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Summary record of the 2126th meeting

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

Extract from the Yearbook of the International Law Commission:-
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framework of the legal régime governing territorial waters, but the situation was entirely different in the case of watercourses.

51. In his fifth report, the Special Rapporteur had called on the authority of the great seventeenth and eighteenth-century jurists who had set forth their sometimes naive or mystical conceptions of international law. While he had nothing but respect for the classics, he thought that, in all fairness, the position of the positivist school should also be brought out. However, the main authorities were to be found in bilateral and multilateral agreements and conventions, for the Commission had to focus its work on the study and generalization of the experience gained and the practice developed by States in solving problems that might arise during the use of international watercourses.

52. In conclusion, he said that he had referred only *in fine* to the subject of the sources of law on the uses of international watercourses in order not to give the wrong impression about his generally positive reaction to the ideas expressed in the draft articles. He did believe, however, that the articles should be revised, taking into account the comments made and the sometimes serious reservations expressed during the Commission's discussion.

The meeting rose at 11.45 a.m.

2126th MEETING

Wednesday, 28 June 1989, at 10 a.m.

Chairman: Mr. Bernhard GRAEFRATH

Present: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Hayes, Mr. Illueca, Mr. Koroma, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Reuter, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.

The law of the non-navigational uses of international watercourses (*continued*) (A/CN.4/412 and Add.1 and 2,[1] A/CN.4/421 and Add.1 and 2,[2] A/CN.4/L.431, sect. C, ILC(XLI)/Conf.Room Doc.4)

[Agenda item 6]

FIFTH REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

PART VI OF THE DRAFT ARTICLES:

ARTICLE 22 (Water-related hazards, harmful conditions and other adverse effects) *and*

ARTICLE 23 (Water-related dangers and emergency situations)[3] (*concluded*)

1. Mr. OGISO said that the wealth of detailed material the Special Rapporteur had provided in his excellent fifth report (A/CN.4/421 and Add.1 and 2) and brilliant oral introduction (2123rd meeting) would be of great assistance to the Commission in its task of codifying the law of the non-navigational uses of international watercourses.

2. Referring to draft article 22, paragraph 1, he said that he had doubts about the use of the words "on an equitable basis" to describe the way in which watercourse States were required to co-operate. The wording used in article 6, paragraph 2, and article 7, paragraph 1, was "in an equitable and reasonable manner", and he drew attention in that regard to paragraph (5) of the commentary to article 6.[4] Although the area of co-operation covered by articles 6 and 7 differed from that covered by draft article 22, the conceptual basis for co-operation should, in his view, be the same. Readers would find the articles easier to understand if the same terminology were used throughout. However, if the Special Rapporteur had meant to emphasize the difference between the areas of co-operation covered, an appropriate explanation should be included in the commentary.

3. With regard to article 22, paragraph 2 (*a*), which referred to the "regular and timely exchange" of data and information, he recalled that paragraph 1 of article 10 as provisionally adopted[5] comprehensively covered the issue of data and information exchange. It might be enough to refer to that provision in article 22, adding that, in the case of water-related hazards, the exchange should be conducted with greater frequency, in the light of developments in the situation.

4. Draft article 23, paragraph 3, referred to co-operation between "States in the area affected by a water-related danger or emergency situation, and the competent international organizations" and, in that connection, the Special Rapporteur had mentioned the example of the recent floods in Bangladesh. He joined the Special Rapporteur and other members of the Commission in expressing his sympathy for the suffering of the people of Bangladesh. That country's experience showed that there were two types of emergency assistance, namely assistance to stop the flood damage itself and assistance to mitigate the suffering of the victims through supplies of food and medical care. In the case of the Bangladesh floods, immediate assistance had been offered by many members of the international community, including countries not directly affected by the disaster, both through international organizations and on a

[1] Reproduced in *Yearbook . . . 1988*, vol. II (Part One).

[2] Reproduced in *Yearbook . . . 1989*, vol. II (Part One).

[3] For the texts, see 2123rd meeting, para. 1.

