



**SUMMARY RECORD OF THE 29th MEETING**

**Chairman:** Mr. DENG (Sudan)

**CONTENTS**

**AGENDA ITEM 134: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTIETH SESSION (continued)**

**AGENDA ITEM 130: DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND (continued)**

\*This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned within one week of the date of publication to the Chief of the Official Records Editing Section, room DC2 750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate fascicle for each Committee.

**Distr. GENERAL**  
**A/C.6/43/SR.29**  
**8 November 1988**

**ORIGINAL: ENGLISH**

The meeting was called to order at 3.10 p.m.

AGENDA ITEM 134: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTIETH SESSION (continued) (A/43/10, A/43/539)

AGENDA ITEM 130: DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND (continued) (A/43/525 and Add.1, A/43/621-S/20195, A/43/666-S/20211, A/43/709, A/43/716-S/20231, A/43/744-S/20238)

1. Mr. LEE (Canada) said that the topic of the law of the non-navigational uses of international watercourses was of considerable importance to his country, and reflected the international community's growing realization of the need for legal measures to safeguard the natural environment, including international rivers.

2. His delegation was generally satisfied with the progress so far achieved on the draft articles in parts II and III, which had been presented by the Special Rapporteur and discussed and adopted in revised form by the Commission. Canada concurred in principle with draft articles 8 to 21, subject to further detailed consideration. It would also like them to be harmonized with the Commission's work on related subjects. For example, article 8 on the "Obligation not to cause appreciable harm" should be consistent with related texts in the eventual instrument on liability for injurious consequences. Articles 11 to 21 provided adequately for notification and reply on measures planned by one State for an international watercourse which might have effects, often adverse ones, upon another State. It might be useful to provide for some sort of dispute-settlement mechanism if the consultations and negotiations envisaged in draft articles 17 and 18 did not bear fruit. His delegation tended to favour the idea of a joint fact-finding mechanism, although it would assume that such a proposal would normally be embodied in an annex to the proposed framework agreement.

3. The obligation to warn of impending hazards was so important that it warranted a separate article outside the ambit of notification of planned measures. Where there was particular urgency in conveying such warnings, the usual stipulations concerning the period of notification and reply should not be rigidly applied. In his delegation's view, the Special Rapporteur had handled those questions well.

4. The special Rapporteur had also concentrated in his fourth report on two of the most important aspects of his topic, namely exchange of data and information (A/CN.4/412) and environmental protection, pollution and other matters (A/CN.4/412/Add.1). Those subjects were expected to form parts IV and V respectively of the draft articles, and merited serious discussion in the Sixth Committee in order to assist the Commission in its further consideration of the topic.

5. On the practical issue of exchange of data and information, his delegation found the language used in draft article 10 as adopted by the Drafting Committee suitably precise. Since some States might require some technical and financial assistance in collecting and producing such data, his delegation was able to

(Mr. Lee, Canada)

endorse the concepts of "reasonably available data and information", "best efforts" and "reasonable costs". It also considered that demands for such information and the responses thereto should be aimed at eliciting the reasons behind the notifications and replies.

6. His delegation welcomed the widening of the definition of information to include information of an ecological nature. The result was a wider obligation to warn of hazards which had their source in hydrological, meteorological or hydrogeological situations.

7. Canada supported the Special Rapporteur's suggestion that environmental protection and pollution control should be dealt with in a separate part of the draft. Such an approach would be consistent with the treatment accorded to that topic in the 1982 United Nations Convention on the Law of the Sea. Also, since the topic of pollution was likely to go beyond the area of national jurisdiction and to affect other States which were not necessarily watercourse States, it was highly desirable that the problem should be addressed in a separate part. Indeed, his delegation supported the formulation of separate articles to deal specifically with the relationship between watercourse States and non-watercourse States in that matter.

8. Since, however, the Commission was preparing a framework agreement, the number of articles on any sub-topic should be kept to the necessary minimum, and it would be left to Member States to adopt specific and detailed measures on the protection of the environment and the control of pollution of international watercourses.

