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Summary record of the 1831st meeting

Topic:
Law of the non-navigational uses of international watercourses

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1831st MEETING

Wednesday, 30 May 1984, at 10.05 a.m.

Chairman: Mr. Sompong SUCHARITKUL

Present: Chief Akinjide, Mr. Balanda, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Ogiso, Mr. Pirzada, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Sir Ian Sinclair, Mr. Ushakov, Mr. Yankov.

The law of the non-navigational uses of international watercourses (A/CN.4/367,¹ A/CN.4/381,² A/CN.4/L.369, sect. F)

[Agenda item 6]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

1. The CHAIRMAN invited the Special Rapporteur to introduce his second report on the law of the non-navigational uses of international watercourses (A/CN.4/381), as well as the revised outline for a draft convention contained therein, which read as follows:³

CHAPTER I

INTRODUCTORY ARTICLES

Article 1. Explanation (definition) of the term "international watercourse" as applied in the present Convention

1. For the purposes of the present Convention, an "international watercourse" is a watercourse—ordinarily consisting of fresh water—the relevant parts or components of which are situated in two or more States (watercourse States).

2. To the extent that components or parts of the watercourse in one State are not affected by or do not affect uses of the watercourse in another State, they shall not be treated as being included in the international watercourse for the purposes of the present Convention.

3. Watercourses which in whole or in part are apt to appear and disappear (more or less regularly) from seasonal or other natural causes such as precipitation, thawing, seasonal avulsion, drought or similar occurrences are governed by the provisions of the present Convention.

4. Deltas, river mouths and other similar formations with brackish or salt water forming a natural part of an international watercourse shall likewise be governed by the provisions of the present Convention.

Article 2. Scope of the present Convention

1. The present Convention applies to uses of international watercourses and of their waters for purposes other than navigation and to measures of administration, management and conservation related to the uses of those watercourses and their waters.

¹ Reproduced in *Yearbook ... 1983*, vol. II (Part One).

² Reproduced in *Yearbook ... 1984*, vol. II (Part One).

³ Changes made to the original draft are shown in italics in chapter headings and in the body of the text, and in roman type in titles of articles.

2. The use of the waters of international watercourses for navigation is not within the scope of the present Convention except in so far as other uses of the waters affect navigation or are affected by navigation.

Article 3. Watercourse States

For the purposes of the present Convention, a State in whose territory relevant components or parts of the waters of an international watercourse exist is a watercourse State.

Article 4. Watercourse agreements

1. Nothing in the present Convention shall prejudice the validity and effect of a special watercourse agreement or special watercourse agreements which, taking into account the characteristics of the particular international watercourse or watercourses concerned, provide measures for the reasonable and equitable administration, management, conservation and use of the international watercourse or watercourses concerned or relevant parts thereof.

The provisions of this article apply whether such special agreement or agreements are concluded prior to or subsequent to the entry into force of the present Convention for the watercourse States concerned.

2. A special watercourse agreement should define the waters to which it applies. It may be entered into with respect to an international watercourse in its entirety, or with respect to any part thereof or particular project, programme or use, provided that the use by one or more other watercourse States of the waters of such international watercourse is not, to an appreciable extent, affected adversely.

3. In so far as the uses of an international watercourse may require, watercourse States shall negotiate in good faith for the purpose of concluding one or more watercourse agreements or arrangements.

Article 5. Parties to the negotiation and conclusion of watercourse agreements

1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to that international watercourse as a whole.

2. A watercourse State whose use of the waters of an international watercourse may be affected to an appreciable extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in the negotiation of such an agreement, to the extent that its use is thereby affected.

CHAPTER II

GENERAL PRINCIPLES, RIGHTS AND DUTIES OF WATERCOURSE STATES

Article 6. General principles concerning the sharing of the waters of an international watercourse

1. A watercourse State is, within its territory, entitled to a reasonable and equitable share of the uses of the waters of an international watercourse.

2. To the extent that the use of the waters of an international watercourse within the territory of one watercourse State affects the use of the waters of the watercourse in the territory of another watercourse State, the watercourse States concerned shall share in the use of the waters of the watercourse in a reasonable and equitable manner in accordance with the articles of the present Convention and other agreements and arrangements entered into with regard to the management, administration or uses of the international watercourse.

Article 7. Equitable sharing in the uses of the waters of an international watercourse

The waters of an international watercourse shall be developed, used and shared by watercourse States in a reasonable and equitable manner

on the basis of good faith and good-neighbourly relations with a view to attaining optimum utilization thereof consistent with adequate protection and control of the *international watercourse* and its components.

Article 8. Determination of reasonable and equitable use

1. In determining whether the use by a *watercourse State* of the *waters of an international watercourse* is exercised in a reasonable and equitable manner in accordance with article 7, all relevant factors shall be taken into account, whether they are of a general nature or specific for the *international watercourse* concerned. Among such factors are:

(a) the geographic, hydrographic, hydrological and climatic factors together with other relevant circumstances pertaining to the *watercourse* concerned;

(b) the special needs of the *watercourse State* concerned for the use or uses in question in comparison with the needs of other *watercourse States*;

(c) the attainment of a reasonable and equitable balance between the relevant rights and interests of the *watercourse States* concerned;

(d) the contribution by the *watercourse State* concerned of waters to the *international watercourse* in comparison with that of other *watercourse States*;

(e) development and conservation by the *watercourse State* concerned of the *international watercourse* and its waters;

(f) the other uses of the *waters of an international watercourse* by the *State* concerned in comparison with the uses by other *watercourse States*, including the efficiency of such uses;

(g) co-operation with other *watercourse States* in projects or programmes to obtain optimum utilization, protection and control of the *watercourse* and its waters, taking into account cost-effectiveness and the costs of alternative projects;

(h) pollution by the *watercourse State* or *States* concerned of the *international watercourse* in general or as a consequence of the particular use, if any;

(i) other interference with or adverse effects, if any, of such use for the uses, rights or interests of other *watercourse States* including, but not restricted to, the adverse effects upon existing uses by such *States* of the *waters of the international watercourse* and its impact upon protection and control measures of other *watercourse States*;

(j) availability to the *State* concerned and to other *watercourse States* of alternative water resources;

(k) the extent and manner of co-operation established between the *watercourse State* concerned and other *watercourse States* in programmes and projects concerning the use in question and other uses of the *waters of the international watercourse* in order to obtain optimum utilization, reasonable management, protection and control thereof.

2. In determining, in accordance with paragraph 1 of this article, whether a use is reasonable and equitable, the *watercourse States* concerned shall negotiate in a spirit of good faith and good-neighbourly relations in order to resolve the outstanding issues.

If the *watercourse States* concerned fail to reach agreement by negotiation within a reasonable period of time, they shall resort to the procedures for peaceful settlement provided for in chapter V of the present Convention.

