Document:-

A/CN.4/SR.1789

Summary record of the 1789th meeting

Topic:

Law of the non-navigational uses of international watercourses

Extract from the Yearbook of the International Law Commission:-

1983, vol. I

Visit of the Secretary-General of the United Nations

32. Mr. ROMANOV (Secretary to the Commission) said he was pleased to inform members that the Secretary-General of the United Nations, Mr. Pérez de Cuéllar, would address the Commission on Monday 4 July at noon.

33. Mr. McCAFFREY, observing that the Commission normally held its Monday meetings in the afternoon, asked whether it was intended to meet earlier on the day of the Secretary-General's visit.

34. Mr. USHAKOV suggested that the time of the Commission's meetings on 4 July should be settled in informal consultations.

It was so agreed.

The meeting rose at 12.35 p.m.

1789th MEETING

Friday, 24 June 1983, at 10 a.m.

Chairman: Mr. Laurel B. FRANCIS

Present: Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Flitan, Mr. Jagota, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Pirzada, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

The law of the non-navigational uses of international watercourses (*continued*) (A/CN.4/348,[1] A/CN.4/367,[2] A/CN.4/L.352, sect. F.1, A/CN.4/L.353, ILC (XXXV)/Conf. Room Doc.8)

[Agenda item 5]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR[3] (*continued*)

1. Mr. BARBOZA, after warmly congratulating the Special Rapporteur on his report (A/CN.4/367), observed that, as the successor of two previous special rapporteurs on the topic, Mr. Evensen's task was not easy. The new Special Rapporteur, noting that the Sixth Committee of the General Assembly had found the work already done acceptable, had decided to follow the course already set and not put forward any revolutionary ideas. Whatever some members of the Commission might say, he had been right to submit a full set of draft articles. It was surprising to find that some members of the Commission appeared, from their statements, to have completely written off the earlier studies on the topic. For to start out again on the same discussions as four or five years ago could only delay the Commission.

2. In regard to the specific nature of the topic under study, he associated himself with Mr. Koroma (1786th meeting), Mr. El Rasheed Mohamed Ahmed (1785th meeting) and Mr. Sucharitkul (1787th meeting), who had emphasized the important role of water in satisfying man's essential needs. It was not a matter of codifying one of the classic subjects of international law; the Commission had been criticized for limiting itself to such topics only, and so the General Assembly would closely follow the Commission's progress, as was shown by the comments of several representatives in the Sixth Committee recorded in the topical summary of the discussions (A/CN.4/L.352, sect. F.1). Those considerations, among others relating to the need for a body of legal rules to solve the many problems concerning water requirements, should make the Commission aware of the urgency of its task.

3. General Assembly resolution 2669 (XXV) of 8 December 1970 recommended that the Commission should take up the study of the law of the non-navigational uses of international watercourses with a view to its progressive development and codification; in regard to the term "uses", it was the social and human connotations that should be stressed. As the arbitral tribunal in the *Lake Lanoux* case between France and Spain had maintained: "The unity of a basin is supported at the legal level only to the extent that it conforms to the realities of life."[4] Hence, definitions had to be found which took account of those realities and were not mere geographical or political descriptions. Moreover, while aware of the difficulties which the Commission was bound to encounter in its work of progressive development, the General Assembly had requested it, in case of difficulty in defining rules of international law applicable to watercourses, to propose solutions and not to get lost in vain speculations. At the 1785th meeting, Mr. Stavropoulos had concluded his statement by rightly exhorting the Commission to work towards equity and justice and to rule out any possibility of a veto. In that connection, it should be recalled that it was the Commission's tradition to respect the views of the majority, not omitting, however, to transmit dissenting opinions to the General Assembly.

4. Turning to draft articles 1 and 6, which were interconnected, he observed that article 1 was based on the note which the Commission had drafted in order to explain what was meant by the term "international watercourse system"[5] before a definition was finally adopted.

