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Summary record of the 2885th meeting

Topic:
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paragraph 2 of the draft articles on the responsibility of States¹⁷³ and laid down the two limitations on the invocation of necessity. The Drafting Committee had made no changes to the text proposed by the Special Rapporteur.

13. Draft article 23 (Compliance with peremptory norms), which corresponded to article 26 of the draft articles on the responsibility of States, had been generally supported in the plenary debate.¹⁷⁴ Some questions had been raised as to the applicability of peremptory norms to international organizations, but the Drafting Committee had decided to retain the draft article. Mindful that the whole subject of peremptory norms to international organizations involved difficult issues that could not be resolved in detail in the text of a provision, the Drafting Committee had judged it better to address the subject in general terms both in the text of the draft article and in the commentary.

14. Draft article 24 (Consequences of invoking a circumstance precluding wrongfulness), which corresponded to article 27 of the draft articles on the responsibility of States,¹⁷⁵ was also generally supported in the plenary debate. Some members had commented that the provision should deal with compensation more extensively. The Drafting Committee had been of the view that, for the sake of consistency with the draft articles on the responsibility of States, it was better to retain the text as proposed by the Special Rapporteur. It had also been suggested that the words “no longer exists” at the end of subparagraph (a) should be replaced with the words “does not exist”. The Drafting Committee had agreed that the latter formula was more accurate, since “no longer” had a temporal element that was unnecessarily restrictive; nevertheless, for the sake of consistency with the draft articles on responsibility of States, it had decided to retain the text as proposed and to address that particular question in the commentary.

15. The CHAIRPERSON invited the Commission to consider chapter V (Circumstances precluding wrongfulness) of the draft articles on responsibility of international organizations (A/CN.4/L.687) article by article.

Article 17 (Consent)

Draft article 17 was adopted.

Article 18 (Self-defence)

Draft article 18 was adopted.

Article 19 (Countermeasures)

Draft article 19 was adopted.

Article 20 (Force majeure)

Draft article 20 was adopted.

Article 21 (Distress)

Draft article 21 was adopted.

Article 22 (Necessity)

Draft article 22 was adopted.

Article 23 (Compliance with peremptory norms)

Draft article 23 was adopted.

Article 24 (Consequences of invoking a circumstance precluding wrongfulness)

Draft article 24 was adopted.

The meeting rose at 10.50 a.m.

2885th MEETING

Friday, 9 June 2006, at 10.00 a.m.

Chairperson: Mr. Guillaume PAMBOU-TCHIVOUNDA

Present: Mr. Addo, Mr. Candioti, Mr. Chee, Mr. Daoudi, Mr. Economides, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kateka, Mr. Mansfield, Mr. Matheson, Mr. Momtaz, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Ms. Xue, Mr. Yamada.

Shared natural resources (*concluded*)* (A/CN.4/560, sect. A, A/CN.4/L.683, A/CN.4/L.688)

[Agenda item 5]

REPORT OF THE DRAFTING COMMITTEE

1. Mr. MANSFIELD, introducing the report of the Drafting Committee on shared natural resources (A/CN.4/L.688) on behalf of the Committee's Chairperson, Mr. Kolodkin, said that the Drafting Committee had completed, on first reading, a set of 19 draft articles on the law of transboundary aquifers. At its 2879th meeting, held on 19 May 2006, the Commission had referred to the Drafting Committee the draft articles contained in the annex to the report of the Working Group on Shared natural resources (A/CN.4/L.683). The Drafting Committee had considered the draft articles at five meetings on 31 May and 1, 2, 3 and 7 June 2006.

2. Mr. MANSFIELD paid a tribute to the Special Rapporteur, whose mastery of the subject, perseverance and positive disposition had greatly facilitated the Drafting Committee's task. He also expressed appreciation to the Working Group on Shared natural resources, whose outstanding work had made it possible for the Drafting Committee to adopt several draft articles without any amendment. The Commission had also benefited from the valuable advice supplied by experts on groundwaters from UNESCO and the International Association of Hydrogeologists (IAH).

* Resumed from the 2879th meeting.

