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**Summary record of the 2049th meeting**

Topic:  
**International liability for injurious consequences arising out of acts not prohibited by international law**

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## 2049th MEETING

Friday, 20 May 1988, at 10 a.m.

Chairman: Mr. Leonardo DÍAZ GONZÁLEZ

Present: Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Calero Rodrigues, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Mahiou, Mr. McCaffrey, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.

**International liability for injurious consequences arising out of acts not prohibited by international law (continued)** (A/CN.4/384,<sup>1</sup> A/CN.4/405,<sup>2</sup> A/CN.4/413,<sup>3</sup> A/CN.4/L.420, sect. D)<sup>4</sup>

[Agenda item 7]

### FOURTH REPORT OF THE SPECIAL RAPPORTEUR (continued)

- ARTICLE 1 (Scope of the present articles)
- ARTICLE 2 (Use of terms)
- ARTICLE 3 (Attribution)
- ARTICLE 4 (Relationship between the present articles and other international agreements)
- ARTICLE 5 (Absence of effect upon other rules of international law)
- ARTICLE 6 (Freedom of action and the limits thereto)
- ARTICLE 7 (Co-operation)
- ARTICLE 8 (Participation)
- ARTICLE 9 (Prevention) and
- ARTICLE 10 (Reparation)<sup>5</sup> (continued)

1. Mr. ROUCOUNAS stressed the importance of the Special Rapporteur's fourth report (A/CN.4/413) and of the discussion to which it had given rise and pointed out that the Special Rapporteur appeared to be fully aware of the fact that the topic, despite its promising title, was really intended to establish a residual régime for those intermediate cases in which an activity that was not governed by international law caused harm which called for compensation. Accordingly, the proposals in paragraphs 10, 11 and 47 of the report seemed to go too far.

2. Similarly, the Special Rapporteur's decision not to submit an indicative list of harmful activities, which cast doubt on the existence of a rule of international law pro-

hibiting transboundary pollution, seemed surprising. Indeed, one could not fail to note the proliferation in recent years of multilateral, and still more of bilateral, instruments on international protection of the environment, particularly the 1982 United Nations Convention on the Law of the Sea, which confirmed and developed rules already contained in the IMO conventions relating to the protection of the marine environment, as well as the Convention on Early Notification of a Nuclear Accident<sup>6</sup> and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency,<sup>7</sup> both adopted by IAEA in 1986, the 1985 Vienna Convention for the Protection of the Ozone Layer<sup>8</sup> and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer.<sup>9</sup> In addition, there was abundant legal opinion along the same lines, as well as texts prepared by learned societies, such as the resolution on transboundary air pollution adopted by the Institute of International Law at its Cairo session on 20 September 1987.<sup>10</sup> The preamble and articles 2 and 6 of that resolution deserved particular mention. The fact that the international case-law on the question was not abundant could be attributed mainly to the preferences of the parties with regard to jurisdiction. It should be emphasized, however, that the ICJ had for some 20 years consistently and boldly reaffirmed the fundamental role of custom in the international legal order.

3. The Commission should not stand aside from such endeavours to regulate the matter of pollution, even though a bold approach might be needed, as had already been the case with the distinction drawn between "international crimes" and "international delicts" in article 19 of part I of the draft articles on State responsibility.<sup>11</sup> If one admitted that there existed a general rule of international law under which it was prohibited to cause harm to the territory of another State by either lawful or wrongful activities, the Commission had to define the scope of the topic, since the boundary between what was lawful and what was wrongful was not watertight. In fact, that question had arisen from the outset and the situation had not changed since. The draft articles under consideration were intended to be applied in at least three different situations: (a) where no procedural rules existed for the reparation of appreciable harm; (b) where an activity was in the process of being prohibited; (c) lastly, and chiefly, where the question of the lawfulness or wrongfulness of an activity having harmful consequences did not arise for the States concerned, which were in any event ready to deal with the harm.

4. Strictly speaking, the draft articles were intended solely for the purpose of linking an activity having harmful transboundary effects with the duty to make reparation, a duty that would then become a primary obligation: non-performance of the primary obligation would entail the responsibility of the State concerned

<sup>1</sup> Reproduced in *Yearbook . . . 1985*, vol. II (Part One)/Add.1.

<sup>2</sup> Reproduced in *Yearbook . . . 1987*, vol. II (Part One).