Article 9. Prohibition of activities with regard to an international watercourse causing appreciable harm to other watercourse States

A *watercourse State* shall refrain from and prevent (within its jurisdiction) uses or activities with regard to an *international watercourse* that may cause appreciable harm to the rights or interests of other *watercourse States*, unless otherwise provided for in a *watercourse* agreement or other agreement or arrangement.

CHAPTER III

CO-OPERATION AND MANAGEMENT
IN REGARD TO INTERNATIONAL WATERCOURSES

Article 10. General principles of co-operation and management

1. *Watercourse States* sharing an *international watercourse* shall, to the extent practicable, establish co-operation with regard to uses, projects, programmes, planning and developments related to such *watercourse* in order to obtain optimum utilization, protection and control of the *watercourse*. Such co-operation shall be exercised on the basis of the equality, sovereignty and territorial integrity of all the *watercourse States* concerned.

2. For these purposes *watercourse States* should obtain the appropriate assistance from the United Nations Organization and other relevant international agencies and supporting bodies, at the request of the *watercourse States* concerned.

3. *Watercourse States* should engage in consultations (negotiations) and the exchange of information and data on a regular basis concerning the administration, management and uses of such *watercourse* and other aspects of regional interest with regard to relevant *watercourses*.

4. *Watercourse States* shall, when necessary, establish joint commissions or similar agencies or arrangements as a means of promoting the objects and measures provided for in the present Convention.

*Article 11. Notification to other watercourse States.
Content of notification*

1. Before a *watercourse State* undertakes, authorizes or permits a project or programme or alteration of or addition to existing projects or programmes with regard to the utilization, regulation, conservation, protection or management of an *international watercourse* which may cause appreciable harm to the rights or interests of another *watercourse State* or other *watercourse States*, the *watercourse State* concerned shall submit at the earliest possible date due notification to the other relevant *watercourse State* or *States* about such project, programme, alteration or addition.

2. The notification shall contain *inter alia* sufficient technical and other necessary specifications, information and data to enable the other *watercourse State* or *States* to evaluate and determine as accurately as possible the potential for appreciable harm to the rights or interests of the other *watercourse State* or *States* by such intended project, programme, alteration or addition.

Article 12. Time-limits for reply to notifications

1. In a notification transmitted in accordance with article 11, the notifying *watercourse State* shall allow the receiving *watercourse State* or *States* a reasonable period of time of not less than six months from the receipt of the notification to study and evaluate the potential for appreciable harm arising from the planned project, programme, alteration or addition and to communicate its reasoned decision to the notifying *State*.

Should the receiving *State* or *States* deem that the time-limit stipulated in the notification is not reasonable due to the complexity of the issues or the magnitude of the work involved or for other reasons, they may request a reasonable extension of the time-limit concerned.

2. Should the receiving *watercourse State* or *States* deem that additional information, data or specifications are needed for a proper evaluation of the issues involved, they shall inform the notifying *State* to this effect as expeditiously as possible. Justifiable requests for such additional information, data or specifications shall be met by the notifying *State* as expeditiously as possible and the parties shall agree to a reasonable extension of the time-limit set forth in the notification.

3. During the time-limits set forth in paragraphs 1 and 2 of this article, the notifying *State* may not initiate the works referred to in the notification without the consent of the notified *watercourse State* or *States* concerned.

Article 13. Procedures in case of protest

1. If a *watercourse* State having received a notification in accordance with article 12 informs the notifying State of its determination that the project or programme referred to in the notification may cause appreciable harm to the rights or interests of the State concerned, the parties shall without undue delay commence consultations and negotiations in order to verify and determine the harm which may result from the planned project or programme. They should as far as possible arrive at an agreement with regard to such adjustments and modifications of the project or programme or agree to other solutions which will either eliminate the possible causes for any appreciable harm to the other *watercourse* State or otherwise give such State reasonable satisfaction.

2. If the parties are not able to reach such agreement through consultations and negotiations within a reasonable period of time, they shall without delay resort to the settlement of the dispute by other peaceful means in accordance with the provisions of the present Convention, *watercourse* agreements or other relevant agreement or arrangement.

3. In cases where paragraph 1 of this article applies and *where* the outstanding issues have not been resolved by agreement between the parties concerned, the notifying State may proceed with the planned project, programme, alteration or addition if that State deems that its rights or interests or the rights or interests of another *watercourse* State or other *watercourse* States may be substantially affected by a delay. In such cases the notifying State must proceed with the necessary works in good faith and in a manner conformable with friendly neighbourly relations.

4. Disputes and issues arising out of measures taken under paragraph 3 of this article must be settled as expeditiously as possible by the States concerned by means of the procedures for peaceful settlement provided for in chapter V of the present Convention, in relevant *watercourse* agreements or in other agreements or arrangements.

Article 14. Failure of *watercourse* States to comply with the provisions of articles 11 to 13

1. If a *watercourse* State having received a notification pursuant to article 11 fails to communicate to the notifying *watercourse* State within the time-limits provided for in article 12 its determination that the planned project or programme may cause appreciable harm to its rights or interests, the notifying *watercourse* State may proceed with the execution of the project or programme in accordance with the specifications and data communicated in the notification.

In such cases the notifying *watercourse* State shall not be responsible for subsequent harm to the other *watercourse* State or States, provided that the notifying State acts in compliance with the provisions of the present Convention and provided that it is not apparent that the execution of the project or programme is likely to cause appreciable harm to the other *watercourse* State or States.

2. If a *watercourse* State proceeds with the execution of a project or programme without complying with the provisions of articles 11 to 13, it shall incur liability for the harm caused to the rights or interests of other *watercourse* States as a result of the project or programme in question.

Article 15. Management of international watercourses. Establishment of commissions

1. *Watercourse* States shall, where it is deemed practical and advisable for the rational administration, management, protection and control of the waters of an international *watercourse*, establish permanent institutional machinery or, where expedient, strengthen existing organizations or organs in order to establish a system of regular meetings and consultations, to provide for expert advice and recommendations and to introduce other processes and decision-making procedures for the purposes of promoting effective and friendly co-operation between the *watercourse* States concerned with a view to enhancing optimum utilization, protection and control of the international *watercourse* and its waters.

2. To this end, *watercourse* States should establish, where practical, bilateral, multilateral or regional joint *watercourse* commissions and agree upon the mode of operation, financing and principal tasks of such commissions.

Such commissions may, *inter alia*, have the following functions:

(a) to collect, verify and disseminate information and data concerning utilization, protection and conservation of the international *watercourse* or *watercourses*;

(b) to propose and institute investigations and research concerning utilization, protection and control;

(c) to monitor the international *watercourse* on a continuous basis;

(d) to recommend to *watercourse* States measures and procedures necessary for the optimum utilization and the effective protection and control of the *watercourse*;

(e) to serve as a forum for consultations, negotiations and other procedures for peaceful settlement entrusted to such commissions by *watercourse* States;

(f) to propose and operate control and warning systems with regard to pollution, other environmental effects of water uses, natural hazards or other hazards which may cause damage or harm to the rights or interests of *watercourse* States.