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

3. The draft articles on the law of transboundary aquifers were divided into five parts. They were structured in such a way that some dealt with the obligations of aquifer States *vis-à-vis* other aquifer States, some concerned the obligations of States other than aquifer States and others covered the obligations of aquifer States to third States. Where applicable, the number of the draft article appearing in square brackets corresponded to the draft article proposed by the Special Rapporteur in his third report.¹⁷⁶

4. Part I, entitled “Introduction”, contained draft articles 1 (Scope) and 2 (Use of terms). The Drafting Committee had retained draft article 1 as formulated by the Working Group, although the title had been shortened by deleting the words “of the present draft articles”. The draft articles contemplated three categories of activities: (a) utilization; (b) other activities, such as farming or construction carried out above or below the surface, which might have or were likely to have an impact on an aquifer or aquifer system; and (c) measures for the protection, preservation and management of those activities. Article 1, subparagraphs (a) and (c), were similar to article 1 of the 1997 Watercourses Convention, on which the draft articles had been essentially modelled. The activities mentioned in subparagraph (b) represented a new addition that was important in that there had to be a causal link between those activities and their effects on the aquifer or aquifer system. The term “impact” in subparagraph (b) would be clarified in the commentary.

5. Draft article 2 defined seven terms employed in the draft articles. The text deliberately used technical language, since it was intended for use by scientists and water management administrators. Apart from some stylistic adjustments in subparagraph (g), the draft article reflected the text elaborated by the Working Group.

6. The term “aquifer”, in subparagraph (a), was technically more precise than “groundwaters”, the expression employed in the Special Rapporteur’s earlier texts. The term implied water-bearing, but the apparent tautology in the definition was intentional and designed to highlight the difference between aquifers and other underground geological formations containing oil and gas, which might be discussed by the Commission as part of its consideration of the topic. The reference to an “underground geological formation” underscored the fact that aquifers were found in the subsurface.

7. The draft articles covered both aquifers and aquifer systems. The latter were defined in subparagraph (b) as a series of two or more aquifers which were hydraulically connected. Aquifers within a hydraulically connected system did not have to have the same characteristics; aquifers of different geological formations could in fact be found within a single system. For that reason, the word “series” had been chosen instead of “ensemble”, as had been suggested during the Drafting Committee’s discussions. The commentary would explain the meaning of the term “hydraulically connected”.

8. The draft articles applied only to transboundary aquifers or aquifer systems, in other words to an aquifer or aquifer system part of which was situated in the territory of a different State that, for the purposes of the draft articles, was an aquifer State. The terms “transboundary aquifer” and “aquifer State” were defined in subparagraphs (c) and (d) respectively.

9. The draft principles covered both recharging and non-recharging aquifers. As a specific reference to a “recharging aquifer” was made in draft article 4, the term had been defined in subparagraph (e) as an aquifer receiving a non-negligible amount of the contemporary water recharge. The expressions “non-negligible” and “contemporary water” had particular technical meanings that would be clarified in the commentary.

10. Each aquifer or aquifer system had a “recharge zone”—for example, a catchment area—and a “discharge zone”, such as a watercourse, lake, oasis, wetland or ocean. Those zones were defined in subparagraphs (f) and (g) and were subject to particular measures and cooperative arrangements under the draft articles. A slight stylistic alteration had been made to subparagraph (g), in which each example was now preceded by an indefinite article and the disjunctive “or” had been used in place of the conjunction “and”.

11. Part II dealt with general principles and comprised draft articles 3 to 8. The Drafting Committee had made a few changes to draft article 3 (Sovereignty of aquifer States). In the course of the debate in plenary, members had commented on the need to bear in mind the principles of territorial sovereignty and permanent sovereignty over natural resources and had made particular reference to General Assembly resolution 1803 (XVII). The draft article reflected the proposition that an aquifer State had sovereignty over the portion of a transboundary aquifer or aquifer system located within its territory. The word “territory” had been employed in preference to “territorial jurisdiction” for the sake of clarity and in order to ensure consistency throughout the draft articles and between the draft articles and the 1997 Watercourses Convention. It was understood that sovereignty was not absolute. The two sentences of draft article 3 sought to achieve a balance by first reaffirming the principle and then stipulating how it should be exercised for the purposes of the draft articles.

