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Summary record of the 1872nd meeting

Topic:
Other topics

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60. Mr. RAZAFINDRALAMBO said that the passage in question reflected views he had expressed during the discussion. He therefore preferred the fourth sentence to be divided into two separate sentences. The first sentence would end with the word “hindered”. The conjunction “and” would be deleted and a new sentence would begin with “All the efforts undertaken ...”, and the words “in such a case” would be added after the words “would be meaningless”.

It was so agreed.

Paragraph 49, as amended, was adopted.

Paragraph 50

Paragraph 50 was adopted.

Paragraph 51

61. Mr. McCAFFREY said that the statement in the first sentence of the paragraph should be preceded by a formula on the following lines: “It was generally felt that ...”.

It was so agreed.

Paragraph 51, as amended, was adopted.

Paragraphs 52 and 52 bis

Paragraphs 52 and 52 bis were adopted.

Paragraph 53

62. Mr. McCAFFREY said he reserved the right to propose the deletion of paragraphs 53 to 55, as well as of paragraphs 57 to 60, for the reasons he had given earlier.

Paragraph 53 was adopted.

Paragraph 54

63. Mr. McCAFFREY noted that paragraph 54 described only two of the views expressed in connection with draft article 21. There was, however, a third view, namely that article 21 should be deleted because it was unnecessary. An additional sentence should therefore be inserted, reading: “Still another view was that the entire article was unnecessary.”

It was so agreed.

Paragraph 54, as amended, was adopted.

Paragraphs 55 to 75

Paragraphs 55 to 75 were adopted.

Paragraph 76

64. Mr. McCAFFREY proposed that the words “secrets of official correspondence”, in the second sentence of the paragraph, should be replaced by “confidentiality of official correspondence”.

65. Mr. LACLETA MUÑOZ supported that proposal. Only a slight change was required in the Spanish text, where the word *de* had to be inserted between *el secreto de la correspondencia y* and *los documentos oficiales*.

It was so agreed.

Paragraph 76, as amended, was adopted.

Paragraphs 77 to 106

66. Mr. McCAFFREY said he reserved the right to propose the deletion of paragraphs 93 to 95 and 97 to 101 for the reasons already stated.

Paragraphs 77 to 106 were adopted.

Paragraph 107

67. Mr. OGISO, referring to the statement in the penultimate sentence of paragraph 107 that the “intention was to refer to articles of a confidential nature”, said it was not clear whether all or only some of the articles for official use contained in the diplomatic bag were of a confidential character.

68. The CHAIRMAN, speaking as Special Rapporteur, explained that the protection was intended to apply to articles for official use of a confidential nature. Other articles for official use, such as furniture for the mission, would be covered by another provision of the 1961 Vienna Convention on Diplomatic Relations, namely article 36.

69. Sir Ian SINCLAIR proposed that the relevant passage should be amended to state: “The protection was designed essentially for articles of a confidential nature, ...”.

It was so agreed.

Paragraph 107, as amended, was adopted.

The meeting rose at 1 p.m.

1872nd MEETING

Wednesday, 25 July 1984, at 3.05 p.m.

Chairman: Mr. Alexander YANKOV

Present: Chief Akinjide, Mr. Balanda, Mr. Evensen, Mr. Francis, Mr. Koroma, Mr. Laclea Muñoz, Mr. Mahiou, Mr. McCaffrey, Mr. Ni, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitul, Mr. Thiam, Mr. Ushakov.

Draft report of the Commission on the work of its thirty-sixth session (continued)

CHAPTER III. Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (concluded)
(A/CN.4/L.372 and Add.1)

B. Consideration of the topic at the present session (concluded)
(A/CN.4/L.372)

Paragraphs 108 to 114

Paragraphs 108 to 114 were adopted.

Paragraph 115

1. The CHAIRMAN, speaking as Special Rapporteur, pointed out that the words "of existing conventions", at the end of the penultimate sentence of the paragraph, should be replaced by the words "of that Convention".

Paragraph 115, as amended, was adopted.

Paragraph 116 to 119

Paragraphs 116 to 119 were adopted.

Paragraph 120

2. Mr. McCaffrey proposed that the words "taken up again" should be replaced by the word "continued".

It was so agreed.

Paragraph 120, as amended, was adopted.

Paragraph 121

Paragraph 121 was adopted.