[4] For the texts of articles 6 and 7 and the commentaries thereto, provisionally adopted by the Commission at its thirty-ninth session, see *Yearbook . . . 1987*, vol. II (Part Two), pp. 31 *et seq.*

[5] *Yearbook . . . 1988*, vol. II (Part Two), p. 43.

bilateral basis. As far as he knew, the assistance offered by non-watercourse States had been used for the purpose of mitigating the flood victims' suffering and, in the words of article 23, paragraph 3, for co-operation in "preventing or minimizing harm" resulting from the emergency situation. That paragraph seemed to be intended to cover the two types of assistance he had mentioned, but it was too limitative, since it referred only to affected States and international organizations. Its wording should be made more flexible so as to include voluntary emergency assistance by non-watercourse States.

5. Two drafting points on which he wished to seek clarification from the Special Rapporteur related to the use of the words "relevant intergovernmental organizations" in paragraph 1 of article 23 and the words "competent international organizations" in paragraph 3, and to the difference between the word "neutralize" in paragraph 2 and the word "minimizing" in paragraph 3. Unless a distinction was deliberately being made, standard terms should be used in the interests of greater simplicity.

6. In reply to the question raised by the Special Rapporteur in paragraph (6) of his comments on article 23, namely whether the article should include a provision requiring a State affected by a disaster to accept proffered assistance and not to regard offers thereof as interference in its internal affairs, he shared the view of some other members that the decision should be taken by the State concerned in the light of a variety of factors. It could be presumed, for example, that if the damage was very great the affected State would welcome any assistance offered, whereas, if the damage was relatively limited, it might prefer to accept assistance only from other States in the region or States with which it maintained traditional relations.

7. Mr. ILLUECA said that the Special Rapporteur's fifth report (A/CN.4/421 and Add.1 and 2), which was of the same high standard as the four previous ones, would be of great assistance to the Commission in its efforts to achieve the goal of completing the first reading of the draft articles by 1991.

8. The importance and urgency of the present topic had been stressed during the debates in the Sixth Committee at the forty-third session of the General Assembly, as well as in the 1987 report of the World Commission on Environment and Development, entitled "Our common future".[6] That report indicated that global water use had doubled between 1940 and 1980 and was expected to double again by the year 2000. No fewer than 80 countries, with 40 per cent of the world's population, already suffered serious water shortages. River-water disputes had occurred in all continents. Global warming caused by the atmospheric buildup of carbon dioxide and other gases would lead to disruptive climatic changes, and the rise in sea-levels during the first half of the next century would have disastrous consequences for coastal States and change the shapes and strategic importance of international watercourses.

9. One international watercourse was the Panama Canal, a freshwater canal which linked the Atlantic and Pacific Oceans and was governed by an international treaty with the United States of America that was due to terminate on 31 December 1999. Every time a ship went through the locks of the Panama Canal, 55 million gallons of fresh water flowed into the sea totally unused. In the financial year ended September 1988, 13,440 ships had gone through the Canal and 739,200 million gallons of fresh water had flowed into the ocean. That situation was a very special one and it involved a great many unknown factors.

10. In draft article 22, paragraph 1, the Special Rapporteur had omitted the phrase "as the circumstances of the particular international watercourse system warrant", or its equivalent—which, as the Special Rapporteur pointed out in paragraph (2) of his comments on the article, had been used in the corresponding texts proposed by his predecessors, Mr. Evensen and Mr. Schwebel—and had used instead the words "on an equitable basis", thereby introducing *jus aequum*, as opposed to *jus strictum*. Historically, the Roman-law concept of *aequitas* and the English-law concept of equity had been designed to remedy the gaps and rigidities in the civil-law and common-law systems. In view of the marked differences between those two major legal systems and the many different ways in which the concept of equity could be used, the Commission had to pay close attention to the scope that concept was to have in articles 6 and 7[7] and in articles 22 and 23, as well as to the principle of sovereign equality embodied in article 9.[8]