9. While welcoming the Special Rapporteur's draft definition of pollution, and recognizing that its proper place was in the introductory article with other definitions, his delegation felt that, to ensure uniformity of international law, it should be harmonized with the definition found in article 1, paragraph 1 (4), of the Convention on the Law of the Sea. Similarly, the rule prohibiting States from polluting international watercourses in a way that might cause appreciable harm to other watercourse States or to the ecology of international watercourses should be harmonized with the provisions on all other forms of harm dealt with under the general principles, and with the texts on other related topics, such as liability for injurious consequences arising out of acts not prohibited by international law. That rule must reflect the increasing interdependence of States and the welcome interpenetration of international and national law.

10. The question of whether strict liability arose when a State caused appreciable harm by pollution to another watercourse State had been discussed by some members at the Commission's fortieth session, even though the articles proposed by the Special Rapporteur had not raised the issue. In a useful clarification, referred to in paragraph 162 of the Commission's report (A/43/10), the Special Rapporteur had stated that paragraph 2 of the draft article on pollution was intended to give rise to responsibility for wrongfulness, and not to strict liability. His delegation supported the Special Rapporteur's suggestion that paragraph 2 should require that "watercourse States take all measures necessary to ensure that

/...

(Mr. Lee, Canada)

activities under their jurisdiction or control be so conducted as not to cause appreciable harm by pollution to other watercourse States or to the ecology of the international watercourse [system]".

11. At the current stage, his delegation could support the Special Rapporteur's view that "due diligence" was the measure of the obligation in that paragraph, bearing in mind that the principle had been implicit in transboundary pollution cases since the Trail Smelter award. It afforded a welcome degree of flexibility, and allowed adaptation of the rule of responsibility to different situations, for example, to the level of a State's development. While due diligence was essential by a defence, and the burden of proof should be on the State which was the source of the pollution, it would be a mistake to interpret the Special Rapporteur's proposal as raising the question of absolute liability. Absolute liability was a concept quite distinct from strict liability, and the two terms should not be treated as being interchangeable.

12. Most important was the concept of a positive duty to protect the environment, found in the draft article on pollution proposed by the Special Rapporteur but not yet adopted by the Commission. The Special Rapporteur had rightly pointed out that such obligations were additional to other obligations concerning pollution of international watercourses. His delegation supported the inclusion of that general obligation, which was well grounded in State practice.

13. On the important question of the equitable utilization of international watercourses, Canada believed that the concept of 50-50 sharing represented one formula by which the criterion of equitable utilization could be fully satisfied, and indeed might be the most appropriate formula in some instances.

14. It had been pointed out that there was a possibility of conflict between the principle of "equitable utilization" and the "no harm" principle. He wondered, however, whether in practice an unqualified "no harm" principle might prohibit any change in existing uses. The "no harm" principle could prevent an upstream or downstream State from taking benefits from an international watercourse if such action would affect the other riparian State, whereas the "equitable utilization" principle provided a basis for determining permissible and impermissible "harm".

15. In conclusion, he expressed satisfaction at the Commission's work on the subject at its fortieth session, and the hope that the topic could be completed within the current term of membership.

16. Mr. SZEKELY (Mexico), referring to the law of the non-navigational uses of international watercourses, said that many of the comments made by States, including those made by Mexico, had been taken into account in the Special Rapporteur's fourth report on the subject (A/CN.4/412 and Add.1 and 2), resulting in an improvement in the draft articles in question.

(Mr. Szekely, Mexico)

17. With a view to improving the articles yet further, Mexico suggested, firstly, that the following paragraph - complementing the right to participate - should be added as paragraph 3 to article 5:

"Watercourse States shall refrain from holding the consultations or negotiations or from becoming parties to the agreements provided for in paragraphs 1 and 2 above if any other State whose territory is also affected by the watercourse in question is excluded in a discriminatory manner from such consultations, negotiations or agreements."