Article 15 bis [former article 27]. Regulation of international watercourses

1. For the purposes of the present Convention, "regulation" means continuing measures for controlling, increasing, moderating or otherwise modifying the flow of the waters in an international *watercourse*. Such measures may include, *inter alia*, the storing, releasing and diverting of water by means of dams, reservoirs, barrages, canals, locks, pumping systems or other hydraulic works.

2. *Watercourse* States shall co-operate in a spirit of good faith and good-neighbourly relations in assessing the needs and possibilities for *watercourse* regulations with a view to obtaining the optimum and equitable utilization of the waters of the international *watercourse* concerned. They shall co-operate in preparing the appropriate plans for such regulations and negotiate with a view to reaching agreement on the establishment and maintenance—individually or jointly—of the appropriate regulation, works and measures and on the defrayal of the costs for such *watercourse* regulations.

Article 15 ter [former article 29]. Use preferences

1. In establishing *régimes*, rules and recommendations for equitable participation in the utilization and benefits of an international *watercourse* and its waters by the relevant *watercourse* States, no specific use or uses shall enjoy automatic preference over other equitable uses except as provided for in relevant *watercourse* agreements or other agreements or arrangements, including relevant rules, principles or practices established for the international *watercourse* concerned.

2. In settling questions relating to conflicting uses, the requirements for and the effects of certain pertinent uses shall be weighed against the requirements for and effects of the other pertinent uses with a view to obtaining the optimum utilization of the waters of the international *watercourse* concerned, taking into consideration all pertinent uses for the purpose of providing the reasonable and equitable distribution thereof between the *watercourse* States and taking into account all considerations relevant to the particular international *watercourse*.

3. Installations and constructions shall be established and operated in such a manner as not to cause appreciable harm to other equitable uses of the *watercourse*.

4. When an issue has arisen with regard to conflicting uses or use preferences in an international *watercourse*, *watercourse* States shall, in conformity with the principles of good faith and friendly neighbourly relations, to the extent practicable, refrain from taking measures pertaining to the relevant conflicting uses which might aggravate the difficulty of resolving the questions at issue.

Article 16. Collection, processing and dissemination of information and data

1. In order to ensure the necessary co-operation between *watercourse* States, the optimum utilization of a *watercourse* and a fair and reasonable distribution of the uses thereof among such States, each *watercourse* State shall, to the extent possible, collect and process the necessary information and data available within its territory of a hydrological, hydrogeological or meteorological nature as well as other relevant information and data concerning, *inter alia*, water levels and discharge of water of the *watercourse*, ground water yield and storage relevant for the proper management thereof, the quality of the water at all times, information and data relevant to flood control, sedimentation and other natural hazards and relating to pollution or other environmental protection concerns.

2. *Watercourse* States shall, to the extent possible, make available to other *watercourse* States the relevant information and data mentioned in paragraph 1 of this article. To this end, *watercourse* States should, to the extent necessary, conclude agreements on the collection, processing and dissemination of such information and data. To this end, *watercourse* States may agree that joint commissions established by them or special (regional) or general data centres shall be entrusted with collecting, processing and disseminating on a regular and timely basis the information and data provided for in paragraph 1 of this article.

3. *Watercourse* States or the joint commissions or data centres provided for in paragraph 2 of this article shall, to the extent practicable and reasonable, transmit to the United Nations or the relevant specialized agencies the information and data available under this article.

Article 17. Special requests for information and data

If a *watercourse* State requests from another *watercourse* State information and data not covered by the provisions of article 16 pertaining to the *watercourse* concerned, the other *watercourse* State shall upon the receipt of such a request use its best efforts to comply expeditiously with the request. The requesting State shall refund the other State the reasonable costs of collecting, processing and transmitting such information and data, unless otherwise agreed.

Article 18. Special obligations in regard to information about emergencies

A *watercourse* State should by the most rapid means available inform the other *watercourse* State or States concerned of emergency situations or incidents of which it has gained knowledge and which have arisen in regard to the *watercourse* concerned—whether inside or outside its territory—which could result in serious danger of loss of human life or of property or other calamity in the other *watercourse* State or States.

Article 19. Restricted information

1. Information and data the safeguard of which a *watercourse* State considers vital for reasons of national security or otherwise need not be disseminated to other *watercourse* States, organizations or agencies. A *watercourse* State withholding such information or data shall co-operate in good faith with other *watercourse* States in furnishing essential information and data, to the extent practicable, on the issues concerned.

2. Where a *watercourse* State for other reasons considers that the dissemination of information or data should be treated as confidential or restricted, other *watercourse* States shall comply with such a request in good faith and in accordance with good-neighbourly relations.

CHAPTER IV

ENVIRONMENTAL PROTECTION, POLLUTION,
HEALTH HAZARDS, NATURAL HAZARDS, SAFETY
AND NATIONAL AND REGIONAL SITES

Article 20. General provisions on the protection of the environment

1. *Watercourse* States—individually and in co-operation—shall, to the extent possible, take the necessary measures to protect the environment of the *international watercourse* concerned from unreasonable impairment, degradation or destruction or serious danger of such impairment, degradation or destruction by reason of causes or activities under their control and jurisdiction or from natural causes that are abatable within reason.

2. *Watercourse* States shall—individually and through co-ordinated efforts—adopt the necessary measures and régimes for the management and equitable utilization of an *international watercourse* and surrounding areas so as to protect the aquatic environment, including the ecology of surrounding areas, from changes or alterations that may cause appreciable harm to such environment or to related interests of *watercourse* States.

3. *Watercourse* States shall—individually and through co-ordinated efforts—take the necessary measures in accordance with the provisions of the present Convention and other relevant principles of international law, including those derived from the United Nations Convention on the Law of the Sea of 10 December 1982, to protect the environment of the sea as far as possible from appreciable degradation or harm caused by means of the *international watercourse* concerned.

Article 21. Purposes of environmental protection

The measures and régimes established under article 20 shall, *inter alia*, be designed to the extent possible:

- (a) to safeguard public health;
- (b) to maintain the quality and quantity of the waters of the *international watercourse* concerned at the level necessary for the use thereof for potable and other domestic purposes;
- (c) to permit the use of the waters for irrigation purposes and industrial purposes;
- (d) to safeguard the conservation and development of aquatic resources, including fauna and flora;
- (e) to permit, to the extent possible, the use of the *international watercourse* for recreational amenities, with special regard to public health and aesthetic considerations;
- (f) to permit, to the extent possible, the use of the waters by domestic animals and wildlife.

Article 22. Definition of pollution

For the purposes of the present Convention, "pollution" means any physical, chemical or biological alteration in the composition or quality of the waters of an *international watercourse* through the introduction by man, directly or indirectly, of substances, species or energy which results in effects detrimental to human health, safety or well-being or detrimental to the use of the waters for any beneficial purpose or to the conservation and protection of the environment, including the safeguarding of the fauna, the flora and other natural resources of the *watercourse* and surrounding areas.

