

Document:-
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Summary record of the 1854th meeting

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

Extract from the Yearbook of the International Law Commission:-
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on article 54, paragraph 2, of the first 1977 Additional Protocol to the Geneva Conventions,¹³ which read:

2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as ... drinking-water installations and supplies and irrigation works ...

58. Mr. USHAKOV said that the position of principle he had adopted some 10 years previously had not changed. It was, moreover, becoming increasingly clear that, instead of elaborating a framework convention, the Commission should be drafting model articles which might or might not be taken into account by the States concerned. The draft conventions that the Commission elaborated were usually universal in scope, but the draft articles under consideration would be of no interest whatever to island countries or even to adjacent countries which did not share an international watercourse. It would, in any case, not be possible to apply rules adopted in Europe to other continents.

59. The concept of an international watercourse could be considered from different points of view. There was nothing to prevent States, if they so wished, from managing a watercourse as a hydrographic basin, as a watercourse system or simply as a river.

60. With regard to specific uses of the waters of a watercourse, it should be noted that, in some countries, drinking-water was of major importance to the population, whereas, in others, water was used mainly for agricultural or industrial purposes. In the light of the wide variety of situations that could arise, no generalizations could be made. Accordingly, the Commission could draft only model articles, that would serve as guidelines for the conclusion of agreements relating to particular situations. Otherwise, it would continue to be divided on the question whether its starting-point should be a basin, a system, a watercourse or even part of a watercourse. If it drafted model articles, States would then be able to use those articles to define the concepts to which the agreements they concluded would relate.

61. The draft articles contained more than one reference to "the present Convention". Usually, however, it was only after having drafted a set of articles that the Commission recommended that the General Assembly should adopt them in the form of a convention. In the present case, the Commission had to decide at the outset whether or not it intended to draft model articles, so that its work and the praiseworthy efforts made by the Special Rapporteur would not have been in vain.

62. Referring to draft article 1, paragraph 2, he stressed the need to take account of the geographical location of States, which might be upstream States or downstream States. In principle, the components of a watercourse located downstream did not affect the use of the waters of the watercourse by upstream States. Downstream States must, however, be included in agreements on the use of the waters of a watercourse concluded by upstream States, since the water that subsequently flowed into their territory might, for example, be polluted.

The meeting rose at 12.55 p.m.

¹³ See 1831st meeting, footnote 5.

1854th MEETING

Wednesday, 4 July 1984, at 10 a.m.

Chairman: Mr. Sompong SUCHARITKUL

later: Mr. Julio BARBOZA

Present: Chief Akinjide, Mr. Al-Qaysi, Mr. Balanda, Mr. Boutros Ghali, Mr. Calero Rodrigues, Mr. Diaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Thiam, Mr. Ushakov.

The law of the non-navigational uses of international watercourses (*continued*) (A/CN.4/367,¹A/CN.4/381,² A/CN.4/L.369, sect. F, ILC (XXXVI)/Conf. Room Doc.4

[Agenda item 6]

DRAFT ARTICLES SUBMITTED BY THE
SPECIAL RAPPORTEUR³ (*continued*)

1. Mr. CALERO RODRIGUES said that, as a result of the welcome changes which the Special Rapporteur had made in the draft articles to take account of the views expressed in the Commission and in the Sixth Committee of the General Assembly, the Commission now had a generally acceptable basis for discussion. The Special Rapporteur had rightly maintained the structure of the draft, which had not attracted many objections and could, on the whole, be approved, although it still included too many elements in the form of recommendations. As a framework convention, the draft could be simpler and should be limited to strictly legal provisions.

2. With regard to chapter I of the draft, he welcomed the fact that the Special Rapporteur had decided, as stated in his second report (A/CN.4/381, para. 18), to abandon the "system" concept approach, which might be "a serious hurdle in the search for a generally acceptable instrument". As it now stood, draft article 1 explained the term "international watercourse", which was used in draft article 2 to define the scope of the draft articles.