18. Where article 6, paragraph 1, was concerned, Mexico suggested that the middle of the second sentence should read: "with a view to attaining the optimum utilisation thereof and benefits therefrom which are sustainable and consistent with adequate protection". Furthermore, the following two paragraphs, which were based on articles 300 and 304 of the United Nations Convention on the Law of the Sea, should be added at the end of article 6:

"3. Watercourse States shall fulfil in good faith the obligations assumed under the present articles and shall exercise their rights recognized herein in a manner which would not constitute an abuse of rights.

"4. Any provisions of these articles that may entail responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law."

19. Article 7, paragraph 1 (b), should read: "The social and economic needs of the watercourse States concerned, particularly the needs of the population dependent on the resources of the watercourse in each State". In article 7, paragraph 1 (d), "existing and potential uses of the international watercourse" should above all include "historical uses". Lastly, the words "and good-neighbourly relations" should be added at the end of article 7, paragraph 2.

20. The subjective term "appreciable" should be deleted from article 8, as well as from article 4, paragraph 2, and article 16 (on pollution of international watercourses) as proposed by the Special Rapporteur. The term "harm" was sufficient by itself and should not be qualified at all, as indicated at the end of paragraph 154 of the Commission's report. Perhaps the solution to the problem would be to draft article 7, paragraph 2, in such a way as to reflect the need for States to negotiate specific agreements on scientifically determined levels of permissible emissions, and the need to determine more objectively when a detrimental activity or effect was below or exceeded the threshold of "appreciable harm" (paragraphs 156 and 158 of the Commission's report). Furthermore, the following words should be added at the end of article 8: "and shall refrain from carrying out activities in the area under their jurisdiction or control that may entail a risk of causing such harm".

/...

(Mr. Szekely, Mexico)

21. The Special Rapporteur for the topic of jurisdictional immunities of States and their property had noted that there had been differences of opinion between countries that favoured the so-called restrictive theory of State immunity and countries that supported the absolute theory (paragraph 501 of the Commission's report). Mexico believed that the proponents of the absolute theory had become more flexible and were now willing to accept reasonable restrictions, whereas some proponents of the restrictive theory had in the mean time adopted a more radical position that would make exceptions to State immunity the general rule. That latter approach could be discerned in certain recently adopted domestic laws, which were not in keeping with international legal opinion. The Commission should therefore make a greater effort to achieve rapid progress in that area, before certain unilateral acts impeded progress even more. As the Chairman of the Commission had indicated in his introduction to the Commission's report, States did not accept a situation in which they were the passive subjects of laws prepared by others. Only if the Commission made progress on that topic, would it be possible to prevent such unacceptable situations from occurring.

22. Mr. TANG Chengyuan (China) said that his delegation welcomed the progress made on the topic of the law of the non-navigational uses of international watercourses at the Commission's fortieth session, and supported in principle the schedule of work suggested by the Special Rapporteur for dealing with the whole topic.

23. Concerning the obligation to co-operate and to exchange data and information, which had been the focus of discussion at that session, it was his delegation's belief that the new draft article 9 represented a significant improvement over the original version. It not only stipulated that States had a general obligation to co-operate, but also contained explicit formulations covering the nature and goals of such co-operation, as well as its relationship with other basic principles of general international law. In that respect, it provided a clear formulation on the interrelationship between a State's sovereignty over the international watercourses within its territory and the obligation to co-operate with other watercourse States.

24. Regular exchange of data and information, as provided for in article 10, was also necessary in order to enhance the equitable and rational use of water resources by watercourse States, and to avoid harm to other States concerned. However, a number of situations and factors should be taken into account. For example, the exchange of watercourse information should be determined mainly by the needs of the watercourse States; if those States did not require information, there was no reason to impose an obligation. The information to be exchanged should relate mostly to watercourses already in use or expected to be in use. Only relevant data and information should be exchanged; the obligation did not generally extend to the exchange of sensitive information relating to national defence and security.

25. In the formulation of obligations relating to the exchange of information and notification, an attempt should be made, to the extent possible, to reduce the burden on developing countries, without compromising the fundamental balance

/...

