Document:-
A/CN.4/SR.1788

Summary record of the 1788th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1983, vol. I

report was submitted during or just before a session. What happened in such a case was that pre-session documentation, which was taken into account in the translation and reproduction work-load estimated by Documents Control at Headquarters in New York, became in-session documentation, which was not taken into account in the estimated work-load of the Geneva translation and reproduction services.

42. Mr. STAVROPOULOS said he thought that the question of the delayed distribution of reports and summary records should be discussed in the Planning Group.

43. Mr. DÍAZ GONZÁLEZ said that the inference to be drawn from the Secretary's explanations was that the summary records of the Commission, instead of constituting a working tool, were already archives by the time they appeared. The delay suffered by the Spanish-speaking members of the Commission before they saw the summary records of statements delivered by them in their own language was particularly long, since the summaries were drafted in English or French before being translated into Spanish in terms that were sometimes far removed from those which had actually been employed.

44. As to reports by special rapporteurs, not only did they reach the Spanish-speaking members of the Commission with some delay, but they were also drafted in terms which often necessitated preliminary decoding. Because the Spanish version of the reports was always distributed after the English and French versions, the Spanish-speaking members had less time than other members to read and absorb them. The matter should be brought before the Planning Group, since the solution to the problem apparently did not depend either on the Commission or on the Secretariat.

45. Mr. REUTER said he was under the impression that, in the letters sent to special rapporteurs by the Secretariat, the time-limit for submitting reports was 15 February or 1 March. The Secretariat might furnish some statistics on the submission of reports, which would show whether some special rapporteurs were more punctual than others.

46. Mr. ROMANOV (Secretary to the Commission) explained that the Secretariat did not set deadlines for the submission of reports. It merely informed special rapporteurs that it would be grateful if they could submit the manuscripts of their reports at their earliest convenience. It was thus left to special rapporteurs to determine when their reports would be completed and submitted.

47. The CHAIRMAN, speaking as a member of the Commission, suggested that the Planning Group should discuss ways of ensuring that all language versions of reports and summary records were made available as rapidly as possible.

The meeting rose at 12.45 p.m.

1788th MEETING

Thursday, 23 June 1983, at 10 a.m.

Chairman: Mr. Laurel B. FRANCIS

Present: Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Flitan, Mr. Jagota, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Pirzada, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov.

The law of the non-navigational uses of international watercourses (*continued*) (A/CN.4/348,[1] A/CN.4/367,[2] A/CN.4/L.352, sect. F.1, A/CN.4/L.353, ILC(XXXV)/Conf. Room Doc.8)

[Agenda item 5]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR[3] (*continued*)

1. Mr. NJENGA said that, in justifying the unprecedented step of submitting a comprehensive set of draft articles in his first report (A/CN.4/367), the Special Rapporteur had rightly pointed out that the topic under consideration had been before the Commission since 1979, that the General Assembly had requested the Commission to treat it as urgent, and that draft articles should therefore be formulated as soon as possible. It might, however, have been preferable for the Special Rapporteur to adopt a more modest approach in his first report and to determine whether there was any consensus on general principles before submitting a full set of draft articles. Although what the Special Rapporteur had achieved must not be underestimated, he should bear in mind that whatever general principles were adopted were likely to affect the draft articles as a whole.

2. The outline for a draft convention (*ibid.*, para. 65) was entirely acceptable. It represented a logical and coherent way of dealing with the topic and would be viable whatever solutions ultimately commanded a consensus in the Commission.

3. In view of the diversity of international watercourses in terms of size and physical, hydrological and geographical characteristics, he fully agreed with the opinion expressed by the Special Rapporteur in his report (*ibid.*, para. 14) that

> . . . a definition of international watercourses based on a doctrinal approach to the topic would be counter-productive, whether the

[1] Reproduced in *Yearbook . . . 1982*, vol. II (Part One).

[2] Reproduced in *Yearbook . . . 1983*, vol. II (Part One).