Article 23. Obligation to prevent pollution

1. No *watercourse* State may pollute or permit the pollution of the waters of an *international watercourse* which causes or may cause appreciable harm to the rights or interests of other *watercourse* States in regard to their equitable use of such waters or to other harmful effects within their territories.

2. In cases where pollution emanating in a *watercourse* State causes harm or inconveniences in other *watercourse* States of a less serious na-

ture than those dealt with in paragraph 1 of this article, the *watercourse* State where such pollution originates shall take reasonable measures to abate or minimize the pollution. The *watercourse* States concerned shall consult with a view to reaching agreement with regard to the necessary steps to be taken and to the defrayment of the reasonable costs for abatement or reduction of such pollution.

3. A *watercourse* State shall be under no obligation to abate pollution emanating from another *watercourse* State in order to prevent such pollution from causing appreciable harm to another *watercourse* State or other *watercourse* States, unless otherwise agreed in the relevant *watercourse* agreement or other agreement or arrangement. *Watercourse* States shall—as far as possible—expeditiously draw the attention of the pollutant State and of the States threatened by such pollution to the situation, its causes and effects.

Article 24. Co-operation between watercourse States for protection against pollution. Abatement and reduction of pollution

1. *International watercourse* States shall, when necessary, co-operate through regular consultations and meetings or through their joint regional or international commissions or agencies with a view to exchanging on a regular basis relevant information and data on questions of pollution of the *international watercourse* concerned and with a view to the adoption of the measures and régimes necessary in order to provide adequate control and protection of the *international watercourse* and its environment against pollution.

2. *Watercourse* States shall, when necessary, co-operate with a view to establishing a comprehensive list of dangerous or persistent pollutants or other pollutants, the introduction of which into the waters of an *international watercourse* shall be prohibited, controlled or monitored.

3. *Watercourse* States shall, to the extent necessary, establish programmes for adequate measures and with timetables for the protection against pollution and abatement or mitigation of pollution of the *international watercourse* concerned.

4. *Watercourse* States shall, where expedient, establish the procedures and machinery necessary for the effective implementation of measures provided for in this article.

Article 25. Emergency situations regarding pollution

1. If an emergency situation arises from pollution or from similar hazards to an *international watercourse* or its environment, the *watercourse* State or States within whose jurisdiction the emergency has occurred shall make the emergency situation known by the most rapid means available to all *watercourse* States that may be affected by the emergency together with all relevant information and data which may be of relevance in the situation.

2. The *watercourse* State or States within whose jurisdiction the emergency has occurred shall immediately take the necessary measures to prevent, neutralize or mitigate danger or damage caused by the emergency situation. Other *watercourse* States should to a reasonable extent assist in preventing, neutralizing or mitigating the dangers and effects caused by the emergency and should be refunded the reasonable costs for such measures by the *watercourse* State or States where the emergency arose.

Article 26. Control and prevention of water-related hazards

1. *Watercourse* States shall co-operate in accordance with the provisions of the present Convention with a view to the prevention and mitigation of water-related hazardous conditions and occurrences, as the special circumstances warrant. Such co-operation should, *inter alia*, entail the establishment of joint measures and régimes, including structural or non-structural measures, and the effective monitoring in the *international watercourse* concerned of conditions susceptible of bringing about hazardous conditions and occurrences such as floods, ice accumulation and other obstructions, sedimentation, avulsion, erosion, deficient drainage, drought and salt-water intrusion.

2. *Watercourse* States shall establish an effective and timely exchange of information and data and early warning systems that would contribute to the prevention or mitigation of emergencies with respect to water-related hazardous conditions and occurrences relating to an *international watercourse*.

[Article 27 now article 15 *bis*]

Article 28. Safety of international watercourses, installations and constructions, etc.

1. *Watercourse* States shall employ their best efforts to maintain and protect the *international watercourse* or *watercourses* and the installations, constructions and works pertaining thereto.

2. To this end, the *watercourse* States concerned shall co-operate, consult and negotiate with a view to concluding agreements or arrangements concerning:

(a) relevant general conditions and specifications for the establishment, operation and maintenance of sites, installations, constructions and works of the *international watercourse* or *watercourses* concerned;

(b) the establishment of adequate safety standards and security measures, to the extent practicable, for the protection of the *international watercourse* or *watercourses* concerned and the waters thereof, including relevant sites, installations, constructions and works, from hazards and dangers due to the forces of nature, wilful or negligent acts or hazards and dangers created by faulty construction, insufficient maintenance or other causes.

3. The *watercourse* States concerned shall, as far as reasonable, exchange information and data concerning the safety and security issues dealt with in this article.

Article 28 bis. Status of international watercourses, their waters and constructions, etc. in armed conflicts

International watercourses and their waters, including relevant sites, installations, constructions and works, shall be used exclusively for peaceful purposes consonant with the principles embodied in the United Nations Charter and shall enjoy status of inviolability in international as well as in internal armed conflicts.

[Article 29 now article 15 *ter*]

Article 30. Establishment of international watercourses or parts thereof as protected national or regional sites

1. A *watercourse* State or *watercourse* States may—for environmental, ecological, historic, scenic or other reasons—proclaim an *international watercourse* or part or parts thereof a protected national or regional site.

2. Other *watercourse* States and regional and international organizations or agencies should in a spirit of good faith and friendly neighbourly relations co-operate and assist such *watercourse* State or States in preserving, protecting and maintaining such protected site or sites in their natural state.

CHAPTER V

PEACEFUL SETTLEMENT OF DISPUTES

Article 31. Obligation to settle disputes by peaceful means

1. *Watercourse* States as well as other States Parties shall settle disputes between them concerning the interpretation or application of the present Convention by peaceful means in accordance with Article 2 of the Charter of the United Nations and, to this end, shall seek solutions by the means indicated in Article 33, paragraph 1, of the Charter.

2. Nothing in this chapter shall impair the right of *watercourse* States and other States Parties to agree at any time to settle a dispute

between them concerning the interpretation or application of the present Convention by any peaceful means of their own choice.

Article 31 bis. Obligations under general, regional or bilateral agreements or arrangements

If watercourse States or other States Parties which are parties to a dispute concerning the interpretation or application of the present Convention have agreed through a general, regional or bilateral agreement or arrangement or otherwise that such dispute shall, at the request of a party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in articles 33 to 38 of this chapter, unless the parties to the dispute agree otherwise.

Article 32. Settlement of disputes by consultations and negotiations

1. When a dispute arises between *watercourse* States or other States Parties concerning the interpretation or application of the present Convention, the parties to the dispute shall proceed expeditiously with consultations and negotiations with a view to arriving at a fair and equitable solution to the dispute.

2. Such consultations and negotiations may be conducted directly between the parties to the dispute or through a *joint commission* or joint commissions established for the administration and management of the international *watercourse* concerned or through other regional or international organs or agencies agreed upon between the parties.

