical or natural relationship" or "physical or geographical relationship".

49. Mr. SANCHEZ (Spain) supported the Argentine proposal concerning the use of the term "aguas subálveas".

50. Mrs. MEKHEMAR (Egypt) expressed disagreement with the proposal to delete the word "groundwaters", as it referred to a whole water system that could affect other parts of a watercourse. She also proposed that subparagraph (b) should be expanded to read: ... "groundwaters forming an integral part of the surface waters and constituting ...", as the definition would then include groundwaters which did not flow into a common terminus, but which were just as important.

51. Mrs. DASKALOPOULOU-LIVADA (Greece) and Mr. PULVENIS (Venezuela) said they, too, were opposed to the deletion of the word "groundwaters" from subparagraph (b).

52. Mr. de VILLENEUVE (Netherlands) said he was opposed to the deletion of the word "groundwaters" and supported the Egyptian proposal concerning the expansion of subparagraph (b).

53. Mr. ROSENSTOCK (Expert Consultant) said he wondered whether the problem raised by the representative of Argentina was caused by a poor translation into Spanish of the word "groundwaters".

54. Mrs. FERNÁNDEZ de GURMENDI (Argentina) said that the Spanish term "aguas subálveas" referred to waters that were linked to a river and flowed to the mouth of that river, whereas the term "aguas subterráneas" covered a much broader concept.

55. Mr. ROSENSTOCK (Expert Consultant) said that, in isolation, the term "groundwaters" in English could also encompass a much broader definition than that contained in subparagraph (b), which referred to a system and did not include confined groundwater. Deletion of the word "groundwaters" was a different matter.

56. Mr. AKBAR (Pakistan) proposed that, throughout the framework convention, the word "watercourse" should be replaced by the word "river", as it was universally recognized and used in all engineering literature and relevant agreements on the subject.

57. Mr. de VILLENEUVE (Netherlands) said that his delegation was against use of the word "river"; in his country, it was difficult to differentiate between a river and a canal.

58. Mr. PULVENIS (Venezuela) said that his delegation was prepared to consider a shorter version of the Turkish proposal if it was felt that the issue which it addressed had a bearing on the standards and principles under discussion. He disagreed with the Pakistani proposal to use the word "river" and emphasized that the proposed use of the term "aguas subálveas" in the Spanish text should not be interpreted as minimizing or limiting the concept of groundwaters as reflected in the other languages.

59. Mr. CAFLISCH (Observer for Switzerland) said that his delegation could go along with article 2 as drafted and with the reference in subparagraph (b) of that article to "groundwaters constituting ... a unitary whole"; like the Commission, however, his delegation would be opposed to including confined groundwater in the definition.

60. The question arose whether definitions given in other parts of the convention should be included in article 2; if so, the definition of "regulation" in article 25, paragraph 3, should be transferred to article 2.

61. Lastly, his delegation wished to know why the Commission had chosen to define "international watercourse" before defining "watercourse".

62. Mr. ROSENSTOCK (Expert Consultant), replying to the previous question, said that the order in which the terms were defined was intended to make it clear that the convention dealt only with transboundary situations. As to the possible inclusion in article 2 of definitions found in other articles, the Commission had decided that terms used in more than one article would be defined in article 2, while definitions of terms occurring in only one article would be left in that article.

63. Mr. KASSEM (Syrian Arab Republic) said that article 2, subparagraph (a), was acceptable as drafted, especially since both contiguous and successive watercourses were governed by the same legal regime. Likewise, his delegation could accept the Commission's definition of "groundwater".

64. As to the possibility of including in article 2 definitions of terms used in other articles, his delegation had proposed a definition of the term "optimal utilization" found in article 5, and had agreed to defer consideration of that amendment to the discussion of article 2. In view of the criteria just outlined by the Expert Consultant, and the fact that "optimal utilization" occurred in at least two articles, he requested the Chairman to clarify whether the Syrian delegation's amendment should be incorporated into article 5 or article 2.

65. The CHAIRMAN said that all proposed amendments would be referred to the Drafting Committee; the Syrian delegation would have an opportunity to discuss the placement of its proposal in the context of that Committee.