Paragraphs 122 to 126

Paragraphs 122 to 126 were adopted.

Paragraph 127

3. The CHAIRMAN, speaking as Special Rapporteur, pointed out that the words "any paragraph of" should be deleted.

Paragraph 127, as amended, was adopted.

4. Sir Ian SINCLAIR suggested that, before taking up section C of chapter III of the draft report, the Commission might take a decision on the point raised by Mr. McCaffrey at the 1871st meeting concerning section B. Personally, he was inclined to agree that chapter III should be shortened and the structure rearranged.

5. The CHAIRMAN, speaking as Special Rapporteur, said that he appreciated the reasoning behind Mr. McCaffrey's suggestion. It should none the less be borne in mind that, in drafting chapter III of the draft report, he had followed the pattern of the corresponding chapter of the Commission's report on the work of its thirty-fifth session, the only new feature being the insertion of new headings. Chapter III, although admittedly voluminous, reflected the work done on the item at the current session. Moreover, a thorough revision of the text at the current stage of the session would require considerable thought.

6. Mr. USHAKOV said he saw no reason to shorten chapter III. Much depended on the reader and his wish for a greater or lesser degree of detail.

7. Mr. MAHIU agreed that the chapter might seem cumbersome. The draft articles, however, had been the subject of lengthy discussion, both in plenary and in the Drafting Committee. A further argument in favour of maintaining the text of the chapter in its existing form was that the proposed deletions and rearrangement might prove time-consuming.

8. Mr. McCaffrey said that he would not insist on his suggestion, which was largely aimed at improving the

form of the chapter. The only point of principle at issue was whether it was appropriate to report on discussions in connection with draft articles on which the Commission had already taken action. The suggestion to rearrange certain paragraphs was more procedural in nature.

9. Mr. KOROMA said that the Special Rapporteur was to be congratulated on a faithful and comprehensive summary of the debate on the item. Nevertheless, he wondered whether it was wise for the report to refer to certain positions which would not reflect favourably on the Commission in the minds of readers. Without wishing to press the point, he hoped that the Special Rapporteur, and indeed the special rapporteurs on other items, would bear that in mind in the future.

10. Chief AKINJIDE agreed with Mr. Ushakov's objections to the suggested revision of the chapter. In his view, the chapter was very helpful as it stood, and he urged Mr. McCaffrey not to insist on his suggestion.

11. Mr. BALANDA said that the structure of the chapter was not new and reflected the discussions as a whole, both in the Commission and in the Drafting Committee. Besides, it would be difficult at the current stage to perform some kind of cosmetic surgery to improve the appearance of the text. The presentation should remain unchanged, despite the length of the chapter.

12. Mr. McCaffrey reiterated that he would not insist on his suggestion, but that he wished to register strong opposition to the practice of including in the draft report accounts of discussions that had taken place in the Commission on articles in respect of which action had already been taken. The practice merely encouraged the reopening of the subject in the Sixth Committee of the General Assembly and should be deprecated.

13. The CHAIRMAN said that the discussion had been of great interest to all special rapporteurs, present and future. He, for one, would certainly bear it in mind. He invited the Commission to proceed to the consideration of section C of chapter III of the draft report.

C. Draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, provisionally adopted by the Commission (A/CN.4/L.372/Add.1)

14. Mr. LACLETA MUÑOZ said that, in the Spanish text of the title of section C, the first word, *Proyecto*, should be in the plural.

It was so agreed.

The title of section C, as amended, was adopted.

Paragraph 128

Paragraph 128 was adopted.

Paragraph 129

Commentary to article 8 (Appointment of the diplomatic courier)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were approved.

Paragraph (4)

15. Sir Ian SINCLAIR proposed that the second part of the first sentence should be redrafted to read: "he

thus becomes or may become a member of the permanent or temporary staff of the Foreign Office, with rights and duties deriving from his position as a civil servant”.

It was so agreed.

Paragraph (4), as amended, was approved.

Paragraph (5)

Paragraph (5) was approved.

Paragraph (6)

16. Sir Ian SINCLAIR proposed that the paragraph should be redrafted to read: “The Commission was of the view that the draft article did not exclude the practice whereby, in exceptional cases, two or more States could jointly appoint the same person as a diplomatic courier. The Commission was also of the view that the foregoing should be understood subject to the provisions of articles 9 and 12, although the requirement of paragraph 1 of article 9 would be met if the courier had the nationality of at least one of the sending States.”