12. The Drafting Committee had considered whether the two sentences should be merged into one, or whether the second sentence should be further qualified by a reference to international law. Ultimately both sentences had been retained, but the phrase “such sovereignty” had been replaced by “its sovereignty”. As the draft articles did not cover all the limits imposed by international law on the exercise of sovereignty, the commentary would explain that the draft article would have to be interpreted and applied in the light of general international law.

13. Draft article 4 (Equitable and reasonable utilization) had been discussed at length in an effort to determine whether it was possible to avoid apparent overlaps between that draft article and draft article 5, whether the concepts of equitable and reasonable utilization could be easily separated, particularly when no such separation was

¹⁷⁶ *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/551 and Add.1.

implied in draft article 5, and lastly, whether, considering how difficult it was to define equity, the phrase “the benefits to be derived from such utilization shall accrue equitably to the aquifer State concerned”, proposed by the Special Rapporteur in paragraph 18 of his third report,¹⁷⁷ was precise enough to convey the intended meaning.

14. After considering several proposals and suggestions, the Drafting Committee had decided to view draft articles 4 and 5 as separate articles, one setting out the general principle and the other the factors of implementation. It had also been decided to treat equitable and reasonable utilization in the same draft article even though they were two different, albeit interrelated, concepts. Accordingly, the *chapeau* provided that aquifer States must utilize a transboundary aquifer or aquifer system according to the principle of equitable and reasonable utilization: that was the overarching principle which, in practical terms, had a number of implications for aquifer States. Since the draft articles dealt with shared aquifers or aquifer systems, it was important that the interests of all aquifer States concerned by its utilization be taken into account. Subparagraph (a) of draft article 4 therefore provided that such States must “utilize the aquifer or aquifer system in a manner that is consistent with the equitable and reasonable accrual of benefits therefrom to the aquifer States concerned”. That paragraph replaced the earlier provision which, by asserting “that the benefits to be derived from such utilization shall accrue equitably”, had seemed to focus more on the benefits of utilization than on the utilization itself, whether present or future. It was understood that “equitable” was not coterminous with “equal”.

15. The principle of sustainable utilization had a different connotation when applied to aquifers than when it was applied to renewable resources. In the case of aquifers, the aim was to maximize the long-term benefits deriving from the use of the water contained in the aquifer or aquifer system. In order to do so, the States concerned, either individually or jointly, should establish an overall utilization plan that takes into account present and future needs and alternative water resources available to them. Those requirements, which had originally been considered together, were now reflected separately, in subparagraphs (b) and (c). The words “individually or jointly” in subparagraph (c) had been added to highlight the importance of having a prior overall plan while indicating that such a plan did not necessarily have to emanate from a joint endeavour of the aquifer States concerned.

16. Subparagraph (d) related to a recharging aquifer. As a recharging aquifer could receive a natural or an artificial recharge, it was vital that the aquifer, as a water-bearing container, maintain certain physical qualities and characteristics. Accordingly, subparagraph (d) stipulated that utilization levels should not be such as to prevent continuance of the effective functioning of the aquifer or aquifer system. That did not, however, imply that the level of utilization must necessarily be limited to the level of recharge. That aspect, together with other notions such as “long-term benefits” and “agreed lifespan of such aquifer and aquifer system”, a phrase contained in earlier drafts

and implicit in the notion of “establishing an overall utilization plan”, would be explained in the commentary.

17. A number of changes had been made to draft article 5 (Factors relevant to equitable and reasonable utilization). The first had been to delete the words “and circumstances” in paragraph 1 for purposes of economy, it being understood that “circumstances” were included in “factors”. The factors referred to in the draft article would be considered in the context of the particular circumstances surrounding each case.

18. The factors enumerated in paragraph 1 were not exhaustive. Although they had been reorganized, the rearrangement was not based on any particular order of priority, but had been influenced more by the need for internal coherence and logic. As noted in paragraph 2, however, in weighing different utilizations of a transboundary aquifer or aquifer system, special regard had to be given to vital human needs.