66. Mr. McCAFFREY (United States of America) said that his delegation associated itself with the comments made by the Syrian representative; the same principles applied to both contiguous and successive international watercourses. While the distinction between the two types of watercourse had long been recognized in State practice, many watercourses were both contiguous and successive at different points along their courses. The question was one of emphasis; references to contiguous and successive watercourses tended to omit other, related parts of the system, such as tributaries and groundwater. In that connection, knowledge of hydrology had increased in recent years, to the point where it was recognized that groundwater and surface water were usually interrelated. Attempts to regulate surface water alone could prove futile, because water that was extracted from the ground would reduce the amount of related surface water, and surface water that fed aquifers would, when extracted, reduce the amount of water available in the aquifer. Similarly, pollution of an aquifer would eventually seep into a surface stream. Accordingly, surface water and groundwater could not easily be separated, either physically or conceptually.

67. There were, of course, instances of confined groundwater; however, the Commission had concluded that it was essential to include groundwater in the definition of a watercourse, precisely because of its relationship to surface water. For those reasons, his delegation supported the Commission's text as drafted.

68. Mr. EPOTE (Cameroon) said that his delegation endorsed the statement made by the United States representative. Since the actions taken by one watercourse State could affect the groundwater of another watercourse State, deleting the term "groundwaters" might make it impossible to impute legal liability in the case of harm caused to a third State.

69. Mr. TANZI (Italy) said that, while his delegation could accept article 2 as drafted, it had no objections to the Turkish proposal to distinguish between watercourses that formed and those that crossed an international boundary; such a distinction was appropriately made in article 1 of the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

70. The proposed deletion of the term "groundwaters" would be a step backwards from established international treaty practice, and would diminish the impact and relevance of the future convention.

71. Mr. MANONGI (United Republic of Tanzania) said that it was difficult to see how the term "groundwaters" could be deleted unless an appropriate alternative was found: a watercourse or river must be viewed as part of a systemic whole. His delegation supported the Egyptian proposal and the earlier proposal by Israel for the inclusion in article 2 of a definition of "watercourse agreements".

72. Mr. PAZARCI (Turkey) said that his delegation's proposal concerned the distinction among contiguous watercourses, watercourses that formed a boundary

and those that crossed a boundary; as recognized by the United States representative, such a distinction had long been accepted in State practice. The definition of the term "international watercourse" should clearly encompass all of those categories.

73. His delegation disagreed with the Syrian view that the legal regime applying to contiguous and successive watercourses was identical. While the convention itself did not make a clear distinction in that regard, its rules might be applied differently in one or the other case; for example, article 6 (Factors relevant to equitable and reasonable utilization), paragraph 1 (a), referred to "geographic ... and other factors of a natural character" which must be taken into account, while paragraph 1 (d) of the same article referred to "the effects of the use or uses of the watercourse in one watercourse State on other watercourse States". Those provisions made it clear that practice differed in respect of watercourse that formed and those that crossed a boundary.

74. Mr. KASSEM (Syrian Arab Republic) said that the definition of "watercourse" contained in the Commission's draft encompassed both watercourses that formed and those that crossed a boundary; in that connection, he drew attention to paragraph (2) of the Commission's commentary to article 2 (A/49/10). The lack of distinction between the two types of rivers or streams - not in respect of their definition, but of the legal regime applying to them - was well established in both treaty law and customary law, and had been confirmed by the International Court of Justice in a celebrated opinion.

75. Mr. LALLIOT (France) said that his delegation had no difficulties with the term "groundwaters" as used in article 2, subparagraph (b), provided that it did not apply to "confined" groundwaters, but only to groundwaters having a physical relationship to an international watercourse. He requested the Expert Consultant to confirm his understanding of the term.

76. Mr. ROSENSTOCK (Expert Consultant) said that the French representative's understanding of the term "groundwaters", as used in the Commission's draft, was correct: it referred to groundwaters that interacted with surface waters and were part of a system.