11. The articles he had mentioned clearly stated the general principles of equitable and reasonable utilization and participation (art. 6); factors relevant to equitable and reasonable utilization (art. 7); and the general obligation to co-operate (art. 9). Those general principles related to the water-related hazards, dangers and emergency situations which were dealt with in draft articles 22 and 23 and which required watercourse States to co-operate in an equitable manner. The purpose of those articles was to ensure that any conflict or controversy which might arise with regard to water uses was settled on the basis of equity. That was the conclusion reached by the Commission in the commentary to article 6, in which it had also stated that the practice of States revealed that there was overwhelming support for the doctrine of equitable utilization.[9]

12. The rule of equitable utilization had as its corollary the concept of equitable participation, which was governed by the principle of sovereign equality embodied in article 9 as a basic element of the general obligation to co-operate in order to attain optimum utilization and adequate protection of an international watercourse. It was significant in that regard that a number of modern agreements provided for integrated river-basin management and not simply for the application of the principle of equitable utilization. They thus reflected a determination to achieve optimum utilization, protection and benefits through organizations competent to deal with an entire international watercourse. For all those reasons, he was of the opinion that the expression "international watercourse system" should be used in the final text of the draft articles.

[6] A/42/427, annex.

[7] See footnote 4 above.

[8] For the text of article 9 and the commentary thereto, provisionally adopted by the Commission at its fortieth session, see *Yearbook . . . 1988*, vol. II (Part Two), pp. 41-43.

[9] *Yearbook . . . 1987*, vol. II (Part Two), pp. 32-33, paras. (9)-(10) of the commentary.

13. There appeared to be a consensus in the Commission that the principle of sovereign equality resulted in every watercourse State having rights to the use of the watercourse that were qualitatively equal to, and correlative with, those of other watercourse States. With regard to conflicts of uses, the Special Rapporteur and the Commission had therefore been right to try to provide in the draft for procedures relating to the adjustments or accommodations required in order to preserve each watercourse State's equality of right. The discussions in the Commission during the past three years had shown that the settlement of conflicts of uses could best be achieved on the basis of specific watercourse agreements. In any event, and in the absence of such agreements, such adjustments or accommodations were to be arrived at "on the basis of equity", as stressed by the Commission in paragraph (9) of the commentary to article 6.

14. The application of the principle of equity was particularly complex owing to the different ways in which it was used by Governments and courts. It was clear that much remained to be done to formulate and define what constituted equitable and reasonable conduct with regard to the non-navigational uses of international watercourses. Although the Commission's task was to produce a framework agreement, it must make every effort to formulate by 1991 the main rules and guiding principles deriving from the development of contemporary international law.

15. In paragraph (5) of his comments on article 22, the Special Rapporteur explained that he had used the word "include" in paragraph 2 in order to indicate that the list of steps to be taken was not exhaustive. It must, however, be clearly shown that, in some cases, it was expected that additional types or forms of co-operation might be necessary. He therefore suggested that the words "Without prejudice to other forms of co-operation" be added at the beginning of paragraph 2.

16. Paragraph 3, and article 22 as a whole, dealt with the principle of prevention, which was rightly regarded as the basis for action to protect the environment. In paragraph 3, the Special Rapporteur's preference for the expression "jurisdiction or control" rather than the term "territory" would give rise to problems in cases where part of a river basin in a territory under the jurisdiction of a sovereign State was, by virtue of an international treaty, subject to the control of another State which exercised administrative functions. Those problems could be avoided by referring both to the concept of "territory" and to that of "jurisdiction or control". Paragraph 3 might then begin: "Watercourse States shall take all measures necessary to ensure that activities within their territory or under their jurisdiction or control . . .".

17. In the light of the explanation provided by the Special Rapporteur in paragraph (4) of his comments on article 23, he would suggest that, in paragraph 3 of article 22, the words "appreciable harm to other watercourse States" should be amended to read: "appreciable harm to other States".

18. The Special Rapporteur had been right to specify in article 23, paragraph 1, that notification of water-related dangers and emergency situations should be made not only to watercourse States, but also to all "potentially affected States". The fact that they were not watercourse States was not a valid objection, since the future convention or framework agreement would be open for signature and ratification by all interested States.