[1] Reproduced in *Yearbook . . . 1982*, vol II (Part One).

[2] Reproduced in *Yearbook . . . 1983*, vol. II (Part One).

[3] For the texts, see 1785th meeting, para. 5. The texts of articles 1 to 5 and X and the commentaries thereto, adopted provisionally by the Commission at its thirty-second session, appear in *Yearbook, . . . 1980*, vol. II (Part Two), pp. 110 *et seq.*

[4] United Nations, *Reports of International Arbitral Awards*, vol. XII . . ., p. 304, para. 8; see also *Yearbook . . . 1974*, vol. II (Part Two), p. 196, document A/5409, para. 1064.

[5] See 1788th meeting, footnote 13.

The concept of an "international drainage basin" as a criterion for defining the scope of the draft articles had met with some resistance, and the majority of the Commission had been in favour of waiting until the rest of the draft articles had been completed before deciding what definition to adopt. Like Mr. Díaz González at the previous meeting, he referred members to the views expressed in that regard by Sir Francis Vallat, Mr. El-Erian and Mr. Quentin-Baxter at the Commission's thirty-first session.[6] The note drafted by the Commission had represented a mere working hypothesis, subject to refinement and change, depending on its reception by the General Assembly. It introduced the concept of an "international watercourse system", which was distinct from the broader concept of an "international drainage basin". The latter involved geographical, territorial and hydrological considerations, as shown by the definition in article II of the Helsinki Rules,[7] whereas the former was strictly functional, in the sense that there were as many systems as there were uses : irrigation, pollution control and others. Within a system, member States naturally had rights and obligations, and as soon as the use of the waters at one place affected their use at another, States had to consider the idea of sharing. In fact, the starting-point of the topic was the truism that water flowed—a fact with inevitable consequences which had to be taken into account.

5. Article 1 dealt with the watercourses that would form the subject of the draft articles. Although there were many different kinds of watercourse, there were few criteria for defining what was meant by an international watercourse. He believed that there were two possibilities: either the waters of a watercourse could be regarded as constituting an essentially unitary system and that system as extending as far as the effects of their uses; or they could be treated on a "fragmentary" basis, limiting as much as possible the extent of the waters subject to an international régime. Any definition must, explicitly or implicitly, be based on one of those two views.

6. The question arose as to what régime would be applicable to tributaries, canals, lakes, glaciers and ground water closely connected with international watercourses. What happened, for example, in the case of a tributary situated exclusively in the territory of one State, whose waters, polluted by industrial waste, flowed into an international watercourse and polluted the waters of the lower riparian States, or in the case of ground water which fed an international watercourse after being accidentally infiltrated by buried radioactive waste from a nuclear power station? If the Commission was not to take account of the legal consequences of such incidents in its draft, there was no point in continuing the discussion. Like it or not, the concept of a system was indispensable since, without it, in the examples he had cited, States victims of pollution would only be able to invoke vague rights of good-neighbourliness or an abuse of right, whereas in an international watercourse system the rights and duties of States were clearly established. The two positions he had mentioned earlier lay behind those two possibilities.

7. The fragmentary view of things had its source in the Final Act of the Congress of Vienna of 1815,[8] which had regulated the only use of watercourses with which the Commission was not at present concerned, namely navigation. But the Final Act of the Congress of Vienna was an intrinsically European instrument. For instance, precipitation conditions in Europe were significantly different from those in the Horn of Africa. Besides, neither the problem of industrial pollution nor that of irrigation had arisen at the time of the Congress of Vienna. The definition adopted by the Congress of Vienna was thus of a geographical and political character, and regarded rivers exclusively as means of communication and transport. Hence it was of no use whatever for the Commission's work.