(Mr. Tang Chengyuan, China)

between the rights and obligations of the watercourse States concerned. Such a balance would be conducive to the equitable and rational use of watercourses by watercourse States in both legal and real terms.

26. Concerning the draft articles submitted by the Special Rapporteur on pollution of international watercourses, he noted that it was still not agreed whether harm caused by pollution should be regarded as giving rise to liability based on fault. The question was obviously closely related to the topics of State responsibility and international liability for injurious consequences arising out of acts not prohibited by international law. The Commission should try to ensure a proper interrelationship between those issues in order to avoid inconsistency. At the current stage, his delegation doubted the validity of using strict liability as the basis for liability for appreciable harm by pollution. That did not, of course, preclude the watercourse States from applying the principle of strict liability in respect of harm caused by watercourse pollution, on the basis of specific international watercourse agreements concluded between them in accordance with draft article 4.

27. Mr. MONAGAS (Venezuela) said it was clear that the Commission had made a great effort to advance in its work on the law of the non-navigational uses of international watercourses. It should continue with its preparation of the draft.

28. Venezuela was in favour of devoting a number of draft articles solely to the issue of the protection of the environment and pollution of international watercourses. With regard to specific articles, Venezuela shared the concerns expressed about the words "which results directly or indirectly from human conduct" in article 16, paragraph 1, as proposed by the Special Rapporteur. The definition in question should contain a reference to reduction of amenities and pollution produced by new technologies and radioactive elements, as well as references to changes in the river bed and to the ecological balance that might be altered as a result of pollution of the watercourse. Since the principle laid down in article 16, paragraph 2, was particularly important, it should perhaps be the subject of a separate article or be transferred to the part of the draft dealing with general principles. Moreover, that paragraph should be drafted in such a way as to make the obligation in question stricter.

29. At the current stage, "appreciable harm" was the most appropriate term, and Venezuela was therefore not in favour of replacing it with the term "substantial harm". Furthermore, it would perhaps not be appropriate to use the term "harm" without qualifying it. Another important issue that needed to be clarified in connection with article 16 was that of reconciling the concept of appreciable harm under paragraph 2 with the concept of "effects detrimental to human health or safety" under paragraph 1. The question of "detrimental effects" should be given further consideration by the Commission at its next session. On the issue of strict liability, Venezuela supported the view that a State of origin that caused appreciable harm to another watercourse State should be strictly liable under paragraph 2. Moreover, it endorsed the Special Rapporteur's suggestion that the paragraph might provide that watercourse States should take all measures necessary

/...

(Mr. Monagas, Venezuela)

to prevent the pollution of an international watercourse. However, since the issue was so complex, it would seem preferable to consider it in the context of such other topics as State responsibility and international liability for injurious consequences arising out of acts not prohibited by international law. Naturally, the obligation not to pollute and the obligation to avoid appreciable harm should be retained in the draft articles.

30. With regard to draft article 17 as proposed by the Special Rapporteur, provision should be made for an obligation on the part of watercourse States to adopt measures and régimes to ensure protection of the environment of international watercourses. Such a régime should be established, and all necessary measures should be taken to protect the marine environment from degradation or destruction occasioned through an international watercourse. It might be appropriate to have paragraph 2 as a separate article and to divide paragraph 1 into two. Venezuela was also in favour of including in paragraph 1 the obligation to "prevent, reduce and control" pollution of the environment of international watercourses. The term "ecology of the watercourse" could be replaced by the broader term "environment", and a definition of the term "environment of an international watercourse" could be included in an introductory article to the draft, as suggested by the Special Rapporteur. The appropriateness of the phrase "or serious danger thereof", which appeared in both paragraphs, should be considered further.

31. Venezuela was in favour of the inclusion of draft article 11 on pollution or environmental emergencies, as proposed by the Special Rapporteur. It also supported the suggestion that paragraph 1 of the article should be moved to an article of the draft on the definition of terms, and that the definition should refer to natural as well as man-made emergencies. Furthermore, Venezuela endorsed the suggestion that, rather than being limited to notification, the obligation in paragraph 2 should be expanded to include the obligation of co-operation in minimising the harm caused by an emergency.