3. If the parties have not been able to arrive at a solution of the dispute within a reasonable period of time, they shall resort to the other procedures for peaceful settlement provided for in this chapter.

Article 33. Inquiry and mediation

1. In connection with the consultations and negotiations provided for in article 32, the *States* parties to a dispute concerning the interpretation or application of the present Convention may, by agreement, establish a Board of Inquiry or *other fact-finding body* of qualified persons or experts for the purpose of establishing the relevant facts pertaining to the dispute in order to facilitate the consultations and negotiations between the parties. The parties must agree to the composition of the Board of Inquiry or *fact-finding body*, the task to be entrusted to it, the time-limits for the accomplishment of its findings and other relevant guidelines for its work. The Board or *fact-finding body* shall decide on its procedure unless otherwise determined by the parties. The findings of the Board of Inquiry or *fact-finding body* are not binding on the parties unless otherwise agreed upon by them.

2. The parties to a dispute concerning the interpretation or application of the present Convention may by agreement request mediation by a third State, an organization or one or more mediators with the necessary qualifications and reputation to assist them with impartial advice in such consultations and negotiations as provided for in article 32. Advice given by such mediation is not binding upon the parties.

Article 34. Conciliation

PARAGRAPH 1 - ALTERNATIVE A

1. *If watercourse States or other States or other States Parties to the present Convention have not been able to resolve a dispute concerning the interpretation or application of the present Convention by the other procedures for peaceful settlement provided for in articles 31, 32 and 33, they shall submit the dispute to conciliation in accordance with articles 34 to 36, unless they agree otherwise.*

PARAGRAPH 1 - ALTERNATIVE B

1. If a *watercourse* agreement or other regional or international agreement or arrangement so provides, or if the parties agree thereto with regard to a specific dispute concerning the interpretation or application of the present Convention, the parties shall submit such dispute to conciliation in accordance with the provisions of this article or

with the provisions of such *watercourse* agreement or regional or international agreement or arrangement.

Any party to the dispute may institute such proceedings by written notification to the other party or parties, unless otherwise agreed upon.

2. Unless otherwise agreed, the Conciliation Commission shall consist of five members. The party instituting the proceedings shall appoint two conciliators, one of whom may be its national. It shall inform the other party of its appointments in the written notification.

The other party shall likewise appoint two conciliators, one of whom may be its national. Such appointment shall be made within thirty days from the receipt of the notification mentioned in paragraph 1 of this article.

3. If either party to the dispute fails to appoint its conciliators as provided for in paragraphs 1 or 2 of this article, the other party may request the Secretary-General of the United Nations to make the necessary appointment or appointments, unless otherwise agreed upon between the parties. The Secretary-General of the United Nations shall make such appointment or appointments within thirty days from the receipt of the request.

4. Within thirty days after all four conciliators have been appointed, the parties shall choose by agreement the fifth member of the Commission from among the nationals of a third State. He shall act as the president of the Conciliation Commission. If the parties have not been able to agree within that period, either party may within fourteen days from the expiration of that period request the Secretary-General of the United Nations to make the appointment. The Secretary-General of the United Nations shall make such appointment within thirty days from the receipt of the request.

Article 35. Functions and tasks of the Conciliation Commission

1. Unless the parties otherwise agree, the Conciliation Commission shall determine its own procedure.

2. The Conciliation Commission shall hear the parties, examine their claims and objections, and make proposals to the parties with a view to reaching an amicable settlement.

3. The Conciliation Commission shall file its report with the parties within twelve months of its constitution, unless the parties otherwise agree. Its report shall record any agreement reached between the parties and, failing agreement, its recommendations to the parties. Such recommendations shall contain the Commission's conclusions with regard to the pertinent questions of fact and law relevant to the matter in dispute and such recommendations as the Commission deems fair and appropriate for an amicable settlement of the dispute. The report with recorded agreements or, failing agreement, with the recommendations of the Commission shall be notified to the parties to the dispute by the Commission and also be deposited by the Commission with the Secretary-General of the United Nations, unless otherwise agreed by the parties.

Article 36. Effects of the report of the Conciliation Commission. Sharing of costs

1. Except for agreements arrived at between the parties to the dispute through the conciliation procedure and recorded in the report in accordance with paragraphs 2 and 3 of article 35, the report of the Conciliation Commission—including its recommendations to the parties and its conclusions with regard to facts and law—is not binding upon the parties to the dispute unless the parties have agreed otherwise.

2. The fees and costs of the Conciliation Commission shall be borne by the parties to the dispute in a fair and equitable manner.

Article 37. Adjudication by the International Court of Justice, another international court or a permanent or ad hoc arbitral tribunal

States may submit a dispute for adjudication to the International Court of Justice, to another international court or to a permanent or *ad*

hoc arbitral tribunal if they have not been able to arrive at an agreed solution of the dispute by means of articles 31 to 36, provided that:

(a) the States parties to the dispute have accepted the jurisdiction of the International Court of Justice in accordance with Article 36 of the Statute of the Court or accepted the jurisdiction of the International Court of Justice or of another international court by a *watercourse* agreement or other regional or international agreement or specifically have agreed to submit the dispute to the jurisdiction of the Court;

(b) the States parties to the dispute have accepted binding international arbitration by a permanent or *ad hoc* arbitral tribunal by a *watercourse* agreement or other regional or international agreement or specifically have agreed to submit the dispute to arbitration.

Article 38. Binding effect of adjudication

A judgment or award rendered by the International Court of Justice, by another international court or by an arbitral tribunal shall be binding and final for States Parties. States Parties shall comply with it and in good faith assist in its execution.

CHAPTER VI

FINAL PROVISIONS

Article 39. Relationship to other conventions and international agreements

The provisions of the present Convention do not affect conventions or other international agreements in force relating to a particular international watercourse or any part thereof, to international or regional watercourses or to a particular project, programme or use.

2. Mr. EVENSEN (Special Rapporteur) said that, in his first report on the topic (A/CN.4/367), he had proposed an outline for a draft convention comprising 39 articles as a basis for the discussion of the topic by the Commission at its thirty-fifth session and by the Sixth Committee of the General Assembly at its thirty-eighth session, in 1983. The discussions in both bodies had strengthened his belief that work on the topic was not purely legal in nature, but had strong political and economic overtones. Consequently, only through solutions that were viable both legally and politically would it be possible to arrive at an acceptable instrument of international law. The right balance must be struck between the interdependence of riparian States, on the one hand, and their sovereign independence and right to benefit from the natural resources within their territories, on the other; between upper riparian States and lower riparian States; and between the various uses of water. The Commission should bear in mind the relationship between non-navigational uses of water and other uses, for example navigation, as well as the varying issues posed by different watercourses.