3. The replacement of the term "international watercourse system" by the term "international watercourse" involved more a semantic than a conceptual change, since the "system" concept, which had replaced the "drainage basin" concept, had lost many of its objectionable features when the Commission had agreed in its 1980 provisional working hypothesis that

¹ Reproduced in *Yearbook ... 1983*, vol. II (Part One).

² Reproduced in *Yearbook ... 1984*, vol. II (Part One).

³ For the texts, see 1831st meeting, para. 1. 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.*

To the extent that parts 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. ...⁴

The concept agreed upon by the Commission in 1980 and included in the Special Rapporteur's first report (A/CN.4/367) was thus expressed more adequately by the new term "international watercourse" than by the former term "international watercourse system".

4. Except for drafting changes made as a result of the abandonment of the "system" concept, the only meaningful amendment in chapter I had been the inclusion in draft article 4, paragraph 1, of a provision stating that nothing in the draft convention would "prejudice the validity and effect" of special watercourse agreements concluded prior to or subsequent to its entry into force. That provision was both useful and necessary, but it should be placed at the end of draft article 4 after the present paragraphs 2 and 3, and the words "which, taking into account the characteristics of the particular international watercourse or watercourses concerned, provide measures for the reasonable and equitable administration, management, conservation and use of the international watercourse or watercourses concerned or relevant parts thereof" should be deleted because they might cause problems in the future by casting doubt on the continuing validity of existing treaties and agreements.

5. The most basic principle in chapter II of the draft was that contained in article 9, which established a legal obligation for each watercourse State to refrain from and prevent, within its jurisdiction, uses or activities with regard to an international watercourse that might cause appreciable harm to the rights or interests of other watercourse States. The entire draft convention could in fact be built on that principle, which formed the basis for the principles embodied in draft articles 7 and 8. He was certain that all existing situations with regard to international watercourses could be taken into account and that the interests of the countries concerned could be protected if it was agreed that: (a) no State could cause appreciable harm to another State; (b) to that end, every State must use the waters of an international watercourse in a reasonable and equitable manner; (c) what constituted reasonable and equitable use had to be determined through negotiations between the States concerned.

6. Those three elements had been included in the first draft articles submitted by the Special Rapporteur, but the former draft article 6 had added a further controversial element by providing that the waters of an international watercourse were to be regarded as a "shared natural resource". That concept had, as the Special Rapporteur had stated in his first report (*ibid.*, para. 81) been introduced to support the assertion that "each of the system States is entitled to a reasonable and equitable share" of the waters of an international watercourse. The idea of "reasonable and equitable sharing" did not, however, have been supported by as vague a concept as that of a "shared natural resource". It could be indepen-

dently developed in the draft articles themselves on the basis of analyses of the specific situations that could arise in connection with the non-navigational uses of international watercourses.

7. In his new draft articles, the Special Rapporteur had wisely eliminated the reference to the concept of a "shared natural resource", which had created political and legal difficulties that would probably have been impossible to overcome. The concept of "sharing" had, however, been retained in draft articles 6 and 7. Those provisions were, in his view, intended to mean that a watercourse State was entitled to use the waters of an international watercourse in a reasonable and equitable manner and that, for such use to be considered reasonable and equitable, that State must not prevent other watercourse States from also using the waters of the watercourse in a reasonable and equitable manner. The attainment of a balance between such uses constituted "sharing".

8. Draft article 7 provided that "the waters of an international watercourse shall be developed, used and shared by watercourse States in a reasonable and equitable manner". The use of the term "developed" was a rather awkward way of a referring to the general principles of co-operation and management embodied in chapter III of the draft, but he would not make an issue of that terminology problem. It was, however, redundant to say that States must "use" and "share" the water of a watercourse in a reasonable and equitable manner. If each of the States concerned used the waters in a reasonable and equitable manner, the concept of "sharing" would be implied, and it did not have to be referred to explicitly. The idea that reasonable and equitable use by one State would take account of reasonable and equitable use by another State would be more precise and understandable than the abstract idea of "sharing". Although the reference in the body of draft article 6 to a "share of the uses of the waters of an international watercourse" was less objectionable than the reference in the title of that article to "the sharing of the waters of an international watercourse", he did not think that "sharing" had to be referred to at all in the draft under consideration. It would be enough simply to provide that States must use the waters of an international watercourse in a reasonable and equitable manner and that every watercourse State was entitled, within its territory, to use the waters of that watercourse in that manner.