[3] For the texts, see 1785th meeting, para. 5. The texts of articles 1 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.*

definition is based on the drainage basin concept or on other concepts of a doctrinal nature. The definition of the term "international watercourse" should not have as its purpose to create a superstructure from which to distil or extract legal principles. . . .

On the basis of that opinion, he supported draft article 1, which defined the term "international watercourse system". As long as it was clearly understood that that definition was of a purely descriptive nature and that no legal rule or principle could be deduced from it, he would have no objection to the inclusion in the definition of "deltas, river mouths or other similar formations with brackish or salt water forming a natural part of an international watercourse system". He would, however, reserve his position on other components such as canals, streams, aquifers and ground water, whose inclusion would not be justified.

4. It was still not clear to him whether the concept of an international watercourse system was a hydrological and geographical one, or whether such a system came into being as the result of a system agreement. The definition of "system States" in draft article 3 did not help him to answer that question. The Commission would obviously have to look more closely at draft articles 2–5 when it had agreed on a general approach to the topic.

5. The part of the report which caused him the greatest difficulties was chapter IV, on "General principles: rights and duties of system States". His own country, Kenya, was one of the co-riparian or basin States of the Nile, the second longest river in the world. Approximately 38 per cent of the waters of the White Nile came from the Lake Victoria basin in western Kenya. Kenya was basically an agricultural country and its population growth rate of 4 per cent per year was reputed to be the highest in the world. Only about one-third of the land had adequate rainfall and could be used for agriculture, although seasonal dry periods and droughts were not infrequent. It was therefore obvious that Kenya would have to be increasingly careful about the use of water resources for irrigation if it was to be able to feed its growing population. At present, it relied quite heavily on hydropower to meet its energy needs, since unfortunately it had not been able to locate any hydrocarbons. The available water resources were thus of vital importance for survival and would be even more important in the future.

6. It was against that background that he had considered draft article 6, on the international watercourse system as a shared natural resource. Like Mr. Reuter (1786th meeting), he had questioned whether the principle of shared natural resources existed in international law. If it did, what were its parameters and why should it be restricted to international watercourses? That principle surely could not be based on the fact that water had the physical characteristic of movement, or on the interdependence of States and good-neighbourly relations, which existed in every sphere of international life. As Mr. Reuter had pointed out, the physical characteristics of water would be equally applicable to airspace, outer space, the ozone layer or even the extra-atmospheric layer. If physical movement was to be taken as a criterion, it could also be applied to fish stocks, which moved undeterred and unknowingly from one economic zone to another. It should be borne in mind that the United Nations Convention on the Law of the Sea referred not to shared natural resources, but to sovereign rights over resources in the exclusive economic zone.[4] The conclusion reached by the previous Special Rapporteur and cited in the report under consideration (A/CN.4/367, para. 33, second sentence) was therefore totally unconvincing.

7. In his opinion, there was no basis for believing that there was a ground swell of support for the concept of shared natural resources. Moreover, the concept of the common heritage of mankind was entirely outside the scope of the topic under consideration, because it related to resources beyond the limits of national jurisdiction. Whatever sharing of resources in the exclusive economic zone was envisaged in the United Nations Convention on the Law of the Sea related to the surplus. There was no shared sovereignty even with respect to the surplus. That appeared to be the essence of the concept of shared natural resources and its corollary, namely entitlement to reasonable and equitable participation in the shared resource. It was therefore difficult for him to agree with the conclusion reached by the Special Rapporteur in his commentary to draft article 6 (*ibid.*, para. 81, third sentence). The most fundamental principle today was that of permanent sovereignty over natural resources—which included water, whether in rivers, springs, brooks or underground—within national jurisdiction.