3. As far as the approach to the topic was concerned, the discussions in the Sixth Committee (see A/CN.4/L.369, paras. 359-378) had confirmed that the framework agreement approach chosen by the Commission was preferable to other methods, such as a declaration or proclamation. It had been generally acknowledged that the framework agreement should be based on general legal principles such as good-neighbourly relations, good faith, sharing of resources in a reasonable and equitable manner and avoidance of appreciable harm to others, but that a natural corollary of those principles was that all watercourse States were entitled,

within their own territories, to a reasonable and equitable share of the uses of the waters of an international watercourse.

4. In his first report, when dealing with the watercourse system concept (A/CN.4/367, paras. 67-74), he had expressed the view that the term "international watercourse system" could serve as a descriptive tool but not as a basis from which to distil legal principles, and that the "drainage basin" concept, as adopted by the International Law Association in articles II and III of the Helsinki Rules,⁴ appeared unacceptable, in view of the opposition it had met with in the Commission and the Sixth Committee. The watercourse system concept had in fact been introduced in order to counter the criticism to which the international drainage basin concept had given rise, but it too had met with objections in the Sixth Committee, namely that it represented a doctrinal approach similar to the drainage basin concept, and the introduction of a legal superstructure from which unforeseeable principles might be inferred; that it placed undue emphasis on land areas, which might, if it was adopted, find themselves governed by the provisions of a watercourse convention; and that it was even more objectionable than the drainage basin concept because of its greater vagueness. Its use might therefore prove a very serious hurdle in the search for a generally acceptable convention.

5. He had therefore suggested in his second report (A/CN.4/381, paras. 22-23) that the watercourse system concept should be abandoned in favour of the simple notions of "international watercourse", "watercourse States" and "watercourse agreements". He had defined and explained the term "international watercourse" fairly narrowly, bearing in mind the comments made in the Commission and the Sixth Committee in 1983. The new article 1 represented a substantial change from the article 1 proposed originally, for the reasons he had explained in his second report (*ibid.*, paras. 24-25). International watercourses naturally had a wide variety of source components, but their nature, type and relevance varied from one watercourse to another and from one region to another, therefore he had thought it best not to itemize them.

6. He definitely believed it was appropriate for the Commission to draft an article explaining the term "international watercourse". Paragraph 1 of article 1 was closely related to article 3, which defined a watercourse State in terms intended to convey the notion of the unique character of each watercourse and of the consequent need to determine its relevant components or parts.

7. He had proposed substantial changes to paragraph 1 of article 4, relating to watercourse agreements, since a number of important watercourse States had expressed concern that the article as previously worded could seriously have undermined existing agreements. He himself did not altogether share that view. The new paragraph should be read together with article 39, which was

⁴ See I.L.A., *Report of the Fifty-second Conference, Helsinki, 1966* (London, 1967), pp. 484 *et seq.*; see also *Yearbook ... 1974*, vol. II (Part Two), pp. 357 *et seq.*, document A/CN.4/274, para. 405.

identical with article X of the articles provisionally adopted by the Commission. The question then arose whether articles 4 and 39 should be modified in some way or combined in one article.

8. Turning to chapter II of the draft, relating to general principles, rights and duties of watercourse States, he said that the original article 6 had met with considerable opposition in the Commission and perhaps even more so in the Sixth Committee. The physical, economic and political factors inherent in the management and administration of international watercourses underlined the interdependence of watercourse States and the need for international co-operation across national boundaries, in the form of a modern law of nations based on co-operation and friendly relations among neighbouring countries rather than on the more classical approach of mere co-existence. It had been accepted that watercourse States were entitled to a reasonable share of the benefits arising from uses of an international watercourse, but what had given rise to strong objection was the use in article 6 of the concept of a "shared natural resource". One argument against it had been that it would establish a superstructure from which unforeseeable legal rules could be inferred, with the implicit risk of far-reaching allegations and claims being made in given situations. Other criticisms had been that the article was somewhat unbalanced in form and content; that the waters of an international watercourse should be shared by users in a reasonable and equitable manner; and that a watercourse State should be entitled within its territory to a reasonable and equitable share of the uses of the waters of an international watercourse. He had therefore re-drafted paragraph 1 of article 6.

9. The principle that the use of the waters of an international watercourse should be shared in a reasonable and equitable manner was spelt out in paragraph 2 of article 6 and in articles 7 and 8. Two particular factors to be taken into consideration in deciding whether a use was exercised in a reasonable and equitable manner were provided for in article 8: the attainment of a reasonable and equitable balance between the relevant rights and interests of the watercourse States concerned (para. 1 (c)), and the need for watercourse States, in co-operating with each other on watercourse projects and programmes, to take account of cost-effectiveness and the costs of alternative projects (para. 1 (g)).

10. Chapter III of the draft convention, on co-operation and management in regard to international watercourses, opened with article 10 (General principles of co-operation and management), to which he proposed the addition of a new paragraph 2 dealing with assistance from the United Nations and other relevant international agencies and supporting bodies. The purpose of the addition was to focus attention on the need for watercourse States to receive appropriate assistance from such organizations as the United Nations (Economic and Social Council; Department of Technical Co-operation for Development), FAO, UNESCO and WHO. That principle was formulated in a manner intended to indicate that it was a task of the bodies concerned to provide such assistance.

11. Various changes were proposed in regard to the notification procedure. The first two, in paragraph 1 of article 12, would have the effect of giving receiving watercourse States a reasonable period of time of not less than six months in which to reply to project and programme notifications from other watercourse States, as well as the right to request an extension of that period where the circumstances warranted it. The other change was in paragraph 3 of article 13 and was more fundamental. Under the original provision, if a watercourse State receiving a notification protested against the project or programme proposed, the notifying State could not proceed with it until the two States had reached agreement on the matter or, in the absence of agreement, had exhausted the procedures for peaceful settlement provided for in the draft. That had justifiably been seen in the Commission and the Sixth Committee as tantamount to a right of veto which could easily lead to conflict. He had therefore reworded paragraph 3 of article 13 to provide that, in the absence of agreement, the notifying State might proceed with its plans if it deemed that its rights or interests or the rights or interests of another watercourse State or other watercourse States might be substantially affected by a delay, and provided it did the necessary work in good faith and in a manner conformable with friendly neighbourly relations.

12. Article 13 had a new paragraph 4 which provided that disputes must be settled by means of the procedures for peaceful settlement provided for in the draft, in relevant watercourse agreements or in other agreements or arrangements.

13. A further change related to paragraph 1 of article 29 (now article 15 *ter*), on use preferences. He had endeavoured to reformulate it in order to take account of the need to safeguard uses and practices traditionally established for a special watercourse system under agreements, arrangements, rules, principles or practice.

14. Referring next to the outline for a draft convention, he said that he had considered certain suggestions for restructuring it. He agreed that the proper place for article 27, on regulation of international watercourses, was in chapter III: it now appeared there as article 15 *bis*. The same applied to article 29, which had been transferred to become article 15 *ter*. He proposed that those two articles should become articles 16 and 17, respectively, in which case the present article 16 would become article 18.