19. In his third report on the topic,[10] Mr. Schwebel had submitted draft articles on equitable participation and use and on the general principle of responsibility. It was worth noting that, in environmental law, developments had been taking place with regard to the scope of liability and it was now being recognized that, in addition to States, individuals who had been innocent victims of harm were entitled to claim compensation, as in the *Trail Smelter* case.[11] Moreover, the Experts Group on Environmental Law of the World Commission on Environment and Development had, in its proposed legal principles for environmental protection and sustainable development,[12] endorsed the principle of strict liability, as opposed to the criterion of due diligence favoured by the Special Rapporteur.

20. Although that was a matter that came under the topics of State responsibility and international liability for injurious consequences arising out of acts not prohibited by international law, he considered that, at a later stage, the Commission would have to consider the question of liability arising out of the particular circumstances of the non-navigational uses of international watercourses.

21. Mr. PAWLAK congratulated the Special Rapporteur on his clear and well-organized fifth report (A/CN.4/421 and Add.1 and 2), which contained a great deal of valuable material, including information relating to Eastern European countries.

22. He noted that the Special Rapporteur left open the question whether the draft articles on the subtopic of water-related hazards and dangers should include secondary rules specifying the consequences of the breach of primary rules setting forth the obligations of watercourse States (*ibid.*, para. 5). Draft article 22, paragraph 3, which was a combination of the wording of article 194, paragraph 2, of the 1982 United Nations Convention on the Law of the Sea and of article 8 of the present draft as provisionally adopted[13] and was based on the approach adopted in paragraph 2 of draft article 16 [17],[14] set forth the basic obligation of watercourse States not to cause water-related hazards, harmful conditions and other adverse effects that resulted in appreciable harm to other watercourse States. As the Special Rapporteur himself admitted in paragraph (6) of his comments on article 22, that obligation was nothing more than a concrete application of article 8. There could be no objection to the application of article 8 in the case of water-related hazards and dangers; it was a useful provision that covered a great many natural and man-made water-related phenomena.

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[10] *Yearbook . . . 1982*, vol. II (Part One) (and corrigendum), p. 65, document A/CN.4/348.

[11] Arbitral awards of 16 April 1938 and 11 March 1941 (United Nations, *Reports of International Arbitral Awards*, vol. III (Sales No. 1949.V.2), pp. 1905 *et seq.*).

[12] Summarized in the report of the World Commission on Environment and Development (see footnote 6 above), annex 1.

[13] *Yearbook . . . 1988*, vol. II (Part Two), p. 35.

[14] Submitted by the Special Rapporteur at the fortieth session (*ibid.*, p. 26, footnote 73).

23. The question was, however, whether the Commission should confine itself to the primary rules as set out in article 8, or whether it should also try to formulate secondary rules which would follow from a breach of those primary rules. After all, other States affected by such a breach would not only expect the occurrence of the breach to be acknowledged, but also want to know who was going to make reparation for damage and provide compensation for losses. The problem related both to draft article 22 and to draft article 16 [17] concerning pollution. Most members of the Commission seemed to want to postpone a decision on the issue, some arguing that it was too late to think of introducing secondary rules, and others that the primary rules had to be considered first. Although he agreed with Mr. Shi and Mr. Barsegov (2125th meeting) that it would not be appropriate to deal with the problem now, he was inclined to recommend that secondary rules should eventually be included in the draft. Efforts in that regard should, of course, be harmonized with similar endeavours in connection with the topics of State responsibility and international liability for injurious consequences arising out of acts not prohibited by international law.

24. In general, it could be said that draft articles 22 and 23, together with draft article 16 [17] and draft article 17 [18],[15] created some well-defined obligations of watercourse States with regard to the uses of international watercourses. While articles 16 [17] and 17 [18] related to environmental protection and pollution, articles 22 and 23 dealt with water-related hazards, both natural and man-made. The division was somewhat artificial, but he did not object to it at the present stage. However, emergencies and hazardous situations could also occur as a result of polluting activities, as the Special Rapporteur acknowledged by including a reference to such activities in article 23, paragraph 1. That type of obligation of a watercourse State was also addressed in article 16 [17], paragraph 2. It would therefore be desirable if all provisions relating to the pollution of watercourses could be included in one sub-chapter of the draft. The danger of pollution was one of the most common man-made dangers for the environment as a whole, including watercourses. It would also be desirable if the issue of co-operation in the field of prevention and control of watercourse pollution could be dealt with in the same sub-chapter.