19. The second change had been the redrafting of subparagraph 1 (b) to read “the social, economic and other needs, present and future, of the aquifer States concerned”. The new wording was partly intended to align the text with some aspects of draft article 4, namely the present and future needs referred to in subparagraph (c) of that article.

20. The third change had been made in subparagraph 1 (i), where the word “role” had been used instead of “place” to better convey the idea of the variety of purposive functions fulfilled by an aquifer or aquifer system in a related ecosystem. That might be an important consideration when an aquifer or aquifer system was situated in an arid region.

21. Fourthly, the phrase “with regard to a specific transboundary aquifer or aquifer system” had been added to paragraph 2 to add specificity.

22. The commentary would further elaborate on the “natural characteristics” mentioned in paragraph 1 (c), elements bound up with viability and costs which might affect “the availability of alternatives”, to which reference was made in paragraph 1 (g), and the term “ecosystem” in paragraph 1 (i), which embraced ecosystems outside and inside the aquifer.

23. Draft article 6 (Obligation not to cause significant harm to other aquifer States) dealt with questions of harm arising from utilization, harm from activities other than utilization as contemplated in draft article 1 and questions connected with the elimination and mitigation of significant harm that had occurred despite efforts of due diligence to prevent such harm. Those matters were covered in paragraphs 1, 2 and 3 respectively. The Drafting Committee had not made any changes to the text of the draft article, but it had added the adjective “significant” to the title to bring it into line with the article’s content.

24. Unlike the corresponding article 7 of the 1997 Watercourses Convention, draft article 6 did not address the issue of compensation in situations where harm had occurred, despite efforts to eliminate or mitigate it.

¹⁷⁷ *Ibid.*

It was understood that that area would be governed by other rules of international law, such as those relating to liability, and thus did not require specialized treatment in the draft articles.

25. The commentary to draft article 6 would explain that the article was intended to cover activities undertaken in a State's own territory and would underscore the relative nature of the threshold of "significant harm". It would also explain that the reference to "activities" in paragraph 3 encompassed both "utilization" and "other activities", referred to in paragraphs 1 and 2.

26. Draft article 7 (General obligation to cooperate) had been slightly changed by the Drafting Committee. For the sake of clarity, the word "their" had been used instead of "a" to qualify "transboundary aquifer or aquifer system" in paragraph 1. There had also been some discussion as to whether the adjective "general" was required in the title. The provision was of importance for shared natural resources arrangements, and it provided a context for the application of other provisions on specific forms of cooperation, such as regular exchanges of data and information as well as cooperation in protection, preservation and management. It was partly for that reason that the word "general" had been retained in the title.

27. The commentary would indicate the types of mechanisms contemplated in paragraph 2 and would draw attention to the need to take into account the experience of other existing joint mechanisms and commissions in various regions.

28. Paragraph 2 of draft article 8 (Regular exchange of data and information) had been modified. To make the article clearer, the previous long sentence had been broken up into three sentences. A regular exchange of readily available data and information constituted the first step in the cooperative arrangements envisaged under the draft articles. Draft article 8 therefore set forth general, minimum and residual requirements. The dearth of knowledge regarding the nature and extent of some aquifers or aquifer systems meant that best efforts would have to be deployed to collect and generate complete data and that cooperation among aquifer States would have to be enhanced. The commentary would elucidate the scientific terms used in the phrase "geological, hydrogeological, hydrological meteorological and ecological nature and related to the hydrochemistry of the aquifer or aquifer system". The "generation" of data would entail the processing of raw data into usable information.

29. Part III of the draft was entitled "Protection, preservation and management" and contained draft articles 9 to 13. Draft article 9 (Protection and preservation of ecosystems) had been changed slightly in order to clarify the text and correct the grammar. The word "measures" had been inserted between the words "including" and "to", and the word "are" had been used to qualify the "quality and quantity of water". The obligations of aquifer States under draft article 9 were confined to taking "all appropriate measures to protect and preserve ecosystems", including the quality and quantity of water retained in the aquifer or aquifer systems, as well as that released in the discharge zones. The commentary would

clarify the meaning of ecosystems within or dependent upon the aquifers.