8. On comparing the note adopted by the Commission in 1980 with the Special Rapporteur's draft article 1, he found that he preferred the former wording, which was more systematic than the new text and laid more emphasis on the unitary nature of the system. The reference in paragraph 1 to sporadic watercourses, as well as to deltas, river mouths or other similar formations with brackish or salt water, was unnecessary. It would suffice to mention them in the commentary and delete the expression "fresh water" in the first subparagraph of paragraph 1. Like the Special Rapporteur, he believed that article 1 should not give a definition adopted from principles selected *a priori*. It should follow reality, and reality here was that the uses of water, due to their interdependence, formed systems. From that reality of interdependence, legal principles would derive.

9. Referring to article 6, he said that the concept of shared natural resources had developed during the last 15–20 years, when mankind was becoming aware of the limits and danger of exhaustion of natural resources. The demographic explosion, the increase in industrial production and problems of consumption had increased the sensitivity of world public opinion to the need for sharing previously abundant natural resources. The idea of sharing natural resources was not entirely new, however, since States had already had to reach agreement, for example, on the exploitation of oilfields lying across common frontiers. Among the legal principles applicable in such cases was the equality of States as expressed by the concept of proportionality; the parties had no right to act arbitrarily or to resort to force, and they were required to take account of the other parties' interests.

10. In order to meet the needs of the modern world, several United Nations and other bodies had developed the concept of shared natural resources in instruments such as the Charter of Economic Rights and Duties of States;[9] the Mar del Plata Action Plan;[10] General

[6] *Ibid.*, footnote 12.

[7] See 1785th meeting, footnote 13.

[8] F. Israel, ed., *Major Peace Treaties of Modern History, 1648-1967* (New York, Chelsea House and McGraw-Hill, 1967), vol. I, p. 519.

[9] General Assembly resolution 3281 (XXIX) of 12 December 1974.

[10] See 1787th meeting, footnote 9.

Assembly resolution 3129 (XXVIII) of 13 December 1973 on co-operation in the field of the environment concerning natural resources shared by two or more States; the UNEP Draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States (A/CN.4/L.353); the Helsinki Rules; and many others. With regard to the UNEP draft principles, it had been pointed out during the discussion that the General Assembly only "took note" of them, but it was quite natural that States should have been somewhat reluctant to accept principles that applied to all natural resources, and the draft might perhaps have been better received if it had been concerned with water resources only. However that might be, he believed that the General Assembly's taking note of the UNEP draft was equivalent to its adoption. Furthermore, as was clear from the explanatory note accompanying the draft principles, they were not intended as legal rules, but rather as guidelines with which States were encouraged by the General Assembly to comply when drawing up bilateral or multilateral agreements on shared natural resources.

11. Those considerations argued in favour of including the concept of sharing in the draft articles, and several of the principles set out in chapter II were based on it. He did not think that the theory of good-neighbourly relations or the doctrine of abuse of rights were the source of rights and obligations regarding the uses of watercourses; they derived rather from the very nature of shared resources. On the other hand, could one really speak of abuse of rights in international law? What were the rights and duties deriving from that doctrine? The view had been expressed in the Commission that a lawful act of a State which caused harm to another State could not engage the former State's responsibility. To refuse to recognize that water formed part of shared natural resources was tantamount to reviving the Harmon doctrine. On the other hand, to define the legal character of watercourses as shared natural resources would make it possible to establish general principles and derive from them a régime of clear-cut rights and obligations. As for the harm which that concept would do to the principle of the permanent sovereignty of States over their natural resources, it did not exist. It was a matter of protecting resources against third States, not against other States belonging to the same system. The exercise by a riparian State of a right which deprived a neighbouring riparian State of its rights was equivalent to spoliation, and that was not what was meant by the permanent sovereignty of States over their natural resources.

12. Since draft articles 4 and 5 had not been amended, they could be re-examined on second reading in accordance with the usual procedure. The amendments made to articles 2 and 3 did not alter the substance of the text. With regard to the examination of article 1, he believed that by considering it was time to transform the Commission's note into an article, the Special Rapporteur was about to provoke the very discussion which the Commission had wished to avoid. At the present stage, it would be better to avoid such a general debate and revert to the previous text. Only after the Commission had reached agreement on the major principles set out in the draft should it consider the note, possibly with a view to putting it into the form of an article.