25. He suggested that the words "under their jurisdiction or control" in article 22, paragraph 3, be replaced by "in their territory". At the end of the paragraph, the word "may" should be inserted between the words "that" and "result", since it was very difficult for a State to know that activities would result in appreciable harm to other watercourse States.

26. With regard to the second sentence of paragraph 1 of article 23, which defined the scope of the expression "water-related danger or emergency situation", he suggested that the text as a whole might be improved if all definitions were concentrated in a single article at the beginning of the draft. Paragraph 2 was too restrictive: although watercourse States were undoubtedly the first to be affected by the consequences of water-related dangers and emergencies, other States, particularly coastal States, as well as the marine environment, could also be endangered. He therefore proposed that the words "other watercourse States" in that paragraph be replaced by "other potentially affected States"; alternatively, the words "and other potentially affected States" could be added after "other watercourse States".

27. He did not basically disagree with the view expressed by the Special Rapporteur in paragraph (5) of his comments on article 23, although, in a normal situation, States benefiting from protective or other measures should not only be required to compensate third States for the measures taken, but also be consulted before such measures were implemented. That was how the problem was regulated in some bilateral agreements. As to the point raised in paragraph (6) of the comments, he agreed that, while the problem of non-interference in a country's internal affairs might theoretically arise in connection with assistance, the need to include a provision on mutual assistance among watercourse States was a more important issue. Such a provision would, in his view, solve the problem referred to in paragraph (6).

28. Mr. DÍAZ GONZÁLEZ said that, in his study of developments in what was a comparatively new topic, the Special Rapporteur had followed in the footsteps of his predecessor, Mr. Schwebel, whose third and last report[16] was an inexhaustible source of data and information which members of the Commission would be well advised always to bear in mind.

29. With regard to the Special Rapporteur's proposals, he stressed that more time and reflection were needed in order to arrive at any conclusions on the basis of the wealth of material provided by the Special Rapporteur. It was clear, however, that everything that had been done on the topic until now had been purely exploratory and that the subject exclusively involved progressive development of the law. He was therefore surprised that the Special Rapporteur should have formulated the rules contained in draft articles 22 and 23. It was doubtful whether those rules could be regarded as embodying firm obligations for States.

30. As Mr. Reuter (2123rd meeting) had pointed out, the existence of a number of bilateral treaties setting forth parallel provisions on certain points did not warrant the assumption that there were rules of general international law in the matter. Those instruments regulated specific aspects of the uses of watercourses in particular regions. The problems involved varied from one region to another and so did the solutions. Those instruments could be said to establish only the obligation of vigilance, not the obligations of conduct which the Special Rapporteur proposed in the draft articles.

31. There was clearly a trend in the treatment of the topic under consideration, as well as of those of State responsibility and international liability for injurious consequences arising out of acts not prohibited by international law, to go beyond the subject-matter proper and deal with the general theme of the environment. For example, the question of transboundary harm, which included harm caused by water uses, had been raised in connection with the topic of international liability. In the present topic, liability had been

[15] *Ibid.*, p. 31, footnote 91.

[16] See footnote 10 above.

referred to in connection with the problem of natural disasters such as floods. A flood, however, could not be said to have been caused by a State.

32. One of the precedents cited in support of the thesis of the responsibility of States in such cases was the *Corfu Channel* case,[17] in which Albania had been held responsible because it had not informed the United Kingdom that there were minefields in the Corfu Channel. That situation was completely different from the ones being dealt with under the present topic. The same argument applied to arbitral awards, which could not serve as a source of general international law.

33. In that connection, he drew attention to article 31 of part 1 of the draft articles on State responsibility,[18] which clearly indicated that a State could not be held responsible for cases of *force majeure* and fortuitous event. If a State built a dam without taking the proper precautions and brought about a flood that caused harm to other States, it would be held responsible. If the dam had been built properly, however, but was destroyed by a natural disaster, no fault could be attributed to the State, which therefore incurred no responsibility.