30. In paragraph 2 of draft article 10 (Recharge and discharge zones) the Drafting Committee had replaced "for" by "with regard" in order to add clarity to the text. The draft article covered two types of obligations that sought to attain the same objective, namely to protect recharge or discharge zones from activities that might have an adverse impact on the aquifer or aquifer system. Paragraph 1 was concerned with the duty of aquifer States to take special measures to minimize detrimental impacts on those zones, which had been defined in draft article 2.

31. Paragraph 2 was addressed to all States in whose territory a recharge or discharge zone was located. Those States had a duty to cooperate with aquifer States to protect the aquifer or aquifer system, a duty that was complementary to aquifer States' general obligation to cooperate, which was laid down in draft article 7.

32. The Drafting Committee had made some alterations to the last sentence of draft article 11 (Prevention, reduction and control of pollution) in order to capture not only the uncertainty caused by the lack of knowledge about the nature and extent of aquifers or aquifer systems but also the vulnerability of aquifers to pollution. The phrase "in view of" rather than "in the light of" would help to bring out the intended meaning of the sentence. The precautionary approach applied to a whole range of activities, including the process of recharging an aquifer or an aquifer system, especially when an artificial recharge was involved.

33. The Drafting Committee had not amended draft article 12 (Monitoring) in any way. The provision applied to aquifer States and served as a precursor to the management provisions set out in draft article 13. Paragraph 1 set forth the general obligation to monitor transboundary aquifers or aquifer systems jointly whenever possible. Paragraph 2 was concerned with the modalities and parameters for monitoring.

34. The technical aspects of putting the agreed or harmonized standards and methodology for monitoring into effect would be further clarified in the commentary.

35. The Drafting Committee had likewise made no alterations to draft article 13 (Management). The establishment and implementation of plans for the management of aquifers and aquifer systems were essential components of international cooperation, as were consultations. Groundwater experts considered joint management by aquifer States to be highly desirable. However, the draft article also recognized that, in practice, it might not always be possible to set up such a mechanism. The commentary would note that such plans could be established and implemented on an individual or joint basis.

36. Part IV (Activities affecting other States) contained only draft article 14 (Planned activities). The Drafting Committee had introduced a slight change to the draft article by deleting the phrase "which may be able" from the last sentence of paragraph 3 in order to remove any

suggestion that an independent fact-finding body might not be impartial.

37. Unlike the 1997 Watercourses Convention, which had detailed provisions on planned measures that were based on State practice, a minimalist approach had been chosen with respect to aquifers and aquifer systems. The draft articles applied to any State which had reasonable grounds for believing that a planned activity in its territory could affect a transboundary aquifer or aquifer system in a manner that would have a significant adverse effect on another State. Assessment, timely notification, consultations and, if necessary, negotiations or independent fact-finding were contemplated in the draft article as a means of reaching an equitable solution to a particular problem.

38. Part V (Miscellaneous provisions) contained the last five draft articles (15–19).

39. The text of draft article 15 (Scientific and technical cooperation with developing States) was identical to that formulated by the Working Group on Shared natural resources. It sought to accentuate cooperation rather than assistance. In the first sentence of the *chapeau*, States were required to promote scientific, educational, technical and other cooperation for the protection of transboundary aquifers or aquifer systems. The list of activities was neither cumulative nor exhaustive. States were not bound to engage in each of the types of cooperation listed but would be allowed to choose their means of cooperation. The commentary would make it plain that the types of cooperation listed in the draft article represented just some of the ways in which States could fulfil the obligation to promote cooperation in the areas contemplated by the draft article.

40. The Drafting Committee had made several changes to draft article 16 (Emergency situations). The paragraphs had been reorganized: the order of paragraphs 2 and 3 had been reversed and what had been paragraph 3 had been further condensed into paragraphs 2 (a) and 2 (b).

41. In paragraph 1 the expression “the present draft article” had been used for consistency rather than “this draft article”, and in the last part of the sentence the broader phrase “harm to aquifer States or other States” had been used rather than “harm to States”. In paragraph 2 (a), the phrase “the State within whose territory the emergency originates” had been used to make it clear which State was required to take the action described in subparagraphs (i) and (ii). In addition, the definite article had been used in preference to the indefinite article to qualify “State” and “emergency”.