<sup>3</sup> Reproduced in *Yearbook . . . 1988*, vol. II (Part One).

<sup>4</sup> Consideration of the present topic is based in part on the schematic outline submitted by the previous Special Rapporteur, R. Q. Quentin-Baxter, at the Commission's thirty-fourth session. The text is reproduced in *Yearbook . . . 1982*, vol. II (Part Two), pp. 83-85, para. 109, and the changes made to it are indicated in *Yearbook . . . 1983*, vol. II (Part Two), pp. 84-85, para. 294.

<sup>5</sup> For the texts, see 2044th meeting, para. 13.

<sup>6</sup> IAEA, Legal Series No. 14 (Vienna, 1987), p. 1.

<sup>7</sup> *Ibid.*, p. 9.

<sup>8</sup> UNEP, Nairobi, 1985.

<sup>9</sup> UNEP, Nairobi, 1987.

<sup>10</sup> See *Yearbook of the Institute of International Law, 1987*, vol. 62 (part II), p. 296.

<sup>11</sup> See 2045th meeting, footnote 6.

for what was a wrongful act. From the start, however, the two Special Rapporteurs successively entrusted with the topic had sought to formulate an obligation of prevention which would also be considered as a primary obligation. The draft articles thus revolved around two poles: reparation and prevention, with risk as the legal basis. The concept of risk appeared expressly for the first time, and very emphatically, in the present fourth report. He saw no difficulty in maintaining that concept of risk, which, as Mr. Calero Rodrigues (2045th meeting) had pointed out, could in a way strengthen prevention, provided of course that it did not have the effect of restricting even more a scope of application that was already limited. Hence, like other members of the Commission, he did not favour the concept of "appreciable" risk, in the first place because it would shorten still further the list of dangerous things, but chiefly because it would exclude "hidden" risks which, in the event of harm, should also give rise to reparation.

5. Draft articles 1 to 3 made unduly frequent, and perhaps excessive, use of the term "risk". As to draft article 1, in the first place it did not specify who was to be the beneficiary of the right to reparation, and in the second place the scope of the draft should be extended to cover activities which were conducted in areas that were not under the jurisdiction or control of any State but nevertheless produced harmful effects from those areas. Technical developments had made frontiers meaningless and any appreciable harm could be expected sooner or later to affect some third State. It would therefore be useful to reaffirm, in addition to the principle of the protection of the territorial sovereignty of States, another principle, cherished by the Commission, namely the "interest of the international community as a whole", so that the draft could encompass all possible sources of injury.

6. It would be appropriate to define in draft article 2 (b) the concept of an "activity involving risk". Since natural events were not to be covered, it was necessary to specify that the risks envisaged were those directly or indirectly caused by man, as in the case of the 1976 Convention for the Protection of the Mediterranean Sea against Pollution<sup>12</sup> (art. 2 (a)), not to mention the risks resulting from man's failure to take action.

7. Care should be taken to give certain terms used in draft article 3, such as "attribution", the same meaning as in other instruments. In that connection, the Special Rapporteur might include among the opening provisions a new article along the lines of article 139, paragraph 1, of the United Nations Convention on the Law of the Sea, which would provide:

"States shall have the responsibility to ensure that activities carried out by them or by State enterprises or natural or juridical persons which possess their nationality or are effectively controlled by them or their nationals shall be carried out in conformity with the provisions that follow relating to prevention."

In addition, the problem of the burden of proof and, with regard to imputability, such questions as the consent of the injured State were bound to arise. With

regard to knowledge by the State that an activity involving risk was being or was about to be carried on in areas under its jurisdiction or control, he was indeed ready to discuss the matter. But he would stress that the observation made by the ICJ in its judgment in the *Corfu Channel* case (see A/CN.4/413, para. 63)—and actually repeated by the Court in its judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*<sup>13</sup>—concerned wrongful activities which were conducted on the territory of a State and of which that State had a more or less precise knowledge. That observation did not therefore appear to be applicable to the present draft articles, the basic purpose of which was the reparation of harm caused by modern techniques.

8. Draft article 4 still referred to "situations", a term which the Special Rapporteur had decided to discard. Lastly, it would be enough to redraft article 5 so as to indicate the residuary character of the draft, reaffirming at the same time the primacy of general international law.