9. He also did not think that draft article 8, paragraph 1, had to contain a long, non-exhaustive list of factors to be taken into account in determining whether the waters of a watercourse were being used in a reasonable and equitable manner. The words "all relevant factors shall be taken into account, whether they are of a general nature or specific for the international watercourse concerned", in the first sentence of paragraph 1, would enable the States concerned to decide which factors should be taken into consideration. Since the proposed list would be of limited value for that purpose, he suggested that it should be included as an illustration in the commentary to draft article 8.

10. With regard to the organization of work on the

⁴ *Yearbook ... 1980*, vol. II (Part Two), p. 108, para. 90.

complex topic under consideration, the Commission must, despite the Sixth Committee's impatience, take its time and attempt to accommodate different points of view. After a slow start on the topic, it now appeared to be on the right track, but it could not have considered all 41 draft articles at the current session. It had therefore been right to concentrate mainly on the draft articles in chapters I and II, which could, in his view, be referred to the Drafting Committee. At its next session, the Commission might focus on chapters III and IV and leave chapters V and VI for the thirty-eighth session, in 1986, the last year of the term of office of the current membership.

11. Mr. NI congratulated the Special Rapporteur on his second report (A/CN.4/381): his approach, which combined codification with the progressive development of the law, offered the best prospects for a solution to the problems involved and commanded a fairly wide measure of support. The complexity of the legislative endeavour that was being undertaken was universally recognized. Each watercourse was unique, as were the needs and interests of the States concerned, and the success of the task would depend largely on the extent to which a balance could be struck between the various conflicting interests. The Special Rapporteur had introduced a number of amendments to meet the concerns expressed in connection with the first report (A/CN.4/367). His second report would thus provide a suitable basis for the Commission's future work, although some further refinements might still be needed.

12. A number of changes both of form and of substance had been made in chapter I of the draft. Perhaps the most obvious was the abandonment of the term "international watercourse system" in favour of the term "international watercourse", which appeared in draft article 1 and subsequent articles. The "international watercourse system" concept was unacceptable for a number of reasons, *inter alia* because it could be said to imply a certain rigid conceptual approach which would necessarily lead to the formulation and adoption of some undesirable concepts and rules. Although the possibility of such an interpretation had been excluded in the first report (*ibid.*, para. 14), subsequent criticism in the Sixth Committee of the General Assembly had led the Special Rapporteur to conclude in his second report (A/CN.4/381, para. 18) that the use of the system approach could be a serious hurdle in the search for a generally acceptable instrument. The Special Rapporteur had therefore deemed it advisable to reformulate article 1, using the simpler and purely geographical term "international watercourse". The underlying objective was perhaps the same as with the use of the term "international watercourse system", namely to adopt a purely descriptive and non-doctrinal term with a view to facilitating the task of formulating draft articles. If that objective could be achieved without prejudicing anybody's position, there was no reason not to use that new term.

13. Draft article 4, paragraph 1, had been amended to meet the concern expressed with regard to the obligation of States to bring any special watercourse agreement or agreements into line with the draft convention. The last part of the first sentence of the paragraph imposed what

seemed to be a rigid condition and he was not sure that the validity of a special watercourse agreement should be made subject to the proviso that it should "provide measures for the reasonable and equitable administration, management, conservation and use of the international watercourse or watercourses concerned or relevant parts thereof".

