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A/CN.4/L.316

Draft articles on the law of the non-navigational uses of international watercourses. Texts adopted by the Drafting Committee: articles 1-5 and X and explanatory note - reproduced in A/CN.4/SR.1636, para.24

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

Extract from the Yearbook of the International Law Commission:-
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*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

Useful information could be obtained from existing conventions. In reply to another question, he said he believed that it might be useful for the instrument to contain references to other diplomatic or consular conventions in some contexts. The idea should not be excluded.

18. With reference to Mr. Reuter's statement at the 1634th meeting, he wondered whether it was sufficient to include provisions in the instrument concerning abuse of the official bag and its consequences. He suggested that the Special Rapporteur might reflect on whether the instrument should not also contain an outline of procedures to be followed by Governments, embassies and delegations abroad to prevent abuse as far as possible, with emphasis on their serious and far-reaching obligations.

19. He hoped that the Special Rapporteur would continue his work on the lines indicated in his preliminary report and start formulating draft articles, which he looked forward to discussing at the 1981 session.

20. Mr. TABIBI congratulated the Special Rapporteur and the Secretariat on their reports on the topic. The subject was a highly sensitive one, because couriers and diplomatic bags were an essential part of relations between States, between States and international organizations and between diplomatic missions. They were particularly important nowadays, because codes and ciphers were no longer safe or reliable, owing to the new scientific means of breaking them. But with the growth of abuse, the diplomatic bag was not only losing its security, it could even become a danger. All the years of work, all the international conventions and all the organizations combating the drug traffic had not been able to stop it, because of abuse of the diplomatic bag.

21. The topic was a vital one, especially for the smaller States which lacked the means to protect themselves. In its approach, the Commission must respect certain established principles recognized by international law, such as respect for freedom of communication and the means of communication, non-discrimination in regard to the movement of the courier and the diplomatic bag, and respect for the security and laws of the host State and third States. It should proceed within the framework of previous work and conventions. He agreed with the contents of section III of the preliminary report and the reference to the four United Nations codification conventions.

22. The task of the diplomatic or official courier had grown from a simple duty to a function that could be performed by an *ad hoc* courier, such as the captain of a ship, the pilot of an aircraft, the driver of a motor-car or train, or even the leader of a caravan of camels or of horse transport. The diplomatic bag, too, had changed and what had once been described as an official letter had become a sealed container in a wagon, train, ship or aircraft. But even the diplomatic bag was not

inviolable; its contents could be photographed by electronic devices. Some countries now found it safer to send a courier with a verbal message.

23. He had an open mind on the form of the instrument to be elaborated; whether it was to be a protocol or a convention was not important at that stage. The Commission had to draft a set of practical articles; it could decide later what type of instrument to submit to the General Assembly. With regard to the scope of the draft, in his opinion it would be better to concentrate first on States and deal with international organizations later.

The law of the non-navigational uses of international watercourses (concluded)* (A/CN.4/332 and Add.1, A/CN.4/L.316)

[Item 4 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

24. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the draft articles and explanatory note proposed by the Committee (A/CN.4/L.316), which read:

Article 1. Scope of the present articles

1. The present articles apply to uses of international watercourse systems and of their waters for purposes other than navigation and to measures of conservation related to the uses of those watercourse systems and their waters.

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

Article 2. System States

For the purposes of the present articles, a State in whose territory part of the waters of an international watercourse system exist is a system State.

Article 3. System agreements

1. A system agreement is an agreement between two or more system States which applies and adjusts the provisions of the present articles to the characteristics and uses of a particular international watercourse system or part thereof.

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

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

* Resumed from the 1612th meeting.

Article 4. Parties to the negotiation and conclusion of system agreements

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

2. A system State whose use of the waters of an international watercourse system may be affected to an appreciable extent by the implementation of a proposed system agreement that applies only to a part of the system 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, pursuant to article 3 of the present articles.