32. Mr. BADAWI (Egypt) said that his delegation wished to respond to the invitation extended by the Commission and present its views on the degree of elaboration with which the draft articles on the law of the non-navigational uses of international watercourses should deal with problems of pollution and environmental protection, and on the concept of "appreciable harm" in that context.

33. In the view of his delegation, there was no need for a separate part devoted solely to the sub-topic of pollution, and obligations relating to environmental protection and pollution control would best be treated as an integral part of those other rights and duties of States enumerated in different parts of the draft. Such an approach would reflect the general principles to which States should adhere, and it would be for the watercourse States themselves to establish more precise and detailed procedures that took account of the specific characteristics of the watercourse in question and the particular problems to which they gave rise.

34. In connection with the concept of "appreciable harm", there was a need for consistency among the various articles of the draft. In addition to its use in the

/...



(Mr. Badawi, Egypt)

context of pollution, the term had also been used in draft article 8, as provisionally adopted by the Commission at its fortieth session, on the obligation of watercourse States to utilize an international watercourse in such a way as not to cause appreciable harm to other watercourse States. It was rare for "harm" to be accompanied by any qualifying criterion in matters involving an element of responsibility, since any such qualification might narrow the scope of application at the expense of legitimate rights and interests. The nature of the topic dealt with by the draft articles, however, and the fact that special agreements would be concluded by watercourse States in order to ensure equitable utilisation enabled his delegation to accept the concept of "appreciable harm" as a general principle within the context of the topic.

35. His delegation was pleased with the approach adopted by the Special Rapporteur and with the articles provisionally adopted by the commission at its fortieth session. It would nevertheless like to make a number of observations that the Commission might take into account in connection with the draft articles already provisionally adopted or those to be adopted in future.

36. His delegation would have liked draft article 9, on the general obligation to co-operate, to contain a reference to good faith as one of the fundamental principles on which co-operation between watercourse States was founded. As currently formulated, the text might carry that implication, but the essential link between article 9 and the other obligations stipulated in the draft articles as a whole, such as equitable and reasonable utilisation, the avoidance of harm to the interests of others, consultation among watercourse States and notification concerning planned measures, had convinced his delegation that that principle should be mentioned in the context of the obligation to co-operate.

37. With regard to draft articles 17 and 18, on consultations and negotiations concerning planned measures and on procedures in the absence of notification, his delegation would like to point out that the proposed texts were silent as to the procedure to be followed in the event of the failure of consultations and negotiations. A possible solution that the Commission might wish to consider was the inclusion of a text along the lines of article 12 of the 1975 Statute of the River Uruguay. Consideration should also be given to the possibility of appropriate compensation for harm caused by the postponement of the implementation of planned measures, in a case where a request for postponement was made by a watercourse State without sufficient justification or in bad faith.

38. It might be appropriate for the draft articles to contain a recommendation to watercourse States to establish an authority to be entrusted with the task of administering the watercourse, disseminating information and data, and making the necessary arrangements for consultations and negotiations. There were many precedents for such a mechanism, some of which had been mentioned by the members of the Commission.

39. The draft articles were, generally speaking, free of obscurity, and they established a just balance between the different interests involved. It was to be hoped that the Commission was on the way to completing the draft articles and codifying a set of legal rules that had been long awaited.

/...