14. He also had doubts about the need for draft article 4, paragraph 3, which required watercourse States to negotiate for the purpose of concluding watercourse agreements. The obligation to negotiate was expressly provided for in the Charter of the United Nations and in many other international instruments and had frequently been resorted to by States, although usually in the context of disputes. There seemed to be no point in providing for such an obligation in the absence of a dispute. As noted in the Sixth Committee (A/CN.4/L.369, para. 400), it was not always politically feasible or legally sound to impose an obligation on States to conclude watercourse agreements. Furthermore, the words "In so far as the uses of an international watercourse may require" were vague and could give rise to problems of interpretation. Paragraph 3 therefore called for further reflection. One solution might be to place it in chapter V of the draft, dealing with the peaceful settlement of disputes.

15. Chapter II, which set out the rights and duties of watercourse States, was regarded as the most important in the draft and the Special Rapporteur had introduced certain amendments to take account of comments made both in the Commission and in the Sixth Committee. Perhaps the most significant change had been the elimination of the concept of an international watercourse as a "shared natural resource", on which views in the Commission and in the Sixth Committee had been sharply divided. The highly controversial nature of that concept had led the Special Rapporteur to doubt, in his second report (A/CN.4/381, para. 48), "whether it will prove conducive to the attainment of a generally acceptable convention to retain that concept in the form in which it was expressed in article 6". Article 6 had therefore been redrafted and a new paragraph had been introduced to provide expressly for the right of a watercourse State, within its territory, to a reasonable and equitable share of the uses of the waters of an international watercourse. The notion of sharing had not been lost in the new draft article 6, but rather reflected in a more flexible and practical manner. The new article was thus designed to maintain a balance between the right of a watercourse State to benefit within its territory from the uses of the waters of an international watercourse and the rights of other watercourse States to share in those uses and, at the same time, to avoid both the doctrinal overtones implicit in the concept of a "shared natural resource" and its undefined legal consequences. While sharing did not necessarily mean strict equality in terms of the quantity of water to be shared, it should be reasonable and equitable in accordance with the terms of draft articles 7 and 8. The principles and factors set forth in those two articles were well conceived and conducive to the determination and realization of reasonable and equitable uses of the waters of international water-

courses. In general, the amendments to chapter II were a welcome improvement.

16. With regard to draft article 9, the maxim *sic utere tuo ut alienum non laedas* should obviously have a place in the draft. The term “appreciable harm” had been the subject of different interpretations and account should be taken of the many amendments proposed in that regard. The main problem, however, was how to reconcile the idea of equitable use, as provided for in draft article 7, with the duty not to cause harm to other watercourse States, as provided for in draft article 9.

17. Another difficulty was that draft article 9 would tend to give more protection to a State that was already making use of the resources of an international watercourse, no matter whether other watercourse States had obtained an equitable share of those resources, and it could militate against a rational balancing of rights and interests in the apportionment of the benefits to be derived from the use of those resources. The result would be that developed States, being the first to benefit from watercourses, would be favoured to the detriment of developing states, which would normally be late-comers in developing and utilizing international watercourses. The effect of the saving clause in draft article 9 was simply to require the express permission of the first or prior user State. A clause could perhaps be added to avoid any possible conflict between the principle of refraining from causing appreciable harm and the principle of equitable use. One solution would be to go back to the draft article 8 (Responsibility for appreciable harm) submitted by the previous Special Rapporteur in his third report, which prohibited the infliction of appreciable harm “except as may be allowable under a determination for equitable participation for the international watercourse system involved”.⁵ Other solutions could also be considered with a view to achieving a balanced régime that would ensure, on the one hand, that the freedom of a State to use its watercourse was not unduly restricted and, on the other, that the freedom of other States from being harmed thereby was adequately safeguarded.

18. Lastly, the new version of draft article 13 seemed to meet the concerns which had been expressed, particularly with regard to paragraph 3, in the Commission and in the Sixth Committee. It was also in conformity with the established principles of international law and was more in line with State practice.