8. Subject to his comments on shared natural resources, he could accept draft article 7 on equitable sharing in the uses of an international watercourse system and its waters. Nevertheless, he had some doubts about draft article 8, which contained a list of factors to be taken into account in determining whether the use made of a watercourse system or its waters by a system State was reasonable and equitable. Each State determined its own priorities in the light of its requirements, and the list given in draft article 8 would tend to create disputes rather than promote good-neighbourly relations through broad-based consultations.

9. Although the concept of "appreciable harm" might be difficult to define in practice, he supported the basic idea of draft article 9, which provided that a system State must refrain from and prevent, within its jurisdiction, uses or activities that might cause appreciable harm to the rights or interests of other system States. That draft article embodied a cardinal principle of international law which was applicable not only to international watercourses, but also in all spheres of inter-State activities.

10. Chapter V of the report, on "Co-operation and management in regard to international watercourse systems", should be the bedrock on which the future development of the law under consideration should be based. In that connection, he referred the Commission to recommendation 85 of the Mar del Plata Action Plan, quoted in the report (*ibid.*, para. 104), which reflected the

[4] Part V of the Convention (*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).

pragmatic and function-oriented approach adopted, for example, in Africa by the member States of the Niger River Commission, the Mano River Union and the Lake Chad Basin Commission, as well as by a number of Asian and Latin-American States. Although that recommendation referred to "shared water resources", it did so in a purely descriptive manner. The emphasis was on the need for voluntary and practical co-operation, not on the legal obligation to co-operate. Another example of such co-operation was that established by the Nile River Basin States, which had not concluded an all-embracing agreement but had set up a number of informal committees that carried out useful technical and hydrometric work in all the Nile countries. The establishment of a Nile Basin Authority was also being considered.

11. When the Commission came to consider draft articles 10–19 in detail, it would have to take care not to establish a system of co-operation that would enable lower riparian States to veto development projects undertaken by upper riparian States. Those draft articles failed to take account of the principle of reciprocity; the obligations they established seemed to be intended only for upper riparian States. Draft article 13, paragraph 3, which provided that a notifying State must not proceed with a planned project without completing the procedure for the settlement of disputes provided for in paragraph 2, came very close to a veto. The saving clause in paragraph 3, which permitted a planned project or programme to be carried out if the notifying State deemed it to be of the utmost urgency and considered that further delay might cause unnecessary damage or harm, was useful, but it might exacerbate disputes that could have been settled by means of a less rigid and more informal procedure.

12. The articles in chapter VI of the report made a very positive contribution to development of the law. Developing countries, especially those in Africa, depended heavily on the use of river water for domestic and agricultural purposes and it would be catastrophic for them to allow such water to be polluted through irresponsible use. On that subject he fully agreed with the Special Rapporteur's view (*ibid.*, para. 171) that a distinction between old and new sources of pollution was not acceptable. With regard to draft article 28, on the safety of international watercourse systems, installations and constructions, he shared the Special Rapporteur's doubts (*ibid.*, para. 186) about the advisability of including any provisions such as those contained in the two 1977 Protocols to the 1949 Geneva Conventions, relating to the protection of victims of international armed conflicts and non-international armed conflicts.[5] Any attempt by the Commission to include such provisions in draft article 28 would be tantamount to amending those Protocols, which, he believed, also applied to international watercourses.

13. Lastly, he thought that the articles on the settlement of disputes contained in chapter V of the draft were premature and could be considered at a later stage.

14. Mr. USHAKOV, after thanking the Special Rapporteur for his excellent report (A/CN.4/367), said that the starting-point for the Commission's work on the topic under study was still as unsatisfactory as it had been at the outset, some 10 years earlier. Neither the concept of a drainage basin nor the slightly broader concept of an international watercourse system, which the Commission had substituted for it, had any chance of being accepted by States. In fact, the international watercourses with which the Commission should concern itself were rivers which flowed through the territories of two or more States. The concepts of a "basin" and a "system" had completely unacceptable consequences in the present context. They implied that a State having no connection with a river which passed through the territories of other States could participate in taking decisions on the utilization of the river merely because it was fed by water from that State's territory. A further consequence was that a river flowing in the territory of only one State acquired an international character for the sole reason that it received ground water or glacier water coming from the territory of another State. No Government would agree to a State completely unrelated to a watercourse being considered a "system State" and empowered to take decisions concerning its uses, or to a national watercourse becoming international by virtue of the draft articles.