9. Mr. OGISO, after congratulating the Special Rapporteur on his fourth report (A/CN.4/413), said that, of the three principles put forward in paragraph 85, the third—to the effect that "an innocent victim of transboundary injurious effects should not be left to bear his loss"—appeared to be new and should accordingly be examined with greater care. The Special Rapporteur added that the three principles were stated only for preliminary guidance (*ibid.*, para. 86), that the report was not concerned with establishing whether the principles reflected general international law (*ibid.*, para. 89) and that they were being proposed simply as part of the progressive development of international law (*ibid.*, para. 90). Moreover, the Special Rapporteur had rejected the suggestion by some members of the Commission that a list of dangerous activities be drawn up and had explained his reasons for doing so (*ibid.*, paras. 4, 6 and 7). His own conclusion was, therefore, that the Special Rapporteur recognized that any activity presupposed a precise, exacting obligation of prevention, without which no international measures of prevention and reparation could be effective, and that the Commission, in order to continue its consideration of the topic, stood in need of the co-operation of competent international organizations such as IAEA and UNEP.

10. It was gratifying that the Special Rapporteur had considered the question of creeping pollution, or pollution by accumulation (*ibid.*, paras. 8-15). Japan had had an unfortunate experience in that regard and, although the experience had not been international in dimensions, it could help to shed light on the question. In 1953, an extremely serious disease of the nervous system had emerged in the Kumamoto region in southern Japan, on the shores of Minamata Bay. It had later been discovered that a factory producing a chemical which was not poisonous had been discharging into the Bay methyl chloride and mercury in quantities which were not considered dangerous but which, over the years, had contaminated the marine flora and fauna by accumulation. The inhabitants of the area used to eat

<sup>12</sup> UNEP, *Selected Multilateral Treaties in the Field of the Environment*, Reference Series 3 (Nairobi, 1983), p. 448.

<sup>13</sup> Judgment of 27 June 1986, *I.C.J. Reports 1986*, p. 14.

fish from the Bay, whence the name of Minamata disease. At the time the disease had first appeared, however, the injury could not be connected with any “appreciable risk” and only in 1968 had the Ministry of Public Health officially acknowledged that the cause had been the waste discharged by the factory. Thus it had taken more than 10 years after the first appearance of the disease for the Government officially to recognize its origin. Numerous lawsuits had followed, and most of them were still pending. Certain important decisions, however, had already been rendered in those cases. First, the president of the company concerned and the manager of the factory had been convicted of accidental homicide by the district court and also on appeal. Secondly, the district court had in one case sentenced the company to pay damages to the persons affected by the disease or to the dependants of persons who had died of it. Thirdly, the same district court had ruled that the Government, because it had not reacted fast enough when the disease had appeared, was liable to the affected persons because of that negligence. The characteristic feature of all those decisions was that the liability attributed to the company, the State or the local authorities was based on fault: the courts, while admitting that the operator of a factory manufacturing chemical products had a duty to observe particularly strict safety standards, had not based their decisions on strict liability. Despite their purely internal character, those cases could be of interest for the topic under consideration, if only because, when the disease had appeared for the first time, the risk had not been “appreciable” since the disease had been unknown.

11. Turning to the draft articles, the concept of “appreciable” risk, which was being proposed as the threshold for attributing liability under draft article 1, was unduly subjective. Unlike injury, which was also qualified as “appreciable” but which constituted a physical phenomenon, risk was an abstract notion, a probability or a possibility of a scale that was much more difficult to assess. Besides, if that notion were to be retained, the effect would be to exclude the case—already mentioned—of an extremely low risk which, once it materialized, could cause major harm. The Special Rapporteur, moreover, appeared to use the expressions “appreciable risk” and “appreciable injury” interchangeably, stating as he did (*ibid.*, para. 41) that “for the time being, the focus should be on appreciable injury, since we have already seen that there seems to be a universal consensus that, below this threshold, injury should be tolerated”. By tolerable injury, the Special Rapporteur appeared to mean negligible injury, whether it had its origin in appreciable risk or not. On the other hand, in draft article 10, which stated that “injury caused by an activity involving risk must not affect the innocent victim alone”, the Special Rapporteur appeared to be saying that only injury caused by an activity involving risk should give rise to reparation. Some clarification was desirable on that point. In any event, it would have to be decided whether the concept of risk, or appreciable risk, was to be adopted as the threshold of liability.