It was so agreed.

Paragraph (6), as amended, was approved.

The commentary to article 8, as amended, was approved.

Commentary to article 10 [9] (Nationality of the diplomatic courier)

Paragraphs (1) to (4)

Paragraphs (1) to (4) were approved.

Paragraph (5)

17. Sir Ian SINCLAIR suggested that the paragraph should be deleted.

It was so agreed.

Paragraph (5) was deleted.

Paragraph (6)

Paragraph (6) was approved.

The commentary to article 10 [9], as amended, was approved.

Commentary to article 11 [10] (Functions of the diplomatic courier)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

Paragraph (3)

18. Further to comments by Mr. McCAFFREY, Mr. LACLETA MUÑOZ and Chief AKINJIDE, Sir Ian SINCLAIR suggested that the final sentence should read: “The facilities, privileges and immunities accorded to the diplomatic courier are closely connected with his functions.”

It was so agreed.

Paragraph (3), as amended, was approved.

Paragraphs (4) and (5)

Paragraphs (4) and (5) were approved.

Paragraph (6)

19. Sir Ian SINCLAIR suggested that the paragraph should be replaced by the following: “The Commission decided to delete draft article 12 as submitted by the Special Rapporteur and dealing with the commencement of the functions of the diplomatic courier on the grounds that the matter would be better dealt with in the context of draft article 28, on the duration of privileges and immunities.”

It was so agreed.

Paragraph (6), as amended, was approved.

The commentary to article 11 [10], as amended, was approved.

Commentary to article 13 [11] (End of the functions of the diplomatic courier)

Paragraphs (1) to (4)

Paragraphs (1) to (4) were approved.

Paragraph (5)

20. Mr. LACLETA MUÑOZ said that, in the Spanish version, the word *cesación*, at the beginning of the second sentence, should be replaced by *cese* or *terminación*.

It was so agreed.

Paragraph (5), as amended, was approved.

The commentary to article 13 [11], as amended, was approved.

Commentary to article 14 [12] (The diplomatic courier declared persona non grata or not acceptable)

Paragraphs (1) to (5)

Paragraphs (1) to (5) were approved.

Paragraph (6)

21. Sir Ian SINCLAIR suggested that the paragraph should be deleted.

It was so agreed.

Paragraph (6) was deleted.

Paragraph (7)

Paragraph (7) was approved.

The commentary to article 14 [12], as amended, was approved.

Commentary to article 15 [13] (Facilities)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

Paragraph (3)

22. Sir Ian SINCLAIR suggested that, in the third sentence, the words “might be very circumstantial, unpredictable or peculiar in nature” should be replaced by “might be unpredictable in nature”. Moreover, the sixth sentence could be redrafted to read: “They may be of a technical or administrative nature, relating to the admis-

sion or entry into the territory of the transit or the receiving State, or to the provision of assistance in securing the safety of the diplomatic bag." Also, in the last sentence, the words "privileges and immunities" should be deleted.

It was so agreed.

23. Mr. McCAFFREY suggested that, in line with the information contained in paragraph (7), a sentence should be added at the end of paragraph (3) to indicate that at least one member had been opposed to paragraph 1 of article 15.

It was so agreed.

Paragraph (3), as amended, was approved.

Paragraphs (4) to (7)

Paragraphs (4) to (7) were approved.

The commentary to article 15 [13], as amended, was approved.

Commentary to article 16 [14] (Entry into the territory of the receiving State or the transit State)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

Paragraph (3)

24. Sir Ian SINCLAIR proposed that the word "ultimately", in the third sentence, should be replaced by "where possible".

It was so agreed.

Paragraph (3), as amended, was approved.

The commentary to article 16 [14], as amended, was approved.

Commentary to article 17 [15] (Freedom of movement)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

25. Sir Ian SINCLAIR proposed that the last sentence of the paragraph should be deleted.

26. The CHAIRMAN, speaking as Special Rapporteur, said he saw no difficulties in connection with that sentence other than those inherent in the article itself.

27. Sir Ian SINCLAIR said the purpose of his proposal was to avoid any suggestion that the receiving or transit State was under an obligation to assist the courier in the manner described. If the last sentence of the paragraph was maintained, he would suggest that, in the fourth sentence, the words "save in exceptional circumstances" should be inserted between the words "should" and "assist".