13. Mr. BALANDA said that the Special Rapporteur was to be commended for submitting a complete report (A/CN.4/367) that would enable the other members of the Commission to follow his train of thought and decide what position to adopt, provided, of course, that they clearly understood the meaning of the terms used. Although the clarity of the report, which showed the Special Rapporteur's mastery of the topic, was also commendable, some of the draft articles, such as articles 1, 10, 12 and 14, were unfortunately too long.

14. He thought it would be more convenient to speak on the report as a whole, since it differed from former reports in that the present Special Rapporteur had revised some of the articles provisionally adopted by the Commission and, as he himself had indicated (*ibid.*, para. 43), had sometimes taken different positions from those of his predecessors. For example, the French texts of the work of the earlier Special Rapporteurs had used the term "voies d'eau", whereas the present report referred to "cours d'eau", a more restrictive term that apparently did not cover canals and locks, for example. The Special Rapporteur's study should, however, relate to all the freshwater uses of international watercourses.

15. With regard to the criteria used to classify the uses of watercourses, he noted that the report (*ibid.*, para. 52) referred to three headings only—agricultural uses, economic and commercial uses, and domestic and social uses—which overlapped and were not exhaustive. As the Special Rapporteur had proposed, a pragmatic and less doctrinal approach should be adopted. The general outline seemed to cover all aspects of the use of fresh water.

16. In resolution 2669 (XXV), the General Assembly had recommended that the Commission should take up the study of the law of the topic under consideration with a view to its progressive development and codification; but development seemed to play very little part in the present draft. The provisions on the peaceful settlement of disputes offered an opportunity for developing international law; yet the proposed outline contained no innovations in that respect.

17. He shared the Special Rapporteur's opinion that, in view of the many uses to which water could be put, it would be more appropriate to propose a general framework that would be flexible enough to take account of each specific use. The draft articles would then have an inspirational and a residuary role. Hence it would not matter if they were worded conditionally, since the draft would be only a model for the guidance of States in concluding specific co-operation agreements on the use of their shared water resources.

18. The United Nations Convention on the Law of the Sea, to which some speakers had referred, was a legal instrument which had not yet entered into force; so until

the various mechanisms for which it provided—in particular the machinery for the settlement of disputes[11]—had been tested, the value of its contribution to the progressive development of international law was only that of a precedent.

19. The relationship between the draft articles under consideration and the studies on State responsibility and on international liability for injurious consequences arising out of acts not prohibited by international law must not be overlooked, since use of the waters of a watercourse by States could engage their international responsibility. According to articles 14, 20 and 23 of the present draft, a State would be obliged to repair damage for which it was internationally liable only if the damage went beyond what might be regarded as reasonable or appreciable. That case was not quite the same as that of an internationally wrongful act entailing the responsibility of the author State. The draft articles also provided that States should contribute to the payment of costs according to the direct benefits they might derive from the use of the waters of a watercourse. In his view, the basic idea of benefits was necessarily covered by the concept of shared resources. In the case of the draft articles on international liability for injurious consequences arising out of acts not prohibited by international law, there were no such clear grounds for the obligation to share in the cost of preventing or limiting damage.

20. One of the basic principles proposed by the Special Rapporteur for the use of international watercourses was co-operation, which was the corollary of water's characterization as a shared natural resource. It might, at first glance, seem incompatible with the sovereignty of the States of a watercourse system for them to be under an obligation to negotiate in order to give practical effect to co-operation or, rather, to the solidarity which united them; but that was not quite the case. He proposed to consider the concept of water as a shared resource and the two key concepts of co-operation and negotiation in the light of some examples taken from the current situation in Zaire. His purpose was to show the link between shared interests and the exercise of sovereignty.