42. Paragraph 3, which had formerly been paragraph 2, had been recast in order to temper the possible consequences entailed by a derogation clause, the form originally proposed for that paragraph. As redrafted, the paragraph stipulated that, notwithstanding draft articles 4 and 6, aquifer States might take measures that were strictly necessary to meet vital human needs in the event of an emergency. The reference to draft article 5 had been deleted in order to remove any apparent contradiction, since draft article 5, paragraph 2, stated that, in weighing

different utilizations, special regard must be given to vital human needs. Since the factors listed in draft article 5 had to be taken into account when applying draft article 4, it was unnecessary to specifically mention draft articles, as had been done in the original text.

43. The concept of “emergency” was defined in paragraph 1 as a suddenly resulting situation that posed an imminent threat of causing serious harm to aquifer States or other States. The commentary would make it clear that the requirement of suddenness would not exclude situations that could be predicted in a weather forecast. The modalities for responding to an emergency that affected a transboundary aquifer were set forth in paragraph 2. They required notification without delay of, and cooperation with, potentially affected States, as well as the provision of scientific, technical, logistical and other cooperation. The reference in paragraph 3 to articles 4 and 6 was understood to be without prejudice to the application to the draft articles of rules of international law concerning circumstances precluding wrongfulness.

44. The Drafting Committee had made no amendment to draft article 17 (Protection in time of armed conflict), which reaffirmed that, during times of armed conflict, the principles and rules of international law applicable in international and non-international armed conflicts applied to the protection and utilization of transboundary aquifers and related installations. The Hague Convention 1907 (IV) respecting the Laws and Customs of War on Land and the two 1977 Protocols additional to the Geneva Conventions of 12 August 1949 provided for the protection of water resources and related works as well as their use during armed conflict.

45. The Drafting Committee had amended the title of draft article 18 (Data and information concerning national defence or security) by deleting “vital to” and replacing it with “concerning”. That deletion and the retention of “essential” in the text instead of “vital” had been decided upon only after an unofficial vote. Article 31 of the 1997 Watercourses Convention, on which the provision was modelled, used the phrase “provide data or information vital to its national defence or security”. The two provisions had a similar import.

46. The inclusion of draft article 18 had been a contentious issue. The commentary would indicate that there had been disagreement over the need for it and the inclusion of a reference to the protection of international secrets and intellectual property.

47. Draft article 19 (Bilateral and regional agreements and arrangements) was the final draft article, and the Drafting Committee had made a number of changes to the text. First, the title now included a reference to “agreements,” and the words “agreements or” or “agreement or” had been inserted in the text wherever the word “arrangement” appeared to denote the binding character of some of the interactions envisaged for aquifer States. Secondly, in view of the fact that an aquifer State was defined in draft article 2, the phrase “in whose territory such an aquifer or aquifer system is located”, already contained in that definition, had been deleted.

48. Under draft article 19, aquifer States were encouraged to enter into bilateral or regional agreements or arrangements with respect to activities involving their transboundary aquifers. However, such arrangements must not adversely affect, to a significant extent, utilization of the water in the aquifer or aquifer system by other aquifer States without their express consent. That point would be further clarified in the commentary.

49. The draft article did not deal with the relationship between the current set of draft articles and existing or future obligations, nor did it address the relationship between the draft articles and an international agreement or general international law. Those matters were linked to the decision the Commission would take on the final form of the draft articles. Should they become a binding instrument, the Commission would have to consider those and other matters, such as dispute settlement provisions.

50. The Drafting Committee recommended to the Commission the adoption on first reading of the set of 19 draft articles on the law of transboundary aquifers.

51. The CHAIRPERSON invited the Commission to adopt the draft articles contained in document A/CN.4/L.688. He noted that although the Drafting Committee had been working only with the original English text, all the language groups had quickly mobilized to help in finalizing the other language versions. He thanked all participants as well as the translators who had joined in that effort which had greatly facilitated the concordance of the text in all languages.

Draft articles 1 to 9

Draft articles 1 to 9 were adopted.