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraphs (3) and (4)

Paragraphs (3) and (4) were approved.

The commentary to article 17 [15], as amended, was approved.

Commentary to article 20 [16] (Personal protection and inviolability)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were approved.

Paragraph (4)

28. Sir Ian SINCLAIR suggested that the reference in the last sentence to the provision of a special guard should be deleted. The sentence would thus read: "They must take all reasonable steps to that end."

It was so agreed.

Paragraph (4), as amended, was approved.

Paragraph (5)

Paragraph (5) was approved.

The commentary to article 20 [16], as amended, was approved.

Commentary to article 21 [17] (Inviolability of temporary accommodation)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

29. Mr. LACLETA MUÑOZ said that, in the Spanish version, the first word, *Normalmente*, should be replaced by *En muchas ocasiones*.

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraphs (3) to (7)

Paragraphs (3) to (7) were approved.

Paragraph (8)

30. Mr. McCAFFREY suggested that a sentence should be added at the end of the paragraph stating that some members had been opposed to paragraph 1 of article 21 [17], for the reasons given in paragraph (3) of the commentary.

It was so agreed.

31. Sir Ian SINCLAIR proposed that the word "would", in the fifth sentence, should be replaced by "might in exceptional circumstances".

It was so agreed.

Paragraph (8), as amended, was approved.

Paragraphs (9) to (11)

Paragraphs (9) to (11) were approved with drafting changes.

The commentary to article 21 [17], as amended, was approved.

Commentary to article 24 [19] (Exemption from personal examination, customs duties and inspection)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

Paragraph (3)

32. Sir Ian SINCLAIR proposed that, in the first and second sentences of the paragraph, the word "sentence" should be replaced by "phrase" and that the word "prerogative" in the second sentence should be replaced by "extension of the principle".

It was so agreed.

Paragraph (3), as amended, was approved.

Paragraphs (4) and (5)

Paragraphs (4) and (5) were approved.

Paragraph (6)

33. Sir Ian SINCLAIR proposed that the words "possible abuses on the duty-free articles or other exemptions", in the fifth sentence, should be replaced by "possible abuses of the exemptions".

It was so agreed.

Paragraph (6), as amended, was approved.

Paragraph (7)

Paragraph (7) was approved.

The commentary to article 24 [19], as amended, was approved.

Commentary to article 25 [20] (Exemption from dues and taxes)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

34. Sir Ian SINCLAIR proposed that the first sentence should read:

"Notwithstanding the foregoing, the provision has been drafted bearing in mind that the short stay of the diplomatic courier in a given country places him in a somewhat different position from that of members of a mission and renders much less likely and almost impossible the exercise by him of certain activities or his entering into legal relationships which would expose him to liability for particular forms of taxation."

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraph (3)

35. The CHAIRMAN, speaking as Special Rapporteur, pointed out that the words "movable property" at the end of the third sentence, should read "real property".

Paragraph (3), as amended, was approved.

Paragraphs (4) and (5)

Paragraphs (4) and (5) were approved.

Paragraphs (6) and (7)

36. Sir Ian SINCLAIR pointed out that, since paragraphs (6) and (7) related to draft articles 26 and 27, which had been deleted, those paragraphs might also be deleted.

37. The CHAIRMAN, speaking as Special Rapporteur, recalled that draft article 26, relating to exemption from personal and public services, had been deleted by the Drafting Committee at his suggestion. However, that draft article should be mentioned in the commentary because the point had been made both in the general debate and in the Drafting Committee that, although the situation in question would rarely arise, it might none the less constitute an impediment to the performance of the functions of the courier. The case of draft article 27, on exemption from social security provisions, was somewhat different, and the article had enlisted very limited support in the course of the discussion.

38. Sir Ian SINCLAIR said he would not press his suggestion.

39. Mr. McCAFFREY wondered whether the paragraphs could not be compressed and aligned with those concerning other draft articles that had been deleted. For example, the opening sentence of paragraph (6) might read: "The set of draft articles as submitted by the Special Rapporteur contained a draft article on exemption from personal and public services." The next two sentences would be deleted, up to: "The Commission opted for ..." With regard to paragraph (7), it might not be inappropriate to delete it altogether.