Mr. Barboza, Second Vice-Chairman, took the Chair.

19. Mr. MAHIU, commenting generally on the Special Rapporteur’s second report (A/CN.4/381), said that it supplemented the first report (A/CN.4/367) and contained a number of constructive new elements that had been added to take account of the discussions in the Commission and in the Sixth Committee of the General Assembly. As indicated in the second report (A/CN.4/381, paras. 5-6), the Special Rapporteur had adopted the approach of a framework agreement, for which there had been considerable support in the Com-

mission and which would not only pave the way for future special watercourse agreements, but also safeguard existing agreements. The framework agreement under consideration was based on a balance between the rights and interests of watercourse States and was, in particular, designed to reconcile those States’ interdependence and their sovereign right to benefit from the natural resources located in their territory. In that connection, the Special Rapporteur had stressed that adequate fresh water supplies, in terms both of quantity and of quality, were of fundamental importance to the population of all countries. He had also referred (*ibid.*, para.8) to the United Nations Water Conference, held at Mar del Plata in 1977, in order to draw attention to the economic impact of water problems on developing countries and to stress the need for the co-ordinated development and management of water resources and for forecasting on a long-term basis. Although that Conference had focused on drought and its disastrous effects on developing countries, the principles it had established applied to all countries.

20. The elaboration of a framework agreement that would strike the right balance between the interests at stake and effectively promote co-operation among States involved the problem of determining which basic concepts should be taken into account. In that connection, the Special Rapporteur’s doubts and the changes he had introduced in his draft articles were entirely justified. He had, for example, had to decide whether the draft should be based on the “drainage basin” concept, the “international watercourse system” concept or the “international watercourse” concept. The first concept, which the Commission had not endorsed, was so geographically oriented that a framework agreement might not be able to deal with all the consequences to which it would give rise. As to the second concept, which the Commission had provisionally adopted in 1980, he personally had stated at the Commission’s previous session that the way in which it was used would determine whether it was needed.⁶ As a purely functional term, whose scope and consequences could be accurately defined, it was definitely useful, but as a conceptual term, from which a number of unforeseen and perhaps even uncontrollable consequences could be deduced, it certainly gave rise to doubts and controversy. It was moreover, often difficult to distinguish between a functional term and a conceptual one. The Commission and the Sixth Committee had subsequently endorsed those views. If the concept of a “watercourse system” gave rise to problems and was not generally acceptable, it should not be retained, since a balanced and stable legal régime could not be established if it was based on concepts that caused doubt and uncertainty. In abandoning controversial concepts, the Commission must, however, not lose sight of the fact that its aim was to find the best possible means of promoting co-operation among riparian States.

21. Draft article 1, in which the “international watercourse system” concept had been abandoned in favour of the “international watercourse” concept, contained

⁵ See *Yearbook ... 1982*, vol. II (Part One), p. 103, document A/CN.4/348, para. 156, art. 8, para. 1.

⁶ *Yearbook ... 1983*, vol. I, p. 225, 1793rd meeting, paras. 5-6.

the words "parts" and "components" in its first two paragraphs. Those words were, in his view, unnecessary, particularly since the Special Rapporteur's commentary (*ibid.*, paras. 24-25) referred almost exclusively to the "components" of an international watercourse. Those terms were also used in draft article 3. In his observations on specific ground-water aspects (*ibid.*, paras. 26-30), the Special Rapporteur had rightly drawn a distinction between ground-water resources that were related to a surface watercourse, of which they would be a component, and independent ground-water resources. Logically, only the former should be governed by the draft articles, but the latter should also be developed and managed as rationally as possible in the interests of the States concerned.