77. Mr. NGUYEN DUY CHIEN (Viet Nam) said that, while every watercourse undoubtedly had specific characteristics, that did not imply that the definition must include each and every distinguishing feature. His delegation agreed with the Syrian and United States delegations that the definitions of "watercourse" and "international watercourse" were sufficiently clear in the Commission's draft.

78. Mr. CRISÓSTOMO (Chile) said that the term "watercourse" was confusing, as shown by the fact that some delegations wished to replace it with "river", which was far too restrictive a term. His delegation proposed that "watercourse" should be replaced by "hydrographic system", "international watercourse" by "hydrographic system with shared water resources" and "watercourse State" by "State belonging to a hydrographic system with shared water resources".

79. Mr. HABIYAREMYE (Rwanda) said that his delegation welcomed the Turkish proposal, as it made for a more complete distinction between contiguous

watercourses and those that formed a boundary. His delegation was also among those which felt that the term "groundwaters" was superfluous; it would not, however, insist on its deletion. Lastly, his delegation believed that it would have been more logical to define "watercourse" first and then "international watercourse".

80. Mr. MORSHED (Bangladesh) endorsed the views expressed by the United States representative.

81. Mr. MANNER (Finland), reiterating his delegation's comments, contained in document A/51/275, on the term "international watercourse", drew attention to the alternative expression "transboundary waters", which was used in the 1992 ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

82. Mr. REYES (Mexico) said that his delegation too was in favour of the Commission's text and had little to add to the comments by the United States representative. From the technical standpoint the term "international watercourse" was used correctly in article 2 because the source of the waters must always be distinguished from the waters themselves.

83. Mr. LAVALLE VALDÉS (Guatemala) asked the Expert Consultant to say whether a river, for simplicity's sake one without tributaries, which throughout its course ran between two States but with the State frontier established along only one of its banks, would constitute an international watercourse.

84. Mr. ROSENSTOCK (Expert Consultant) said that it was hard to give an answer on such a theoretical situation. It was inconceivable that a river could be so clearly demarcated, lacking any tributaries or distributaries or groundwater flows, that the State frontier could be established along a line at the river's edge. However, in such a situation he supposed that the river would not constitute an international watercourse.

Article 33

85. Mr. MAZILU (Romania) said that his delegation supported the French proposals concerning article 33 (A/C.6/51/NUW/WG/CRP.55).

86. Mr. KASSEM (Syrian Arab Republic) said that it would be possible for States to settle disputes under article 33, but unless the article was made compulsory they would not be obliged to do so. His delegation had therefore submitted an amendment to make all recourse under the article compulsory.

87. Mrs. MEKHEMAR (Egypt) said that the article was too detailed for a framework convention. It should be left to the parties to a dispute to find a peaceful solution under specific agreements.

88. Mr. ŠMEJKAL (Czech Republic) said that his delegation supported the French proposals, preferring the first option therein.

89. Mr. LAVALLE VALDÉS (Guatemala) said that his delegation would prefer provisions concerning a settlement dispute system drafted along the lines of

such instruments as the Framework Convention on Climate Change. It would submit an amendment to that end.

90. Mr. RAO (India) said that his country had always taken the position that disputes should be settled by peaceful means but also by means acceptable to all the parties, a principle established in the Charter of the United Nations. No one party to a dispute must be allowed to impose any specific means of settlement on the other parties. That point was recognized in article 33, but recourse to a fact-finding commission was made compulsory and that might create more problems than it solved. The French proposals were helpful but did not resolve that particular issue. An article such as article 33 should have been avoided in a framework convention.

91. The CHAIRMAN said he took it that the Working Group wished all the proposals on clusters IV and V to be referred to the Drafting Committee.

92. It was so decided.

93. The CHAIRMAN said that there appeared to be two or three groups of delegations with differing positions on the policy issues. Some delegations had initiated coordination work within those groups and had begun to negotiate with the other groups. He hoped that that approach would be vigorously pursued. Such efforts could not of course replace the work of the Drafting Committee but would help to narrow the differences and pave the way to a generally acceptable text.

The meeting rose at 5.40 p.m.