Article 5. Use of waters which constitute a shared natural resource

1. To the extent that the use of waters of an international watercourse system in the territory of one system State affects the use of waters of that system in the territory of another system State, the waters are, for the purposes of the present articles, a shared natural resource.

2. Waters of an international watercourse system which constitute a shared natural resource shall be used by a system State in accordance with the present articles.

...

Article X. Relationship between the present articles and other treaties in force

Without prejudice to paragraph 3 of article 3, the provisions of the present articles do not affect treaties in force relating to a particular international watercourse system or any part thereof or particular project, programme or use.

Note

A watercourse system is formed of hydrographic components such as rivers, lakes, canals, glaciers and groundwater constituting by virtue of their physical relationship a unitary whole; thus, any use affecting waters in one part of the system may affect waters in another part.

An "international watercourse system" is a watercourse system, components of which are situated in two or more States.

To the extent that part of the waters in one State are not affected by or do not affect uses of waters in another State, they shall not be treated as being included in the international watercourse system. Thus, to the extent that the uses of the waters of the system have an effect on one another, to that extent the system is international, but only to that extent; accordingly, there is not an absolute, but relative, international character of the watercourse.

25. Mr. VEROSTA (Chairman of the Drafting Committee) said that the six articles, together with the explanatory note, corresponded to articles 1, 2, 4, 5 and 7 originally submitted in the Special Rapporteur's second report (A/CN.4/332 and Add.1, paras. 52, 59, 69, 105 and 142).³ Article 3 (*ibid.*, para. 64), for which no text had been proposed in that report, was intended to reserve future inclusion of a provision on the meaning of the terms used in the draft articles. The Drafting Committee had not considered article 6 (*ibid.*, para. 130), dealing with collection and exchange of information, because it had been unable to deal adequately with the important issues raised in the short

time available. The Committee had found it appropriate at the present stage to propose a new article X, entitled "Relationship between the present articles and other treaties in force". He drew attention to the explanatory note which the Committee had adopted as a provisional working hypothesis.

26. In order to take account of criticisms made in the Commission, the Drafting Committee had decided to use the term "*cours d'eaux*" instead of "*voie d'eaux*" in the French text of the articles, in order to align the terminology used in the various languages. A corresponding change would therefore be needed in the title of the topic. He suggested that the Commission might wish to take a decision on the proposed change before discussing the draft articles.

27. The CHAIRMAN invited the Commission to take a preliminary decision on the change in the French text proposed by the Chairman of the Drafting Committee. If there were no objections, he would take it that the Commission approved that change.

It was so decided.

28. Mr. VEROSTA (Chairman of the Drafting Committee) said that the Drafting Committee had adopted the explanatory note following the draft articles as a provisional working hypothesis on what was meant, at that preliminary stage of work, by the expressions "watercourse system" and "international watercourse system" used throughout the draft articles. It had not been the Committee's intention to prepare final definitions of those terms for inclusion in the draft articles, but to suggest to the Commission that the contents of the note should appear in the introductory section of the relevant chapter of the Commission's report, as an indication to the General Assembly of a tentative understanding of what was meant by certain terms used.

29. Some members of the Drafting Committee who had supported the note had pointed out that by virtue of the provisions of the proposed article 3, paragraph 2, it was clear that, regardless of any tentative notions as to what might constitute an international watercourse system, a system agreement concluded under the draft articles would itself define the waters to which it applied. At least one member of the Drafting Committee had expressed the view that it would be better to start work on the topic on the basis of the more classical definition of the international river as "a river that separates or traverses the territory of two or more States"—a definition which could be expanded to suit particular uses to be covered in the draft.

30. The first paragraph of the note provided a scientific definition of the expression "watercourse system", whose hydrographic components constituted a unitary whole by virtue of their physical relationship. Any use affecting waters in one part of the system *might* affect waters in another part. Such use of waters might take place in the upstream or the

³ The text of the seven articles initially submitted by the Special Rapporteur is reproduced in the 1607th meeting, para. 1.