22. Draft article 4, on watercourse agreements, must be taken together with draft article 39, dealing with the relationship between the draft convention and other conventions and international agreements. Because the earlier version of draft article 4 had gone too far in requiring that system agreements should be adjusted to the draft convention, the Special Rapporteur had completely redrafted paragraph 1 of that provision. Now, however, he had perhaps gone too far in the other direction by including in article 4 a provision that duplicated the provision of article 39. Since the basic purpose of draft article 4 was to define watercourse agreements, the beginning of the first sentence and the entire second sentence of paragraph 1 should be placed in draft article 39. He therefore suggested that the Commission should follow the model of the earlier version of draft article 4, paragraph 1, and amend that provision to read:

"1. A watercourse agreement is an agreement between two or more States which, taking into account the characteristics of the particular international watercourse or watercourses concerned, provides measures for the reasonable and equitable administration, management, conservation and use of the international watercourse or watercourses concerned or relevant parts thereof."

23. Draft articles 6 to 9, which formed chapter II of the draft relating to general principles and the rights and duties of watercourse States, were fully justified. In draft article 6, the controversial concept of an international watercourse as a "shared natural resource" had been abandoned. The comments which he had just made with regard to the concept of a "watercourse system" also applied to the concept of a "shared natural resource".

24. Draft article 8 was the corner-stone of chapter II, if not of the entire draft. When States were unable to agree during the elaboration of special watercourse agreements, they would probably rely on that article. The drafting problems to which it gave rise had been cleverly overcome by the Special Rapporteur. He had thus had to decide whether an exhaustive list was preferable to a selective list, whether the relevant factors should be listed according to their importance, and whether qualitative or subjective factors should be referred to in addi-

tion to quantitative factors. Some factors might, of course, have been left out and others might not have been sufficiently stressed. Although it was not desirable to give the relevant factors an order of priority, drinking-water supplies for the population of the countries concerned, for example, were of such high priority that they should be regarded as one of the "special needs" of watercourse States referred to in draft article 8, paragraph 1 (*b*).

25. He would not comment further on the other draft articles, except to say that the new draft article 28 *bis* was fully justified. At the previous session, he had already stated that the Commission had to examine the question of the link between the protection of installations relating to the use of international rivers and armed conflicts. In that connection, the amendment to draft article 28 *bis* proposed by Mr. Boutros Ghali (1853rd meeting) was very much to the point.

26. Mr. EL RASHEED MOHAMED AHMED thanked the Special Rapporteur for his excellent second report, (A/CN.4/381), the general trend of which he endorsed. Commenting on chapters I and II of the draft, he noted that, in draft article 1, the Special Rapporteur had abandoned the term "international watercourse system" in favour of the term "international watercourse". In its ordinary meaning, the term "watercourse", which covered distribution and control, did not comprise the hydrological aspects of a volume of water running in a unified and identifiable channel. He therefore agreed with Mr. Al-Qaysi (1853rd meeting) that scientific and technical advice would be needed to amplify the definition contained in draft article 1, paragraph 1. For the time being, however, he was prepared to accept the definition, which was the best that could be achieved in the circumstances.

27. Paragraph 2 of draft article 1 should, in his view, be deleted, partly because, as Mr. Ushakov (*ibid.*) had pointed out, it was unfair to downstream States. The main reason, however, was that he did not see how the components or parts of a watercourse could possibly fail to affect the uses of that watercourse. If a component or part was blocked, it would definitely have an adverse effect on the discharge of the river and thus decrease the volume of water that might otherwise run to the downstream State. If a component or part was polluted, the mainstream would be affected accordingly.

28. With regard to draft article 2, he said that, although navigation fell outside the scope of the draft articles, he agreed with Mr. Boutros Ghali's proposal (*ibid.*) that navigation should be taken into consideration as a criterion affecting other equitable uses of the waters of an international watercourse, particularly when the watercourse was used for both navigational and other purposes.