15. The revised draft also included certain new ideas, based on the discussions which had taken place on his first report. The first idea related to the inviolability of international watercourses and their waters, constructions and works in armed conflicts, and was embodied in the new article 28 *bis*. The proposed article was couched in general terms and made no reference to the two Geneva Protocols of 1977.⁵ It was not part of his remit to

⁵ Protocol I relating to the protection of victims of international armed conflicts, and Protocol II relating to the protection of victims of non-international armed conflicts, adopted at Geneva on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (United Nations, *Juridical Yearbook 1977* (Sales No. E.79.V.1), pp. 95 *et seq.*).

consider whether national watercourses should enjoy such inviolability, although his personal view was that they should.

16. The second new idea concerned the effect of compulsory jurisdiction arrangements in regard to procedures for peaceful settlement of disputes. On the basis of the discussions in the Commission, and above all in the Sixth Committee, he had formed the view that it would be unrealistic to provide in the draft for a separate compulsory jurisdiction procedure for international watercourses. He had therefore introduced two less radical concepts which he trusted would be generally acceptable. The first—in the new article 31 *bis*—provided for existing compulsory jurisdiction arrangements to prevail over the arrangements provided for in articles 33 to 38 of the draft unless the parties to the dispute agreed otherwise. That new provision had been inspired mainly by article 282 of the 1982 United Nations Convention on the Law of the Sea⁶ and would be additional to article 37 of the draft, on adjudication by the ICJ, another international court or a permanent or *ad hoc* arbitral tribunal. The second concept related to compulsory conciliation and was embodied in alternative A proposed for paragraph 1 of article 34. Compulsory conciliation had proved a particularly useful settlement procedure in international watercourse disputes and had a precedent in article 297, paragraph 3 (b), of the United Nations Convention on the Law of the Sea.

17. Regarding the procedure to be followed by the Commission in its consideration of the topic, he suggested that as far as possible it should concentrate on the first two chapters of the draft. Chapter I contained the five articles which had already been dealt with by the Commission.⁷ Article 1 raised two basic questions: should the Commission consider it immediately, and if so, was its formulation broadly acceptable? Articles 2 and 3, relating respectively to the scope of the articles and to “watercourse States”, were identical with the articles 1 and 2 provisionally adopted, except for the deletion of the system concept. For article 4 he had relied heavily on article 3 as provisionally adopted, with the exception of paragraph 1, which he had reworded for the reasons already explained (para. 7 above). Likewise article 5, on parties to the negotiation and conclusion of watercourse agreements, was modelled on article 4 as provisionally adopted, but again with the deletion of the system concept. He trusted that those five articles at least might be referred to the Drafting Committee.

18. Mr. NJENGA said that the fundamental importance of the topic could hardly be over-emphasized. He welcomed the Special Rapporteur’s second report (A/CN.4/381), a remarkable achievement which took into account the criticisms levelled at the first report

(A/CN.4/367) and represented a realistic effort to meet the concerns of all interested States.

19. The Special Rapporteur’s innovative proposals related mainly to chapters I and II of the draft. The concept which had created most problems during the discussion of the first draft had been that of an international watercourse system. In his first report, the Special Rapporteur had already pointed out that a doctrinal definition of international watercourses would be counter-productive. The discussions in the Commission and in the Sixth Committee had revealed that the concepts of an international watercourse system and a system State were unjustifiable and that their adoption would seriously restrict the sovereign right of the State to take decisions concerning the utilization of watercourses in its territory. By removing the controversial element of an international watercourse system in his reformulation of paragraph 1 of article 1, the Special Rapporteur had gone a long way towards removing the major stumbling-block to progress on the topic. The changes made by the Special Rapporteur in the other paragraphs of article 1 were consequential upon that major modification. The Special Rapporteur had thus produced a purely geographical definition which could form the basis of a comprehensive draft.

20. His only suggestion for article 1 was to remove the brackets surrounding the words “watercourse States” at the end of paragraph 1 and to amend the paragraph to read: “... situated in two or more States, hereinafter referred to as watercourse States”. That change would make it possible to dispense with article 3, which could lead to unnecessary doctrinal disputes reminiscent of those to which the term “system States” had given rise in the past.

21. The changes made by the Special Rapporteur in the other articles of chapter I were largely of a drafting nature. He endorsed the new formulation proposed for article 4, paragraph 1, and agreed with the Special Rapporteur that it should alleviate misgivings as to whether States parties to the convention would have the obligation to amend existing special watercourse agreements, or word new agreements, in strict compliance with the provisions of the framework convention. In saying that, the Special Rapporteur had recognized that the physical characteristics of international watercourses and the political, social and economic problems of the States concerned were immensely diverse, hence the need to allow for the preservation of existing special régimes and the creation of new ones if the parties concerned so desired.

22. Another major improvement introduced by the Special Rapporteur related to article 6, which dealt with the general principles concerning the sharing of the waters of an international watercourse. Previously, that article had been based on the idea that an international watercourse was a shared natural resource. The discussion of the article at the previous session had shown that concept to be totally unacceptable; it not only denied the principle of the permanent sovereignty of the State over its natural resources, but also imposed ob-

⁶ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122.

⁷ For the texts of articles 1 to 5 and X and the commentaries thereto, adopted provisionally by the Commission at its thirty-second session, see *Yearbook ... 1980*, vol. II (Part Two), pp. 110 *et seq.*

ligations on upper riparian States while conferring all the benefits, without corresponding obligations, on lower riparian States, and particularly on the last State in the line. Such a concept could not possibly serve as the basis for an equitable international watercourse régime. The new formulation of article 6, however, provided a fair basis for a realistic international convention acceptable to all States sharing an international watercourse. From the drafting point of view, he suggested that paragraph 2 should be amended to indicate that only significant or appreciable adverse effects of watercourse use should bring the provisions of the article into operation. In its present wording the paragraph was much too broad.

23. He had no substantive comments to make on the remaining articles of chapter II. Article 7 and 9 had commanded broad support both in the Commission and in the Sixth Committee. With regard to article 8, he could accept the proposed changes, including the addition of the new criterion of reasonable and equitable use provided for in the new paragraph (c) of paragraph 1.

24. He fully shared the views expressed by the Special Rapporteur in his second report on the importance of co-operation among watercourse States (A/CN.4/381, para. 59). He found the new articles 10 to 18 a marked improvement on the corresponding articles submitted in the first report, even though the earlier articles had on the whole been acceptable to him. The new paragraph 2 of article 10 was especially welcome because of its importance for developing countries. The new formulations of articles 12 and 13 should prove more acceptable than the previous ones. In article 12, paragraph 1, for instance, the somewhat arbitrary time-limit of six months for replying to notifications had been replaced by "a reasonable period of time of not less than six months" and provision had also been made for a reasonable extension of that period in appropriate circumstances. That provided the necessary flexibility for both the notifying State and the receiving State. Furthermore, the removal of the possibility open to a protesting State under the earlier article 13 of vetoing a disputed project, or at least of postponing it unreasonably, went a long way towards meeting a very real concern of many States. The new article 13 also provided for the expeditious peaceful settlement of any dispute arising out of measures taken by a notifying State to implement a disputed project despite a protest by the receiving State. That innovation should meet with the full approval of the Commission.