12. With regard to draft article 3, the condition contained in the formula “provided that it knew or had means of knowing that an activity involving risk was be-

ing, or was about to be, carried on in areas under its jurisdiction or control”, a proviso which related to the special position of developing countries, might in fact detract in part from the effectiveness of the principle whereby the innocent victim must not be left to bear the loss alone. Accordingly, the proviso should be deleted or at least altered so that the burden of proof lay with the State of origin to prove that it did not know, or had no means of knowing. It should be noted that the affected State as well as the State of origin could well be a developing State.

13. With reference to draft article 6, he agreed with the Special Rapporteur that it was preferable not to refer to “interests”, a term which could be a source of ambiguity. Nevertheless, if the exercise of the freedom recognized in that article affected the health of the population of a neighbouring State as a result of transboundary pollution and a causal relationship was established, the State of origin could be regarded as having abused its freedom, and the question would then be one of State responsibility.

14. The Special Rapporteur had been right to stress in draft article 9 the duty of the State of origin to take measures to prevent or minimize injury that might result from an activity involving risk. Personally, however, he was not at all convinced that the concept of risk should play a role at the reparation stage. Draft article 10 provided that injury resulting from an activity involving risk must not affect the innocent victim alone. Yet, according to the explanation given by the Special Rapporteur, if appreciable injury was caused by an activity, that activity would be assumed to have involved a certain risk from the outset, so that the State of origin was under an obligation to make reparation for the injury, regardless of the extent of the risk before the incident occurred. Why, therefore, was it necessary to state, as did article 10, that only “injury caused by an activity involving risk” gave rise to liability?

15. Although he was not at all certain of its utility, he was not opposed to retaining draft article 10, if it was intended to state general guidelines for the elaboration of conventions on specific activities. Admittedly, there had been cases in which the principle of strict liability had been included by agreement of the parties, for specific activities, but that had been done only with regard to those activities, in the light of their specific features and with the aim of adopting a special legal régime, for example in order to concentrate liability upon an operator or to set a maximum ceiling in the matter of insurance. He had no objection to the question of strict liability being examined at a later stage, particularly in respect of activities involving a low risk but capable of causing large-scale harm if the risk materialized. If, however, the Special Rapporteur intended to open the door to the application of strict liability as a general principle of international law, he was likely to encounter the resistance of a great many Governments. It should be noted in that respect that even the 1963 Vienna Convention on Civil Liability for Nuclear Damage had so far been ratified by only 10 States, none of them a nuclear power. In addition, the internal legislation of many countries was still based on fault liability.

16. Mr. FRANCIS said he wished to dispel a misunderstanding which had arisen on his part at the previous meeting in connection with Mr. Mahiou's statement and wished to make it clear that he was now in full agreement with Mr. Mahiou's views on the concept of risk. In addition, his own remarks on that concept, and in particular on draft article 1, might have been misunderstood. He had sought essentially to say that the article should cover not only activities involving risk, but also other activities. In any case, he would be submitting a suggested definition of "risk" to the Drafting Committee. He had not been present when Mr. Eiriksson had spoken on article 1 at the previous meeting, but having since been informed of his views, he entirely agreed with him about that article.

17. The Special Rapporteur had not incorporated in the draft articles the provisions of article 5 as proposed by the previous Special Rapporteur,<sup>14</sup> whereby the rules of the draft were made conditionally applicable to international organizations. The 1982 United Nations Convention on the Law of the Sea (art. 156) provided for the establishment of an International Sea-Bed Authority which could very well find itself in the same position as an affected State or a State of origin. He therefore suggested that the Special Rapporteur should consider the desirability of including similar provisions making the rules conditionally applicable to international organizations.

18. Mr. McCAFFREY invited the Commission to reflect on three specific points raised in the course of a discussion that was particularly rich because of the calibre of the report on which it was based.

19. The first point was the concept of "effective control" appearing in draft article 1. The Special Rapporteur dealt with it in his fourth report (A/CN.4/413, paras. 19 and 21) without really explaining it, whereas a distinction should be made between *de facto* control and *de jure* control. In a general manner, in any case, the concept was tied in with the requirement of "knowledge or means of knowing" (*ibid.*, paras. 61-70). Clearly, it was impossible to control an activity unless its existence was known. The reasoning developed by the ICJ in the *Corfu Channel* case (*ibid.*, para. 63) seemed to concern *de jure* control. The distinction was an important one in that, if "effective control" was to be retained as the criterion for the attribution of liability, consideration would also have to be given to the allocation of the burden of proof—a question that could well be crucial in an actual case.