40. The CHAIRMAN, speaking as Special Rapporteur, said he accepted Mr. McCaffrey's suggestion regarding the reformulation of paragraph (6). Paragraph (7) might also be compressed to read, after the first sentence: "The inclusion of the draft article would lead beyond the realistic factual context which the Commission had been called upon to codify and it was therefore deleted."

41. Mr. THIAM proposed that, in the second sentence proposed for paragraph (7), the words "factual context" should be replaced by "factual matter".

42. The CHAIRMAN suggested that paragraphs (6) and (7) should be reformulated along the lines proposed by Mr. McCaffrey, Mr. Thiam and himself, speaking as Special Rapporteur.

It was so agreed.

Paragraphs (6) and (7), as amended, were approved.

The commentary to article 25 [20], as amended, was approved.

Paragraph 129, as amended, was adopted.

Section C, as amended, was adopted.

Chapter III of the draft report, as amended, was adopted.

The meeting was adjourned at 4.35 p.m. and resumed at 5.05 p.m.

CHAPTER IV. Jurisdictional immunities of States and their property
(A/CN.4/L.373 and Corr.1 and Add.1 and 2)

A. Introduction (A/CN.4/L.373 and Corr.1)

Paragraphs 1 to 5

Paragraphs 1 to 5 were adopted.

Paragraph 6

43. Sir Ian SINCLAIR pointed out that, in the third sentence, the reference should perhaps be to part III of the draft articles and not to part II. The matter should be verified.

Paragraph 6 was adopted on that understanding.

Paragraphs 7 to 13

Paragraphs 7 to 13 were adopted.

Paragraph 14

44. Sir Ian SINCLAIR suggested that the first sentence should be simplified to read: "Introducing draft article 19, concerning ships employed in commercial service, the Special Rapporteur pointed out that this was a subject possibly more familiar in its detail to common-law lawyers than to civil-law lawyers."

It was so agreed.

Paragraph 14, as amended, was adopted.

Paragraphs 15 and 16

Paragraphs 15 and 16 were adopted.

Paragraph 17

45. Sir Ian SINCLAIR suggested that the word "archaic", in the second sentence, should be deleted. Furthermore, the last sentence should be reformulated to read: "It would therefore be preferable to use more general terms which could more easily be understood by those not acquainted with the particularities of admiralty law."

It was so agreed.

Paragraph 17, as amended, was adopted.

Paragraphs 18 and 19

Paragraphs 18 and 19 were adopted.

Section A, as amended, was adopted.

46. The CHAIRMAN observed that the documents containing section B of chapter IV of the draft report were not yet available in all the working languages. He therefore suggested that the Commission should pass to the consideration of chapter VI of the draft report.

It was so agreed.

CHAPTER VI. The law of the non-navigational uses of international watercourses (A/CN.4/L.375 and Add.1 and Add.1/Corr.1 and Add.2)

47. The CHAIRMAN invited the Commission to consider chapter VI of the draft report (A/CN.4/L.375 and Add.1 and Add.1/Corr.1 and Add.2).

A. Introduction (A/CN.4/L.375)

Paragraphs 1 to 20

Paragraphs 1 to 20 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session (A/CN.4/L.375/Add.1 and Corr.1 and Add.2)

Paragraphs 21 to 46 (A/CN.4/L.375/Add.1 and Corr.1)

Paragraphs 21 to 33

Paragraphs 21 to 33 were adopted.

Paragraph 34

Paragraph 34 was adopted with drafting changes.

Paragraphs 35 and 36

Paragraphs 35 and 36 were adopted.

Paragraph 37

48. Sir Ian SINCLAIR suggested that the phrase "and not necessarily accurate", in the fifth sentence, should be deleted.

It was so agreed.

Paragraph 37, as amended, was adopted.

Paragraphs 38 and 39

Paragraphs 38 and 39 were adopted.

Paragraph 39 bis

49. Mr. USHAKOV pointed out that it was he who had expressed the opinion reflected in paragraph 39 bis (A/CN.4/L.375/Add.1/Corr.1, para. 3). However, he had certainly not used the words "which had set up such an international watercourse". He requested the Secretariat to correct the paragraph by referring to his statement as reported in the summary record of the 1856th meeting.

50. Mr. LACLETA MUÑOZ said that in the Spanish version too the passage corresponding to the words quoted by Mr. Ushakov was meaningless. Clearly, States could not "set up" an international watercourse. He asked that the passage should be amended in all the language versions.