21. The régime of the Congo Basin had been established by the General Act of the 1885 Berlin Conference,[12] which had proclaimed freedom of trade and navigation on what at the time had been called the Congo River and was now known as the Zaire. Most of that river was within the territory of Zaire, except for the part which formed the border with the Central African Republic and the People's Republic of the Congo. The three riparian States of the Zaire practically faced one another. Apart from navigation, the riparian States had no major problems concerning use of the waters. Minor problems had arisen, however, in regard to the joint efforts to be undertaken for the conservation of river species: manufacturing standards for fishing nets to prevent the catching of undersized fish, and protection of crocodiles, lizards, large water snakes and hippopotamuses. The legislation of the riparian States thus had the same objectives and those States had practically no difficulty in maintaining a balance between their respective interests. The same was true of the use of the waters of Lakes Albert, Tanganyika, Kivu and Mweru, which Zaire shared with Rwanda, Uganda and the United Republic of Tanzania.

22. Because of the many waterfalls on the Zaire, it had been possible to build dams on that river; but even before the construction of the Inga dam, which could provide enough electric power for all of central Africa, Zaire had supplied part of its water power to neighbouring States, including the People's Republic of the Congo and Rwanda. That was a typical example of sharing. Although the Inga dam had been financed without any participation by the People's Republic of the Congo and Zaire had agreed to supply that country with electric power, it would be inconceivable for the Government of Zaire to do as it pleased on the pretext of exercising its sovereignty or simply of using property that belonged to it. It would also be inconceivable for Zaire, which, because of the Inga dam, had enough energy resources to meet nearly all the needs of the central African States, to decide to reserve the use of that dam for itself, on the same pretext or on that of using its natural resources. Since Zaire had agreed to supply electric power to other States, it had to conduct negotiations with them in case the exercise of its property rights might be harmful to the enjoyment of the rights of those other States. *De facto* solidarity between all those States should attenuate the exercise of sovereignty; but it should be noted that the idea of sharing and co-operation was in no way incompatible with the idea of the exercise by States of permanent sovereignty over their wealth and natural resources.

23. In order to compensate for its inadequate access to the sea, the former colony of the Belgian Congo, under an agreement with the British Government which then administered the territory known as Tanganyika, had obtained permission to build, at its own expense, the Belbase port installations at Dar es Salaam. At present, Zaire managed those installations, which had devolved upon it through State succession to public property, jointly with the United Republic of Tanzania, Burundi and Rwanda. According to its share in the management of Belbase, each of those States was bound to co-operate and, in particular, to negotiate, so that all activities relating to the Belbase installations would be undertaken jointly. In the exercise of its sovereign rights over its territorial sea and its territory, the United Republic of Tanzania had to take account of the situation created by the existence of Belbase. Since it had accepted that situation, it also had to accept certain limitations on the exercise of its sovereignty.

24. With regard to the concept of a shared natural resource, which the Special Rapporteur had applied to water, he observed that according to the tradition of the peoples of Zaire and of many other African countries, water could not be denied to someone who was thirsty. In view of that tradition, he had no difficulty in regarding water as a shared resource and in accepting the conse-

[11] See 1785th meeting, footnote 10.

[12] Israel, ed., *op. cit.*, vol. II, p. 1081.

quences, namely that the water of a watercourse formed part of the common heritage of the co-riparian States and that it must be equitably used. The idea of the community of interests of peoples, from which the idea of sharing derived, should lead States to co-operate both in the use of the waters of their watercourses and in the use of the environment in general, even if their activities were carried out only within their respective national borders. Any human activity that might have a major impact on the physical environment, which was the common heritage of mankind, should be guided and monitored. What the common heritage of mankind included was more or less known, but little was yet known about the exact content of all the rights and obligations it involved. It would be unwise to refer to the application of rules whose content was still not well defined. States could formulate such rules in each particular case. In some ways, the draft articles seemed to constitute the beginnings of a substantial contribution to the formulation of rules to govern the common heritage of mankind.