20. In that connection, it was also necessary to consider, as the Special Rapporteur had rightly done, the situation of developing countries, some of which were major exporters of substances involving risk. If a case arose between one of those countries and another developing country, it would not be possible to determine who should bear the burden of proof solely on the basis of "knowledge or means of knowing". The "effective control" criterion therefore deserved more detailed scrutiny.

21. The second point was the concept of jurisdiction, which called for great caution, since it lay at the root of the attribution of liability. According to the Special Rapporteur, "the basis for attributing responsibility to a State is primarily territorial" (*ibid.*, para. 18). The origin of transboundary harm could indeed be on the territory of a State, but to what extent could a State be held responsible for all transboundary harm having its origin in any area, sphere or place under its jurisdiction? The answer was not simple, for, as pointed out by Mr. Graefrath (2047th meeting) it could happen that more than one State claimed "jurisdiction" over the same area. The Special Rapporteur referred briefly to the matter, but only incidentally (A/CN.4/413, para. 20). One might add that, even in the territory of some States there were sectors over which other States claimed to exercise jurisdiction. The ambiguity would have to be resolved in some way, in so far as jurisdiction could be claimed "extraterritorially", so to speak.

22. The third point was the concept of causal responsibility, viewed from the standpoint of "proximate cause", to use the expression employed by the Special Rapporteur (*ibid.*, para. 52). The idea of "proximate cause", which was so commonly used in academic circles, set a limit on the defendant's liability, by contrast with the notion of "cause in fact": in law, a sufficiently close link had to exist between the acts of the defendant and the harm imputed to him. The ruling by the United States-German Mixed Claims Commission, which the Special Rapporteur cited in that connection (*ibid.*), related to the "cause in fact" rather than the "proximate cause". The Special Rapporteur appeared to believe that, provided the event which caused the harm could be connected by an uninterrupted chain of causal links with the conduct of a State, the latter could be held liable. The notion of causal responsibility therefore had to be clarified, inasmuch as it was bound to emerge at the reparation stage, in other words in the assessment of the duty of reparation and of the amount of compensation.

23. In a different way, the notion of causal responsibility also arose at the stage of the attribution of liability. Mr. Ogiso had already mentioned the *Minamata* case. It was also possible, however, to mention other substances or products which had previously been considered harmless but had suddenly caused widespread harm: such had been the case in the United States of America with asbestos and with a particular contraceptive product. In the case of asbestos, the responsibilities involved had been so vast as to be beyond the capabilities of the judiciary and had had to be settled by legislation. Lastly, a case of transboundary pollution, namely *Michie v. Great Lakes Steel*, was interesting from the point of view of the burden of proof. In that instance, a number of Canadian citizens had instituted proceedings in the United States courts against a group of industries close to the border and the problem of causal responsibility had arisen because the defendants had claimed that the plaintiffs were incapable of specifying exactly which firm was producing the pollutants. The court had ruled that it was sufficient for the plaintiffs to establish the harm and that it was for the defendants themselves to identify which firm was ac-

<sup>14</sup> See 2045th meeting, footnote 14.

tually responsible. The burden of attributing liability had thus shifted onto the defendants.

24. The CHAIRMAN announced that the meeting would rise to enable the Drafting Committee to meet.

*The meeting rose at 11.30 a.m.*

## 2050th MEETING

*Tuesday, 24 May 1988, at 10 a.m.*

*Chairman:* Mr. Leonardo DÍAZ GONZÁLEZ

*Present:* Mr. Arangio-Ruiz, Mr. Barsegov, Mr. Beesley, Mr. Francis, Mr. Graefrath, Mr. Hayes, Mr. Mahiou, Mr. McCaffrey, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Roucouas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.