40. Mr. KOTSEV (Bulgaria), referring to the topic "International liability for injurious consequences arising out of acts not prohibited by international law", said that the current state of international relations made it necessary to elaborate a legal mechanism to promote concerted State action in preventing environmental degradation and the negative consequences of scientific and technological progress.
41. The scope of the topic should be limited to those activities that posed the greatest risks, instead of covering all acts not prohibited by international law that might result in injurious consequences. It would be worth while to define the term "dangerous activity" on the basis of a study of existing international legal documents and established State practice. The draft before the Commission should be directed at the development of a legal mechanism that encouraged States to maintain close co-operation, and the problems related to compensation and reparation should be considered under the topic of State responsibility.
42. The main difficulty related to whether it was possible to turn liability for acts not prohibited by law into a general principle. Liability for such acts could at present be claimed only on the basis of concrete agreements on specific types of activities between two or more States. In all other cases, there would be no legal grounds for liability. On the other hand, the development of international treaty practice concerning environmental protection would lead to liability for violation of the relevant international law. It would be difficult to raise the issue of liability for damage resulting out of acts that were not qualified as infringements of norms of international law.
43. In working on the problem, the Commission should strive to elaborate a document that guaranteed bona fide co-operation between States in preventing transboundary damage or, where such damage occurred that made provision for the adoption of measures necessary for its limitation, minimization or elimination. His delegation therefore supported the view that the draft articles should serve as an incentive to States to conclude agreements establishing specific régimes to regulate activities in order to minimize potential damage (A/43/10, para. 32). That corresponded fully to the goal set by the Special Rapporteur, namely that the objective of the draft articles was to obligate States involved in the conduct of activities involving risk of extraterritorial harm to inform the other State which might be affected and to take preventive measures (para. 24). If damage occurred, no specified level of compensation was prescribed in the articles; rather there was an obligation to negotiate in good faith with a view to making reparation for harm caused, by taking into account such factors as those set out in sections 6 and 7 of the schematic outline. Adoption of that approach transferred the issue to the sphere of practical feasibility, and would certainly facilitate the Commission's task. Moreover, that approach would make it possible to ensure the necessary balance between the prevention of injurious consequences of acts not prohibited by international law and compensation for damage in accordance with trends in international law.
44. His delegation had repeatedly proposed the compilation of a list by the Commission of the most dangerous activities, for the purpose of determining the

(Mr. Kotsev, Bulgaria)

scope of application of the draft. It was necessary to have a true picture of realities and needs so that the draft could be considered in full knowledge of the main situations to which the articles were meant to apply. However, the Special Rapporteur had proposed an alternative method, namely some general criteria to limit the scope of the draft articles. His delegation did not oppose that approach, but believed that the success of such a course would depend greatly on how clearly the criteria would be defined and how they would be applied in practice. Draft article 1 limited the scope of application to acts that created an appreciable risk of injurious transboundary consequences. While it was advisable to try to limit the scope to the most dangerous activities, it was necessary to use precise criteria to define the respective thresholds. The Commission should be able to propose clear criteria that would make it possible to define the activities objectively on the basis of specific requirements.

45. His delegation believed that the Special Rapporteur had correctly applied the concept of appreciable risk. Application of that concept would create guarantees for the free use of the latest achievements of science and technology in any State. His delegation supported the comments in paragraphs 39 and 41 of the report regarding the advantages of that concept. At the same time, it adopted a flexible position on the issue. If the Commission deemed it necessary to use the term "harm" on the basis of the elaboration of suitable guidelines for determining reparation for injurious acts not prohibited by law, that should be duly reflected in the relevant draft articles. In common with several other delegations, his delegation would be inclined to substitute the term "significant" for "appreciable".

46. Article 7 was of great significance, and reflected the need for a concerted effort by States to prevent highly dangerous activities that could result in substantial damage.

47. Article 8 dealt with a point that concerned co-operation between States, and his delegation therefore thought that the draft could benefit by the inclusion of that provision in the text of article 7, the second paragraph of the latter being deleted.

48. Article 9 allowed for a flexible approach by envisaging the possibility that the interested States themselves could specify concrete régimes which required strictly defined measures to be undertaken in connection with certain types of activities. In his delegation's view, however, the term "reasonable" was not sufficiently precise; perhaps wording such as "the necessary measures" would be better.

49. Since the topic was closely linked to that of State responsibility, his delegation thought that the Commission should work on the two in parallel, but that the final adoption of the draft on international liability for injurious consequences should take place following the conclusion of consideration of the topic of State responsibility.