51. The CHAIRMAN said that he understood that the Commission was prepared to adopt paragraph 39 bis on the understanding that it was reformulated in accordance with the language used in the relevant summary record.

It was so agreed.

Paragraph 39 bis was adopted on that understanding.

Paragraph 40

Paragraph 40 was adopted.

Paragraph 41

52. Sir Ian SINCLAIR, referring to the addition of a new sentence to paragraph 41 (A/CN.4/L.375/Add.1/Corr.1, para. 4), said that he did not recall the matter

having been discussed in plenary. Had it been, he would have commented on the subject. The Commission was dealing with the non-navigational uses of international watercourses, and their impact on navigational uses had admittedly to be borne in mind, but draft article 2 already covered that point. The new sentence would raise a whole new set of problems, including the right to participate in negotiations on navigational as well as non-navigational uses.

53. Mr. EVENSEN (Special Rapporteur) said that the sentence in question had been an afterthought and that he had no objection to its deletion.

54. The CHAIRMAN noted that the new sentence had been withdrawn.

Paragraph 41 was adopted.

Paragraphs 42 and 43

Paragraphs 42 and 43 were adopted.

Paragraph 44

55. Sir Ian SINCLAIR expressed his appreciation for the proposed addition to paragraph 44, after the third sentence (A/CN.4/L.375/Add.1/Corr.1, para. 5). However, the second sentence of the additional text might be amended to read: "It was presumably not the intention that the provisions included in the framework agreement should constitute norms of *jus cogens*."

It was so agreed.

Paragraph 44, as amended, was adopted.

Paragraphs 45 and 46

Paragraphs 45 and 46 were adopted.

CHAPTER VII. State responsibility (A/CN.4/L.376 and Add.1)

A. Introduction (A/CN.4/L.376)

Paragraphs 1 to 6

Paragraphs 1 to 6 were adopted.

Section A was adopted.

The meeting rose at 5.55 p.m.

1873rd MEETING

Thursday, 26 July 1984, at 10.05 a.m.

Chairman: Mr. Alexander YANKOV

Present: Chief Akinjide, Mr. Balanda, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Koroma, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Thiam, Mr. Ushakov.

Draft report of the Commission on the work of its thirty-sixth session (continued)

CHAPTER VI. The law of the non-navigational uses of international watercourses (concluded) (A/CN.4/L.375 and Add.1 and Add.1/Corr.1 and Add.2)

B. Consideration of the topic at the present session (concluded) (A/CN.4/L.375/Add.1 and Corr.1 and Add.2)

Paragraphs 47 to 81 (A/CN.4/L.375/Add.2)

Paragraphs 47 to 54

Paragraphs 47 to 54 were adopted.

Paragraph 55

1. Sir Ian SINCLAIR proposed the deletion of the last two words, "and unacceptable", of the first sentence, which would thus end with the words "was highly controversial". The concept of "shared natural resources" was undoubtedly highly controversial, but it could not be described as unacceptable, since it had been accepted by several members of the Commission in the past.

It was so agreed.

Paragraph 55, as amended, was adopted.

New paragraph 55 bis

2. Mr. OGISO proposed the insertion of a new paragraph 55 bis, drafted along the following lines:

"Some members thought it should not be excluded that a watercourse agreement for a certain project, such as development of a dam, could be facilitated by using the concept of shared natural resources, if the watercourse States concerned so agreed. Therefore it was suggested that a new paragraph could be added to the effect that: 'To the extent that the watercourse States concerned agree, an agreement for special projects may be made on the basis of the concept of shared natural resources within the framework of that agreement.' The Special Rapporteur, however, thought that the introduction of such a provision might become a cause of confusion."

The aim was to take note of a proposal which had not met with a positive response on the part of the Special Rapporteur.

3. Mr. EVENSEN (Special Rapporteur) said that the new paragraph was acceptable, but that the last sentence should be amended to state that the Special Rapporteur had considered the proposal to be unnecessary.

It was so agreed.

New paragraph 55 bis, as amended, was adopted.

Paragraphs 56 to 60

Paragraphs 56 to 60 were adopted.

Paragraph 61

4. Mr. BALANDA proposed that the words "territorial sovereign", in the penultimate sentence, should be replaced by "territorial State".

It was so agreed.