15. Moreover, the concept of an international watercourse system was completely pointless except where navigation was concerned. For all other uses of the waters of a river passing through the territories of two or more States, it mattered little to downstream States whether the watercourse was fed by tributaries, ground water, lakes or other components of a system before reaching their territory. What mattered to them was the quantity and quality of the water they received. It was only in connection with navigation that the concept of an international watercourse system could be applied, because it was on all the components of such a system that navigation was really carried on. It was also unimportant to a State whether a watercourse, before reaching its territory, had as a tributary a watercourse which crossed the territories of several States and was thus of an international character. In his opinion, neither the concept of a "basin" nor that of a "system" was justified in theory or in practice; it would be better to regard as international watercourses rivers crossing the territories of two or more States.

16. It followed that the States concerned were the co-riparian States of a watercourse, not all the States of a basin or system. Hence, the draft articles could only take the form of a set of directives for riparian States; they could not claim to replace the numerous agreements such States had to conclude to cover each particular situation. Like the draft principles of conduct in the field of the environment prepared by UNEP and presented to the Commission in a note by Mr. Stavropoulos (A/CN.4/L.353), the draft articles should encourage co-riparian States to conclude agreements suited to the circumstances of each case. Rules of general international law could be stated in the draft, but not imposed on States.

[5] See 1785th meeting, footnote 14.

17. Under the terms of paragraph 3 of draft article 4, which was identical to article 3 as provisionally adopted by the Commission, system States were required to negotiate in good faith for the purpose of concluding one or more system agreements "in so far as the uses of an international watercourse system may require". But very few watercourses crossing the territories of several States required regulation. He believed that only 5 per cent of international watercourses were the subject of agreements between States at present. Innumerable international rivers were used by each State through whose territory they passed in such a way that no harm could be caused to other riparian States. As it stood, draft article 4, paragraph 3, did not make it sufficiently clear that agreements should be concluded only when the uses of an international watercourse made them absolutely necessary.

18. The effect of the wording of draft article 4, paragraph 1, according to which "A system agreement is an agreement between two or more system States which applies and adjusts the provisions of the present Convention . . .", was to make those provisions mandatory, whereas they should take the form of mere guidelines. States would never be able to accept that provision. It should, indeed, be emphasized that every international watercourse came under the sovereignty of each State through whose territory it flowed. The need for regulations and for an agreement arose only when a use of the watercourse by one of those States affected the uses that other States might make of it. But even in that case, each State retained its sovereignty, and it was only a matter of setting limits to that sovereignty by means of an agreement. It was necessary, on the one hand, to respect State sovereignty and, on the other hand, to take account of the common interests of States and the unacceptable consequences which use of a watercourse by one of them could have for the others.

19. It was completely pointless to treat an international watercourse as being a shared natural resource. If rules of international law applicable to shared natural resources existed, it would suffice to stipulate that those rules applied to international watercourses as shared natural resources; but unfortunately such rules did not exist.

20. Lastly, since the draft articles should take the form of mere guidelines, they ought not to include provisions on the settlement of disputes. It was for the States concerned to reach agreement on methods of settling any disputes that might arise.

21. Mr. DÍAZ GONZÁLEZ said he wished not only to congratulate the Special Rapporteur on his first report (A/CN.4/367), which showed great mastery of the subject and unusual skill in reconciling different points of view, but also to pay a tribute to the previous Special Rapporteur, Mr. Schwebel, for his third report (A/CN.4/348), which his election as a Judge of the ICJ had prevented him from presenting to the Commission. That monumental and fundamental report would long continue to inspire the Commission's work.