50. Mr. CULLEN (Argentina), referring to the topic "International liability for injurious consequences arising out of acts not prohibited by international law", said that the basic question was the concept of "risk". His delegation wondered whether the draft should confine itself solely to activities involving risk and whether only injury caused by such activities should be compensable.

51. The problem related primarily to "creeping pollution", where a State was aware that if the intensity of certain activities was increased or if certain elements were used, pollution above an acceptable threshold would certainly be produced, in other words "appreciable transboundary harm" would occur. In such cases, it might be considered that the element of contingency, essential to the concept of risk, was lacking, and that the draft failed to cover the vast world of pollution. That would not be true with regard to accidents such as the one at Chernobyl, which were typical cases of activities involving risk with harmful elements produced by pollution. Those would be covered despite the limitation represented by the term "risk".

52. The Commission seemed divided in that respect, with a majority apparently prepared to extend liability to harm caused by the activities he had described. His delegation recognised the basis for that position, and was prepared to accept it provided that efforts were made to establish a new limit which did not extend the scope of the draft to any damage produced by any activity. Such an extension would lead to concepts of "absolute liability", which the international community was not prepared to accept.

53. In article 1, the terms "jurisdiction" and "control" should refer to the area where the activity was conducted, not to the activity itself, thus linking any damage to a given jurisdiction. The expression "effective control" referred to a situation where a State did not exercise over a territory jurisdiction as recognised by international law, but had it under its *de facto* jurisdiction, as in the case of South Africa with regard to Namibia. The State in question should be liable for transboundary harm caused in the territory under its control. Similar concepts had been used in other conventions, such as the United Nations Convention on the Law of the Sea, without giving rise to any opposition.

54. His delegation agreed with the text proposed in article 3, and believed that the expression "knew or had means of knowing" applied to developing States which might not have the means to supervise vast territories or maritime areas.

55. He stressed the importance which his delegation attached to the inclusion of a chapter on principles. In that respect, it would be necessary to determine whether there was a consensus in the Sixth Committee that such principles could be applied to the topic, whether or not they reflected general international law. Such an essential consensus seemed to have emerged in the Commission, with the possible exception of article 8 on participation, in respect of which several members had pointed out that it was merely a counterpart to the principle of co-operation. His delegation considered that the principles contained in articles 6, 7, 9 and 10 were adequate and necessary for the functioning of the draft, and that the principle of participation in article 8 could be subsumed in the article on co-operation.

(Mr. Cullen, Argentina)

56. Referring to the topic "The law of the non-navigational uses of international watercourses", he said his delegation believed that environmental protection and the regulation of pollution problems had not yet been sufficiently analysed. The draft definition of pollution should be examined in the light of definitions contained in other international instruments. It might be appropriate to group in a single section rules to prevent, reduce and control the pollution of watercourses.

57. In taking up the question of water pollution, the Commission was confronted with the problem of striking a just balance between the legitimate interests of the watercourse States using the watercourses for different purposes. It had been argued that pollution problems involving international watercourses were regional problems, that environmental protection should be left to the discretion of States, and that good-neighbourliness made it necessary to tolerate some pollution. It was clear that, in principle, those problems were regional and that in many cases efforts had been made to solve them on a regional basis. In his delegation's view, however, the adoption of general rules adaptable to different cases could be highly useful. With regard to the question of discretion, his delegation believed that it was necessary in an interdependent world for States which shared a watercourse to consult each other and to co-ordinate their activities. As to the statement that some degree of pollution should be tolerated, his delegation believed that care should be taken not to give rise to any abuse.

58. His delegation considered that "harm" should be qualified. In that connection, he recalled the statement by the Special Rapporteur that the term was used in various international agreements. His delegation did not think, therefore, that the expression was imprecise or subjective. A possible alternative would be the expression "significant injury" used, for example, in the 1964 Statute on the Lake Chad Basin, the 1971 Declaration of Asunción on the use of international rivers and the 1966 Agreement between Austria, the Federal Republic of Germany and Switzerland.

The meeting rose at 4.50 p.m.