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Draft articles on the law of the non-navigational uses of international watercourses. Titles and texts of the articles adopted by the Drafting Committee on second reading: draft resolution adopted by the Drafting Committee - reproduced in document A/CN.4/SR.2356, para. 38

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

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identify *mutatis mutandis* the principles or rules contained in the draft articles that might apply in a particular case.

20. Mr. Sreenivasa RAO said he welcomed that fact that the draft resolution was broadly worded and took in the form of a recommendation. The Commission, despite its desire to do so, had not, because of time constraints, been able to carry out a comprehensive study on trans-boundary confined groundwater which it had deemed essential for the elaboration of a set of draft articles parallel to those relating to international watercourses. The alternative was the draft resolution before the Commission, a solution which had already found support within the Commission and did not preclude a more thorough investigation of the subject in the future, which was in fact desirable.

21. Further discussion on the wording of the draft resolution, which was the result of careful compromises hammered out in the Drafting Committee, would not be productive and might weaken the impact of the resolution. He therefore urged the Commission to adopt it without further delay.

22. Mr. MAHIU said that he endorsed Mr. Sreenivasa Rao's views.

23. Mr. GÜNEY said that, contrary to what had been said, the members of the Drafting Committee had not, owing to time constraints, discussed at length the way in which the principles contained in the draft articles might be applicable to confined groundwater. They had discussed neither the scope nor the nature, nor the legal aspects of that matter and they had not reached any agreement on which specific principles might be applicable. It was unfortunate that the entire question had been treated with such haste. In that connection, the proposal made by Mr. Robinson merited the Commission's consideration.

24. Mr. BENNOUNA said that the words "Expresses its view" in paragraph 1 should be replaced by "Considering" and that the paragraph, so altered, should form the last paragraph of the preamble.

25. Mr. THIAM and Mr. PAMBOU-TCHIVOUNDA endorsed Mr. Bennouna's proposal.

26. Mr. ROSENSTOCK (Special Rapporteur) said that it might be a good idea for the Chairman to ask the members whether they found Mr. Bennouna's proposal acceptable, so that the Commission could move on to other matters.

27. The CHAIRMAN referred members to the appropriate part of the report of the Chairman of the Drafting Committee, which set out the Committee's rationale for deciding to elaborate on the draft resolution. The report also indicated that operative paragraph 4 had given rise to reservations and that one member of the Committee had objected to the entire text.

28. While objections to the entire text had also been raised in plenary, there was none the less very little support for an approach that did not deal with the text as a whole. He therefore urged the Commission to consider the draft resolution as a whole.

29. Mr. THIAM said that he supported the amendment proposed by Mr. Bennouna. It might also be appropriate to replace the words "may be applied" in paragraph 1, by "might be applied".

30. Mr. FOMBA said he endorsed Mr. Thiam's proposal. While he was not in favour of transferring paragraph 1 to the preamble, he would accept that amendment in a spirit of compromise.

31. Mr. ROSENSTOCK (Special Rapporteur) said that he would urge the Commission to take immediate action on the amendment.

32. Mr. GÜNEY said that he endorsed the amendments proposed by Mr. Bennouna and Mr. Thiam.

33. Mr. ROSENSTOCK (Special Rapporteur) said that the only formal amendment before the Commission was the one proposed by Mr. Bennouna.

34. Mr. TOMUSCHAT said that, if paragraph 1 were to be moved to the preamble, then what was now paragraph 2 would have to be redrafted: the words "said principles" would have to be replaced by "the principles contained in its draft articles on the law of the non-navigational uses of watercourses".

35. Mr. VILLAGRÁN KRAMER said that he would, with reluctance, accept the proposed amendment.

36. Mr. MAHIU said that he supported the amendment proposed by Mr. Bennouna. However, he was not convinced of the need for any further drafting changes in paragraph 1.

37. Mr. AL-KHASAWNEH said that he had already expressed his reservations (2355th meeting).

38. The CHAIRMAN said that, if he heard no objections, he would take it that the Commission wished to adopt by consensus the draft resolution, as amended by Mr. Bennouna.

The draft resolution, as amended, was adopted.

CONSIDERATION OF THE DRAFT ARTICLES
ON SECOND READING (*continued*)

39. The CHAIRMAN invited members to comment on the draft articles and on the resolution, if they so wished.

40. Mr. VILLAGRÁN KRAMER said that the topic of the law of the non-navigational uses of international watercourses was closely related both to State responsibility for internationally wrongful acts and to international liability for injurious consequences arising out of acts not prohibited by international law. Although some members might not agree, he would even maintain that the topic was linked to the so-called theory of the improper exercise of a right (*abus de droit*).

41. It was important not to forget that States did not accept and would not accept any proposal by the Commission to the effect that strict liability was applicable in respect of harm, significant or not. The only relevant precedent in the area of strict liability was the Convention on International Liability for Damage caused by