22. The subject under study was undoubtedly a difficult and delicate one, but it was of particular importance to many States and especially to developing countries. It was a subject which lent itself both to codification and to progressive development of international law. Thanks to the enlargement of the Commission's membership, States which had been passive subjects of international law until their independence would be able to participate in the elaboration of legal rules on a subject whose study made it necessary to take account of the inalienable right to development and to the utilization of natural resources.

23. The Spanish version of the report under consideration was defective in more than one respect. For instance, the word "management", which appeared in the heading of chapter V in the English version, had been translated as *ordenación*, which was quite incorrect, whereas the terms *gestión* or *administración* would have done very well. The title of article 38, which in English was "Binding effect of adjudication", had been translated into Spanish as *Efecto vinculante de la adjudicación*. The term "adjudication" should not have been rendered in Spanish as *adjudicación*, but as *sentencia* or *fallo*; and the word *vinculante* should be replaced by *obligatorio*. Inaccuracies of that kind were a matter of substance, not of form. It should also be pointed out that the English term "landslides", which appeared in paragraph 63 of the report, had been rendered by the incorrect and unsuitable expression *corrimientos de tierra*, instead of the appropriate term *derrumbes*. It was very tiresome for those who read the report in Spanish to be continually obliged to decipher passages that were quite clear in the original version.

24. The Special Rapporteur had said that he intended to stay within the broad outlines defined by the Commission so far. What mattered was to establish a number of principles deriving from the fundamental principle that international watercourses were shared natural resources. In the light of modern demographic and social concepts, those resources should benefit the peoples which used them. It followed that the resources should be reasonably shared between States; that States should co-operate in good faith and participate in their regulation, conservation and administration; and that States should not engage in any activity likely to cause harm to other States. The latter principle was embodied in the Declaration of the United Nations Conference on the Human Environment (principle 21).[6] Finally, the last principle to be taken into consideration was that of the settlement of disputes by peaceful means, particularly by negotiation.

25. The principles he had mentioned had already been applied in various agreements. In that connection, the instructions given by the United Kingdom Foreign Secretary to his representative in the negotiations with Egypt which had resulted in the 1929 Agreement concerning the Nile[7] were of particular interest (see A/CN.4/348, para. 60). It should also be mentioned that the Convention relating to the Development of Hydraulic

[6] *Report of the United Nations Conference on the Human Environment, Stockholm 5–16 June 1972* (United Nations publication, Sales No. E.73.II.A.14), p. 5.

[7] League of Nations, *Treaty Series*, vol. XCIII, p. 43.

Power affecting more than one State,[8] adopted at Geneva in 1923 by the Second General Conference on Communications and Transit, while recognizing the principle that a State was free to carry out on its own territory any operations for the development of hydraulic power, stipulated that such activity should be exercised within the limits of international law and provided that the States concerned had an obligation to enter into negotiations if operations were to be carried out partly in the territory of another State or if they exposed another State to serious prejudice (*ibid.*, para. 408). The PCIJ, in the *River Oder* case,[9] had stressed the concept of the community of interests of riparian States. True, the Permanent Court's considerations related to navigation, but they applied all the more to other uses of international watercourses when the well-being of mankind depended on them.

26. The Seventh International Conference of American States held in Montevideo in 1933 had established another precedent by adopting the "Declaration of Montevideo" on industrial and agricultural use of international rivers,[10] according to which no riparian State of a contiguous river could introduce any alteration which might prove injurious to co-riparian States without their consent. Furthermore, the Inter-American Juridical Committee had prepared a draft convention on the question[11] and the countries of Latin America had concluded a number of multilateral and bilateral agreements, which were mentioned in the third report of the previous Special Rapporteur. Thus the Latin-American States had studied those questions, which were of vital importance for the development of their region, and had concluded agreements incorporating the principles he had mentioned earlier. For example, Venezuela had undertaken, in an agreement concluded with Colombia, to contribute to the maintenance of forests situated near the mouths of rivers which had their sources in Colombia but which flowed into Lake Maracaibo.