25. He would not dwell at length on chapter IV of the draft, since its provisions had proved generally acceptable both in the Commission and in the Sixth Committee, and the Special Rapporteur had made only drafting changes in articles 20 to 29. He could accept the new article 28 *bis* on the status of international watercourses in armed conflicts since he felt that it reflected contemporary international law and did not upset the delicate balance achieved by States in the two Geneva Protocols of 1977.⁸

26. Chapter V, on the peaceful settlement of disputes, was broadly based on the corresponding provisions of the 1982 United Nations Conventions on the Law of the Sea⁹ and was therefore acceptable. He wished, however, to reserve judgment on the new article 31 *bis*, which provided for the operation of settlement procedures that were binding on States through general, regional or bilateral agreements. There appeared to be very few such agreements at the regional or general levels and, to the extent to which they existed bilaterally, they could apply independently of any provision to be included in the present draft. Also, as far as article 34 was concerned, he continued to doubt the value of compulsory conciliation as a means of solving international watercourse disputes and therefore preferred alternative B to alternative A for paragraph 1 of the article. With regard to the final provisions, he had no difficulties with the revised article 39 on the relationship between the draft convention and other conventions and international agreements.

27. Mr. PIRZADA said that he reserved his position generally on the Special Rapporteur's second report (A/CN.4/381), but would nevertheless make certain comments on it at the present stage. Before doing so, he wished to point out that, although Pakistan was a lower riparian State, it had no international watercourse problems in view of the Indus Waters Treaty¹⁰ it had entered into with India in 1960.

28. The Special Rapporteur's second report was a departure from his first report (A/CN.4/367) both in tenor and in spirit. The Commission would recall that the six articles it had provisionally adopted in 1980¹¹ had been based on the "system approach" to international watercourses. In his second report the Special Rapporteur had abandoned that approach on the grounds of the considerable opposition it had met with in the Sixth Committee of the General Assembly. One of the most remarkable features of the Special Rapporteur's original approach to the topic had been his frank recognition of the political nature of his task and of the necessity of establishing a viable balance between various interests. However, the Special Rapporteur had clearly explained that definitional articles were outside the purview of political reconciliation, and he had advocated the system approach mainly on the premise that those articles were descriptive rather than normative in nature. In his second report the Special Rapporteur had thus abandoned not only the work done on the topic by the Commission, but also his own entire approach to it. Apart from making a general reference to the Sixth Committee debate, the Special Rapporteur had offered no justification for that course of action.

29. A comparison of the original text of article 13, paragraph 3, with the reworded version of that paragraph now proposed would serve to illustrate how the Special Rapporteur had radically altered his original de-

⁸ See footnote 5 above.

⁹ See footnote 6 above.

¹⁰ United Nations, *Treaty Series*, vol. 419, p. 125.

¹¹ See footnote 7 above.

sign. Both texts purported to deal with what might be called the immediate pre-dispute stage. The original text would have prohibited the notifying State from proceeding with a planned project until the rules on the settlement of disputes had been complied with, except where the project was of the utmost urgency or where delay in proceeding with it might cause damage to the notifying State or to other system States. The reworded text discarded the important concepts of damage, urgency and the exceptional nature of unilateral action in favour of a requirement that the notifying State should proceed with the project "in good faith and in a manner conformable with friendly neighbourly relations". The two versions patently reflected two totally different views of what the relevant norms of law should be. Matters such as massive diversion, inter-basin transference and the use of boundary waters were not dealt with in the draft. He was tempted to say that the Special Rapporteur's reformulation of the paragraph was an attempt to find a political balance. That approach was likely to create more problems than it solved. Nevertheless, he had to endorse the view expressed by the Special Rapporteur in his introductory statement that the draft must aim at solutions which were legally and politically viable and which maintained a reasonable balance between riparian States and users.

30. He noted with satisfaction the new draft article 28 *bis* containing a provision on the status of international watercourses in armed conflicts. It was broadly in line with the views he had expressed at the previous session.¹²

The meeting rose at 12.20 p.m.

¹² *Yearbook ... 1983*, vol. I, p. 188, 1786th meeting, para. 33.

1832nd MEETING

Friday, 1 June 1984, at 10.05 a.m.

Chairman: Mr. Alexander YANKOV

Present: Mr. Balanda, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Ogiso, Mr. Pirzada, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Sir Ian Sinclair, Mr. Ushakov.

The law of the non-navigational uses of international watercourses (continued) (A/CN.4/367,¹ A/CN.4/381,² A/CN.4/L.369, sect. F)

[Agenda item 6]

¹ Reproduced in *Yearbook ... 1983*, vol. II (Part One).

² Reproduced in *Yearbook ... 1984*, vol. II (Part One).

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR³ (continued)

1. Mr. JAGOTA recalled that the Commission had been dealing with the topic of the non-navigational uses of international watercourses since 1971 and that, in the intervening period, developments had taken place in State practice. It was his hope that the Commission would be able to deal with certain important aspects of the topic and to present acceptable solutions to the world community.

2. By and large, he agreed with the Special Rapporteur's attitude, namely that the aim should be to prepare, if possible, a draft convention rather than mere guidelines or a code of conduct. Similarly, the draft convention should be short, having the form of a framework that could be adjusted in order to take into account the special features of particular international watercourses. The framework convention would thus set forth the general principles, leaving it to the States concerned to establish in each case a detailed régime for each international watercourse. The framework convention and the "watercourse agreements", as the Special Rapporteur now termed them, would none the less influence each other. The general principles embodied in the framework convention would be derived from sources which included State practice as reflected in watercourse agreements and, in turn, were bound to influence the detailed elaboration of special régimes in future watercourse agreements.

3. As to the contents of the framework convention, in the main he endorsed the way in which the Special Rapporteur had dealt with the problem of choosing the material to be included in the relevant articles. First and foremost, the Special Rapporteur had placed the emphasis on the uses of water, obviously excluding navigational uses, which were precluded from the topic by definition. That approach underlined the importance of water throughout the world, especially in developing countries, and more particularly those with certain climatic problems. Inland navigation was only one among many means of transport, so there were many alternative ways of replacing the navigational uses of waterways. There was, however, no substitute for water used for consumption, irrigation and other non-navigational purposes.

4. The draft articles appropriately dealt with the rights and obligations of States regarding uses of water and endeavoured to maintain a balance between the interests of all the parties concerned, whether upper riparian States, lower riparian States or States that were at the same time upper and lower riparian. The basic concept was that of the equitable sharing of water uses, in terms of both quantity and quality. Each State was none the less entitled to use its equitable share in the way it deemed desirable, as an expression of State sovereignty, but the freedom of a riparian State in that regard was limited by

³ For the texts, see 1831st meeting, para. 1. The texts of articles I 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.*