29. The words "reasonable and equitable share" in draft article 6 were not without difficulty. In the first place, the word "reasonable" implied an entirely subjective test, since it would be for the watercourse State concerned to determine what was reasonable. What was

needed was an objective and external test, somewhat akin to the test in English law of the “man on the Clapham omnibus”. Secondly, it was difficult to know what the precise meaning of “reasonable and equitable” was in the context: reasonable and equitable in the light of the needs of the watercourse State, or reasonable and equitable when such needs were weighed against other needs? It had been suggested that the question should be resolved by negotiation, but it would be hard to convince the State concerned that its use or share of the waters of the watercourse was not reasonable. He therefore suggested that the word “reasonable” should be replaced by the word “fair”; it would be appealing to a State’s sense of justice to ask it to be fair and it would, in all probability, respond by acting in a fair manner. The same comment applied to the words “reasonable and equitable” in draft article 7.

30. Referring to draft article 8, he noted that population growth should also be regarded as a major factor in determining what constituted fair and equitable use of the waters of a watercourse. In a letter to *The Times* of London of 3 July 1984, Mr. Frank Vogl of the World Bank had pointed out that, by the middle of the twenty-first century, the population of the poorer nations of the world would be more than double its current level of 3.6 billion and that, as a result, there would be increased pressures on arable land, natural resources, urban conditions and, indeed, on political stability. The situation verged on the inflammable and, in the interests of the entire world, the right balance had to be established between the various needs. He agreed with Mr. Calero Rodrigues that the list of relevant factors should not be incorporated in the text of article 8, but should be left to the commentary.

31. Although he welcomed the Special Rapporteur’s initiative in introducing the new draft article 28 *bis*, he considered that the reference to “internal armed conflicts” should be deleted, since it was tantamount to giving advance recognition to insurrection and internal disturbances, wherever they occurred.

The meeting rose at 12.10 p.m.

1855th MEETING

Thursday, 5 July 1984, at 10 a.m.

Chairman: Mr. Sompong SUCHARITKUL

Present: Chief Akinjide, Mr. Balanda, Mr. Barboza, Mr. Boutros Ghali, Mr. Calero Rodrigues, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, 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. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Thiam, Mr. Ushakov.

Welcome to Mr. Kalinkin, Director of the Codification Division of the Office of Legal Affairs and Secretary to the International Law Commission

1. The CHAIRMAN said that it was his pleasure to welcome Mr. Kalinkin, the newly appointed Director of the Codification Division of the Office of Legal Affairs and Secretary to the International Law Commission. As a member of the United Nations Office of Legal Affairs, Mr. Kalinkin had worked for a number of years on matters relating to the legal aspects of outer space and had been associated in the formulation of the Treaty on Principles governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, and the Convention on International Liability for Damage Caused by Space Objects. Subsequently, he had held a number of important positions with his Government in the field of international law and had taken part in major international legal conferences.

2. Mr. KALINKIN (Secretary to the Commission) said that it was a great honour to be present as Secretary to the International Law Commission, a unique institution of great prestige and distinction. He assured members of his fullest co-operation and looked forward to providing the Commission with all the necessary substantive services.

The law of the non-navigational uses of international watercourses (*continued*) (A/CN.4/367,¹ A/CN.4/381,² A/CN.4/L.369, sect.F, ILC (XXXVI)/Conf. Room Doc.4)

[Agenda item 6]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPporteur³ (*continued*)

3. Mr. BARBOZA said that the chief merit of the set of articles submitted by the Special Rapporteur was that they tried to reconcile the divergent opinions expressed in the Commission; but personally he would have preferred to keep to the former version. In his excellent oral statement (1831st meeting), the Special Rapporteur had pointed out that the subject entrusted to him was not of a purely legal character, but also had political and economic aspects, which were really what the Commission was studying. But the Commission was a body which expressed itself in legal language, by formulating articles to regulate international relations; consequently, its work was concerned with international obligations. Chapter III of the draft, which dealt with co-operation and management, clearly showed the course the Commission should adopt. According to draft article 10, paragraph 2,

¹ Reproduced in *Yearbook ... 1983*, vol. II (Part One).

² Reproduced in *Yearbook ... 1984*, vol. II (Part One).

³ For the texts, see 1831st meeting, para. 1. 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.*