27. On the question of definitions, he observed that the new Special Rapporteur had been right to abide by the decision of the Commission which, before suspending work on the topic in 1980, had deemed it preferable to leave definitions aside so as not to become bogged down in sterile discussions, since absence of definitions would not prevent the continuation of the work. On that point, he associated himself with the views expressed at the Commission's thirty-first session by Sir Francis Vallat and many other members,[12] which had led to the Commission —at its next session—sending a note to the General Assembly concerning article 1 of the draft.[13]

28. As to the idea of shared natural resources, there was no point in discussing it if the Commission proceeded from the principle of absolute sovereignty of States and considered the Harmon doctrine to be still valid. Fortunately, that was not the case, since the United States of America had abandoned that doctrine as far back as 1909 (*ibid.*, paras. 53–56). The previous Special Rapporteur had outlined the development of the concept not only of shared natural resources, but also of equity in the sharing of those resources. He had also explained the meaning which should be attached to the term "abuse of right" and had described the restrictions which must be provided for in order to prevent a State from vetoing the exploitation of a watercourse. The first articles approved by the Commission and by the vast majority of representatives in the Sixth Committee of the General Assembly thus formed the basis of the Commission's work on the topic. The General Assembly had found the Commission's approach correct and the Commission should continue on the same course, which was precisely what the new Special Rapporteur had done.

29. Lastly, he wished to comment on a question which had been raised during the discussion, namely that of the protection of hydraulic installations in the event of war. In his third report (*ibid.*, para. 416), the previous Special Rapporteur had referred to the two 1977 Protocols to the 1949 Geneva Conventions on humanitarian law,[14] which contained provisions designed to protect installations of public utility. Like the new Special Rapporteur, he (Mr. Díaz González) doubted that the Commission should deal with that question, which was covered by the Geneva Protocols, and include provisions on the law of war among its draft articles; it should rather concern itself with the law of co-operation and peaceful coexistence.

30. On the whole, he shared the views of the new Special Rapporteur, who had submitted a useful report which could serve as a basis for the Commission's future work. He thought the report would facilitate the Commission's task because it gave an overall view of the topic. Representatives in the Sixth Committee often complained that the Commission's reports were disjointed and unsystematic and offered them no means of forming an opinion. That would not be true of the report under consideration.

31. Naturally, certain powerful interests would do their utmost to prevent any agreement on the topic; but for many countries it was a matter of fundamental importance and, since more than 100 treaties on it had been recorded, he could not agree that its study was not justified. Doctrine was developing in the direction of conservation of resources, and the United Nations Convention on the Law of the Sea showed that a balance of the interests of all countries could be achieved. The regulation of international watercourse systems was a difficult task which the Commission should tackle in accordance with the mandate it had received, on the basis not of codification of existing rules, but of progressive development of international law.

---

[8] *Ibid.*, vol. XXXVI, p. 75.

[9] *Territorial Jurisdiction of the International Commission of the River Oder*, Judgment No. 16 of 10 September 1929, *P.C.I.J., Series A*, No. 23, p. 27.

[10] See *Yearbook . . . 1974*, vol. II (Part Two), p. 212, document A/5409, annex I.A.

[11] *Ibid.*, pp. 349–351, document A/CN.4/274, para. 379.

[12] See *Yearbook . . . 1979*, vol. II (Part One), p. 154, document A/CN.4/320, para. 49.

[13] *Yearbook . . . 1980*, vol. II (Part Two), p. 108, para. 90.

[14] See 1785th meeting, footnote 14.

Visit of the Secretary-General of the United Nations

32. Mr. ROMANOV (Secretary to the Commission) said he was pleased to inform members that the Secretary-General of the United Nations, Mr. Pérez de Cuéllar, would address the Commission on Monday 4 July at noon.