25. He agreed with the Special Rapporteur that co-operation and, consequently, negotiation on the uses of a watercourse system should respect the principle of good faith. However, co-operation was not absolutely necessary for every use of a watercourse by a system State. Negotiations should be conducted between system States only in so far as a use of the waters planned by one of them might have a major or appreciable impact on their use by the others. It seemed that draft article 9 could be interpreted in that way. Hence an activity which was not likely to cause appreciable harm was not prohibited. It remained, however, to define the meaning of the expression "appreciable harm" and of the adjectives "reasonable" and "equitable".

26. Moreover, it seemed that the obligation to submit a notification provided for in draft article 11, would exist only in so far as the execution of a project by one system State might cause appreciable harm to other system States. That, at least, was what was implied by the provisions of article 13. In draft article 12, the Special Rapporteur had set a period of not less than six months for replies to a notification and had established the obligation to provide a reasoned decision. But he had not lost sight of the fact that emergency situations could arise, and had therefore included a saving clause in article 13, paragraph 3. That provision seemed acceptable, but it should be noted that the assessment of a situation as being one of "utmost urgency" was left solely to the notifying State, so that the saving clause might cancel the intended effects of article 12.

27. The reservation in article 19 concerning the confidential nature of certain information should not come into conflict with the needs of the system of exchange of information and data provided for in articles 16–18. The confidential nature of certain information might also come into conflict with the security requirements of international watercourse systems, installations and constructions, which were dealt with in draft article 28. In connection with that article, he believed that in order to enhance the safety of installations and structures relating to the use of watercourses, it should be stated in an article of the draft that the provisions of the laws of war also applied to the present draft articles.

28. There was nothing original in what had been proposed in the report concerning the settlement of disputes. A mere reminder of the various modes of settlement, whose weaknesses were well known, added nothing to the draft.

29. According to the explanations given in his report (*ibid.*, para. 14), the Special Rapporteur seemed to consider that the draft would be a kind of framework agreement or set of guidelines for States, which they would be entirely free to follow or not. Seen in that light, the draft would not impair the sovereignty of any State. It was in order that the waters of a watercourse system should not be inequitably or selfishly used that the draft required the States concerned to co-operate by holding consultations in order to agree on the way in which they could best exercise their sovereignty. Since their interests were interdependent, States should not prevent one another from benefiting from the activities they carried out, either jointly or separately.

30. The exercise of permanent sovereignty over natural resources should not preclude the obligation of States to take due account of the effects of their activities on other States. Nor should it preclude their obligation to share their natural wealth with other States. In his view, the idea of sharing underlay the right to development. The dual concept of shared natural resources and the common heritage of mankind was bound up with the concepts of solidarity and interdependence, which were reflected in the idea of an international watercourse system. Sovereignty should not serve as a screen for egoism. In a world in which States were obliged to co-operate along new lines in order to promote their development, they should rid themselves of everything that might obstruct development. The idea of State sovereignty, for example, should be reconsidered. In his opinion, the legal nature of the draft articles would not affect enjoyment of the attributes of sovereignty by States, since in the last analysis the States of a watercourse system would assume obligations and co-operate of their own free will.

31. Mr. REUTER said that he wished to explain his position and try to identify the issues on which the Commission agreed or disagreed. Although a few members had suggested that the draft should contain only recommendations, most of them had referred to the obligations it should enunciate. Moreover, the inclusion of only one obligation, accompanied by recommendations, would suffice to make it a treaty. He was sure that Mr. Ushakov also believed some obligations could be mentioned in the draft, even though he thought it should contain indications that were not binding on States.

32. All the members of the Commission agreed that the régime of international watercourses prohibited States from disturbing the natural order. Of course, the disturbances that were prohibited still had to be specified. Some Governments would like questions relating to the pollution of international watercourses to be excluded from the draft, which he considered absolutely impossible.