**The law of the non-navigational uses of international watercourses (A/CN.4/406 and Add.1 and 2,<sup>1</sup> A/CN.4/412 and Add.1 and 2,<sup>2</sup> A/CN.4/L.420, sect. C, ILC(XL)/Conf.Room Doc.1)**

[Agenda item 6]

FOURTH REPORT OF THE SPECIAL RAPporteur\*

### PART IV OF THE DRAFT ARTICLES

1. The CHAIRMAN invited the Special Rapporteur to present the first part of his fourth report on the topic (A/CN.4/412 and Add.1 and 2), i.e. chapter I on the status of work on the topic and plan for future work, and chapter II, which dealt with exchange of data and information and which contained article 15 [16], reading as follows:

#### *Article 15 [16]. Regular exchange of data and information*

1. In order to ensure the equitable and reasonable utilization of an international watercourse [system], and to attain optimal utilization thereof, watercourse States shall co-operate in the regular exchange of reasonably available data and information concerning the physical characteristics of the watercourse, including those of a hydrological, meteorological and hydrogeological nature, and concerning present and planned uses thereof, unless no watercourse State is presently using or planning to use the international watercourse [system].

2. If a watercourse State is requested to provide data or information that are not reasonably available, it shall use its best efforts, in a spirit of co-operation, to comply with the request but may condition its compliance upon payment by the requesting watercourse State or other entity of the reasonable costs of collecting and, where appropriate, processing such data or information.

\* The international instruments referred to during the discussion are listed in the annex to the fourth report.

<sup>1</sup> Reproduced in *Yearbook . . . 1987*, vol. II (Part One).

<sup>2</sup> Reproduced in *Yearbook . . . 1988*, vol. II (Part One).

3. Watercourse States shall employ their best efforts to collect and, where necessary, to process data and information in a manner which facilitates their co-operative utilization by the other watercourse States to which they are disseminated.

4. Watercourse States shall inform other potentially affected watercourse States, as rapidly and fully as possible, of any condition or incident, or immediate threat thereof, affecting the international watercourse [system] that could result in a loss of human life, failure of a hydraulic work or other calamity in the other watercourse States.

5. A watercourse State is not obligated to provide other watercourse States with data or information that are vital to its national defence or security, but shall co-operate in good faith with the other watercourse States with a view to informing them as fully as possible under the circumstances concerning the general subjects to which the withheld material relates, or finding another mutually satisfactory solution.

2. Mr. McCaffrey (Special Rapporteur) reminded the Commission that, at its previous session, in 1987, it had provisionally adopted articles 2 to 7,<sup>3</sup> but had agreed to leave aside for the time being article 1 (Use of terms), and the question of using the term "system". It had decided to continue its work on the basis of the provisional working hypothesis accepted in 1980, and it had referred to the Drafting Committee draft articles 10 to 15<sup>4</sup> which he had submitted in 1987. The Drafting Committee thus remained seized of those six articles, as well as of article 9 (Prohibition of activities with regard to an international watercourse causing appreciable harm to other watercourse States)<sup>5</sup> which the Commission had referred to it at its thirty-sixth session, in 1984.

3. In his fourth report (A/CN.4/412 and Add.1 and 2, para. 7), he gave a tentative outline for the treatment of the topic as a whole. Part I of the draft articles (Introduction) would consist of articles 1 to 5. Part II (General principles) would contain articles 6 and 7, as well as the former articles 9 and 10, to be renumbered 8 and 9.<sup>6</sup> He proposed to include article 9 [10] among the general principles, in deference to the views expressed at the previous session. Part III (New uses and changes in existing uses) would contain articles 11 to 15, which would be renumbered 10 to 14. Part IV (Exchange of data and information) would consist of a single article, article 15 [16], which he would introduce shortly. Part V would deal with environmental protection, pollution and related matters, part VI with water-related hazards and dangers and part VII with the relationship between non-navigational and navigational uses.

4. Under the heading "Other matters", the outline mentioned a number of points on which the Commission might wish to make recommendations. They were matters on which no definite rules of international law had yet emerged and some of them were perhaps not capable of being the subject of such rules. He suggested that they should be dealt with in annexes to the draft articles, but the Commission might wish to cover some of them in the body of the draft.

<sup>3</sup> For the texts of articles 2 to 7 and the commentaries thereto, provisionally adopted by the Commission at its thirty-ninth session, see *Yearbook . . . 1987*, vol. II (Part Two), pp. 25 *et seq.*

<sup>4</sup> For the texts, *ibid.*, pp. 21-23, footnotes 76 (art. 10) and 77 (arts. 11-15).

<sup>5</sup> *Ibid.*, p. 23, footnote 80.

<sup>6</sup> Since from article 8 onwards the draft articles had been renumbered in the Special Rapporteur's fourth report, the numbers attributed to them originally are indicated in square brackets.