33. Mr. McCAFFREY, observing that the Commission normally held its Monday meetings in the afternoon, asked whether it was intended to meet earlier on the day of the Secretary-General's visit.

34. Mr. USHAKOV suggested that the time of the Commission's meetings on 4 July should be settled in informal consultations.

It was so agreed.

The meeting rose at 12.35 p.m.

1789th MEETING

Friday, 24 June 1983, at 10 a.m.

Chairman: Mr. Laurel B. FRANCIS

Present: Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Flitan, Mr. Jagota, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Pirzada, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

The law of the non-navigational uses of international watercourses (*continued*) (A/CN.4/348,[1] A/CN.4/367,[2] A/CN.4/L.352, sect. F.1, A/CN.4/L.353, ILC (XXXV)/Conf. Room Doc.8)

[Agenda item 5]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR[3] (*continued*)

1. Mr. BARBOZA, after warmly congratulating the Special Rapporteur on his report (A/CN.4/367), observed that, as the successor of two previous special rapporteurs on the topic, Mr. Evensen's task was not easy. The new Special Rapporteur, noting that the Sixth Committee of the General Assembly had found the work already done acceptable, had decided to follow the course already set and not put forward any revolutionary ideas. Whatever some members of the Commission might say, he had been right to submit a full set of draft articles. It was surprising to find that some members of the Commission appeared, from their statements, to have completely written off the earlier studies on the topic. For to start out again on the same discussions as four or five years ago could only delay the Commission.

2. In regard to the specific nature of the topic under study, he associated himself with Mr. Koroma (1786th meeting), Mr. El Rasheed Mohamed Ahmed (1785th meeting) and Mr. Sucharitkul (1787th meeting), who had emphasized the important role of water in satisfying man's essential needs. It was not a matter of codifying one of the classic subjects of international law; the Commission had been criticized for limiting itself to such topics only, and so the General Assembly would closely follow the Commission's progress, as was shown by the comments of several representatives in the Sixth Committee recorded in the topical summary of the discussions (A/CN.4/L.352, sect. F.1). Those considerations, among others relating to the need for a body of legal rules to solve the many problems concerning water requirements, should make the Commission aware of the urgency of its task.

3. General Assembly resolution 2669 (XXV) of 8 December 1970 recommended that the Commission should take up the study of the law of the non-navigational uses of international watercourses with a view to its progressive development and codification; in regard to the term "uses", it was the social and human connotations that should be stressed. As the arbitral tribunal in the *Lake Lanoux* case between France and Spain had maintained: "The unity of a basin is supported at the legal level only to the extent that it conforms to the realities of life."[4] Hence, definitions had to be found which took account of those realities and were not mere geographical or political descriptions. Moreover, while aware of the difficulties which the Commission was bound to encounter in its work of progressive development, the General Assembly had requested it, in case of difficulty in defining rules of international law applicable to watercourses, to propose solutions and not to get lost in vain speculations. At the 1785th meeting, Mr. Stavropoulos had concluded his statement by rightly exhorting the Commission to work towards equity and justice and to rule out any possibility of a veto. In that connection, it should be recalled that it was the Commission's tradition to respect the views of the majority, not omitting, however, to transmit dissenting opinions to the General Assembly.

4. Turning to draft articles 1 and 6, which were interconnected, he observed that article 1 was based on the note which the Commission had drafted in order to explain what was meant by the term "international watercourse system"[5] before a definition was finally adopted.

[1] Reproduced in *Yearbook . . . 1982*, vol II (Part One).

[2] Reproduced in *Yearbook . . . 1983*, vol. II (Part One).

[3] For the texts, see 1785th meeting, para. 5. The texts of articles 1 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.*

[4] United Nations, *Reports of International Arbitral Awards*, vol. XII . . ., p. 304, para. 8; see also *Yearbook . . . 1974*, vol. II (Part Two), p. 196, document A/5409, para. 1064.

[5] See 1788th meeting, footnote 13.