Account would have to be taken not only of sources of pollution on the internationalized parts of a watercourse, but also of sources of pollution within a State which affected a watercourse. In that connection, he noted that acid rain could pollute snow, which became glacier ice; and when the polluted ice melted, serious problems could be expected. A State on whose territory there was a drainage basin receiving such polluted water might not be in any way responsible for the triple phenomenon of air, water and river pollution.

33. The problem of drainage basins and river systems was merely a quarrel over words. It was a problem that arose in regard to pollution, because in that case it was impossible not to take account of the entire land territory of the State where the river basin was situated. Hence it was necessary to begin by clearly defining the obligations of a State which disturbed the balance of nature. It was thus a problem of responsibility that lay at the root of the Commission's concern.

34. The real difference of opinion in the Commission stemmed from the fact that, according to some States, responsibility arose at the crossing of the frontier; that was the moment when the natural order was or was not respected. A State was free to do as it pleased in its own territory until its responsibility was engaged, in other words when the frontier was crossed. The Special Rapporteur had proposed an *ex ante* mechanism which came into play before the State had acted. Some members of the Commission considered that mechanism unacceptable because it entailed an obligation that infringed State sovereignty. They believed that States already co-operated to a great extent, and that there was no need to make rules for them. In view of that difference of opinion, each member of the Commission must take a position.

35. His own belief was that there could be no progressive and coherent system which did not lay obligations on States, particularly in regard to machinery for consultations and notifications. It would probably not be necessary to draft mandatory rules if only European watercourses were involved, since the States concerned had finally managed to come to terms about them. But in the case of the developing countries, mere determination of the quantity and quality of the waters which crossed a border could be important and require the consent of both sides. No State should be able to reject the need to reach agreement on such a determination. A State might also be planning a use of water in its territory which would not, for the time being, have any harmful consequences for the downstream State, but which might have such consequences in the future. The problem then might simply be the amount of water reaching the downstream State. It was therefore advisable, during negotiations, to examine the situation as a whole and with an eye to the future. Hence he considered that responsibility *ex post facto* was not enough. In that connection, he drew attention to the good faith shown by the United States of America in abandoning the Harmon doctrine.

36. He also took the view that it would not be possible to provide for the stoppage of projects, as the Special Rapporteur had proposed, since a State could not delay the execution of a project indefinitely. In order to end a stoppage, he saw no other solution than the intervention of a third party. He could understand that for reasons of sovereignty States refused to accept mandatory decisions, but he thought some system must be established which would oblige States to explain the reasons for their positions and, if necessary, to seek assistance from a third party.

37. Lastly, he hoped that, instead of dwelling on general principles and definitions that might cause concern, the Commission would first try to settle the issues on which there was a consensus and those on which there was the least disagreement. It would then probably be able to draft articles that a larger number of States could accept.

The meeting rose at 1.15 p.m.

1790th MEETING

Monday, 27 June 1983, at 3 p.m.

Chairman: Mr. Laurel B. FRANCIS
later: Mr. Alexander YANKOV

Present: Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Flitan, Mr. Jagota, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov.

The law of the non-navigational uses of international watercourses (*continued*) (A/CN.4/348,[1] A/CN.4/367,[2] A/CN.4/L.352, sect. F.1, A/CN.4/L.353, ILC(XXXV)/Conf.Room Doc.8)

[Agenda item 5]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR[3] (*continued*)

1. Mr. JAGOTA, referring to the great contribution made by the Special Rapporteur to the Third United Nations Conference on the Law of the Sea, said that his remarkable ability to find solutions acceptable to all concerned would be of great assistance to the

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[1] Reproduced in *Yearbook . . . 1982*, vol. II (Part One).

[2] Reproduced in *Yearbook . . . 1983*, vol. II (Part One).

[3] For the texts, see 1785th meeting, para. 5. The texts of articles 1 to 5 and X and the commentaries thereto, adopted provisionally by the Commission at its thirty-second session, appear in *Yearbook . . . 1980*, vol. II (Part Two), pp. 110 *et seq.*