Draft article 10

52. Mr. CHEE drew attention to the phrase in paragraph 2 which indicated that States which were not aquifer States should cooperate with aquifer States and said that he found the provision odd from the standpoint of treaty relations. The 1969 Vienna Convention exempted third parties from treaty obligations unless they expressed their consent by becoming parties to the treaty.

53. The CHAIRPERSON said that if States other than aquifer States were affected by the use of an aquifer system, the fact that they were not aquifer States did not prevent them from engaging in cooperation with the aquifer States.

54. Mr. YAMADA (Special Rapporteur) said that the point just raised had been extensively discussed in the Working Group on Shared natural resources. The Chairperson of the Working Group had described the discussion when he had presented the Working Group's report to the plenary (see the 2878th meeting, above, para. 51). He himself had originally proposed referring to the duty of aquifer States to seek cooperation from non-aquifer States in whose territory a recharge or discharge zone was located. However, the Working Group had been of the view that that formulation was too weak, and that even non-aquifer States in whose territories the recharge

or discharge process took place had the duty to cooperate with a view to the proper management of aquifers. The text before the Commission reflected that point. Nevertheless, the obligation would apply only to States that became parties to whatever international instrument ultimately came out of the draft articles. An obligation could not be imposed on a State, including an aquifer State, that was not a party to the international instrument.

55. The CHAIRPERSON said that the obligation to cooperate had in essence become a rule of general international law, from which States could benefit, regardless of the form the draft articles ultimately took.

56. Mr. MOMTAZ endorsed that view and added that in the field of environmental protection there was a general obligation of States to cooperate among themselves, an obligation which the ICJ had often stressed.

57. Mr. CHEE said that he still had reservations about the phrase but would not stand in the way of the adoption of draft article 10.

Draft article 10 was adopted.

Draft articles 11 to 13

Draft articles 11 to 13 were adopted.

Draft article 14

58. Mr. ECONOMIDES drew attention to a disparity in the French language version between draft article 14 and other provisions, particularly draft article 6. Paragraphs 1 and 2 of draft article 14 employed the phrase "*effets négatifs importants*" ("significant adverse effect"), whereas draft article 6 spoke of "*dommage significatif*" ("significant harm"). He wondered whether the distinction was intentional and, if so, which phrase established a higher threshold in terms of the obligation it placed upon States.

59. Mr. YAMADA (Special Rapporteur) said that draft article 6 established the obligation not to cause significant harm, with the threshold being "significant", whereas in the context of planned activities under draft article 14, the State had the responsibility to carry out an environmental impact assessment if it had reasonable grounds for believing that planned activities might have a significant adverse effect. That threshold was lower than the threshold in draft article 6 because the purpose of draft article 14 was to trigger impact assessment, consultation and negotiations with a view to reaching an equitable solution.

60. The CHAIRPERSON said that there was indeed a disparity between the French versions of draft articles 6 and 14 but suggested that it could be resolved by replacing "*importants*" by "*significatifs*" in draft article 14.

61. Mr. MANSFIELD, speaking on behalf of the Chairperson of the Drafting Committee, confirmed the Special Rapporteur's point that the distinction between the thresholds in draft articles 6 and 14 had been made intentionally. He therefore advocated adjusting the French wording as the Chairperson had suggested.

Draft article 14 was adopted, with the above-mentioned editorial amendment to the French version.

Draft articles 15 to 19

Draft articles 15 to 19 were adopted.

The titles and texts of the draft articles on the law of transboundary aquifers as a whole, as orally amended, were adopted on first reading.

62. The CHAIRPERSON said that if he heard no objection, he would take it that, in accordance with articles 16 and 21 of its Statute, the Commission wished to transmit the draft articles, through the Secretary-General, to Governments for comments and observations, with the request that such comments and

observations should be submitted to the Secretary-General by 1 January 2008.

It was so decided.

Organization of work of the session (*continued*)*

[Agenda item 1]

63. The CHAIRPERSON announced that the Commission had concluded the first part of its fifty-eighth session.

The meeting rose at 11.15 a.m.

* Resumed from the 2881st meeting.