34. The draft articles under consideration raised problems of terminology and of co-ordination with the terminology of related topics, particularly that of State responsibility. A quite separate problem was the inadequacy of the Spanish texts, a matter to which he had often had occasion to refer. New terms had to be invented when new law was being developed and also when new technologies were developed. It was essential, however, that the new terms should be carefully defined and their scope strictly delimited in order to avoid divergent interpretations.

35. The Special Rapporteur had asked members to consider whether the draft articles should contain only primary rules or both primary and secondary rules. In his own view, there was no room in the draft for rules on responsibility, in other words secondary rules. The draft articles were intended as a general framework for the conclusion of bilateral agreements to regulate the uses of international watercourses. Rules on liability had no bearing on that framework.

36. Draft articles 22 and 23 dealt with the duties of States in the event of natural disasters. Some of those disasters were predictable, provided that the State concerned had the necessary technical equipment and know-how. Most States—and especially third-world countries—had no such facilities, however, and it would be wrong to assume that they were in a position to foresee certain disasters.

37. He found the wording of articles 22 and 23 much too vague. Terms such as "hazards", "harmful conditions" and "other adverse effects" could not be used in stating legal obligations.

38. He agreed with Mr. Bennouna (2124th meeting) that article 22 was unnecessary. The meaning of "co-operation on an equitable basis" was by no means as clear as the idea of "co-operation in good faith". The article seemed to be based on the principle of co-operation among States that served as the foundation for the new environmental law.

39. The references in the Special Rapporteur's report (A/CN.4/421 and Add.1 and 2) to matters such as deforestation and its effects on watercourses indicated that the scope of the topic was being broadened and militated in favour of the "watercourse system" approach, which he himself had advocated from the start.

40. With regard to the question of prevention, he stressed that an emergency situation could not be foreseen. The situation would be known only after the event had occurred. As to the preventive measures to be taken, he was at a loss to understand the meaning of the reference to "structural and non-structural" measures in paragraph 2 (*b*) of article 22.

41. In paragraph 3, the expression "appreciable harm" was unsatisfactory. Any harm, however unimportant, would be "appreciable", even if it did not result in injury. The words "substantial harm", as suggested by Mr. Tomuschat (2124th meeting), were preferable, for their meaning was clear.

42. Article 23 was a good basis for the formulation of the obligation of co-operation, but its wording would have to be looked at with great care. In particular, the words "potentially affected" should be used instead of the word "affected". More precise terms than "dangers" and "emergency situations" would have to be found. For the time being, there was no basis in State practice for the establishment of a binding rule of international law on the subject-matter of article 23.

43. In conclusion, he said that more time would be needed for the consideration of article 23 and the other articles the Special Rapporteur was to propose. On no account should the Commission rush through its work simply because it thought that it had to meet the 1991 deadline. It should bear in mind the possible consequences of such haste, as well as the need to maintain its usual high standard of work.

44. Mr. McCAFFREY (Special Rapporteur), summing up the discussion on chapter I of his fifth report (A/CN.4/421 and Add.1 and 2), said that he was grateful for the opportunity to reflect on a rich debate in which most members of the Commission had participated. He thanked those who had spoken for their valuable contributions, which would help to advance the work on the topic with a view to completing the consideration of the draft articles on first reading by the end of the current quinquennium in 1991.

45. In his report (*ibid.*, para. 18), he had raised the question whether the presence in a wide range of international agreements of provisions that greatly resembled one another could be taken as evidence of a rule of customary international law. There was broad support for that proposition among scholars and jurists, as could be seen from the report (*ibid.*, footnote 39). All the members of the Commission who had addressed the question, however, had disagreed with or expressed doubts about that proposition. Most of them had stated that it was immaterial, since the Commission's task was to generalize the experience of States in their relations involving international watercourses and as reflected in international agreements. Other speakers had noted that the Commission could ignore neither trends in practice nor contemporary problems and that the legal force of the articles would depend on their reasonableness. It had also been stated that the articles were supported by abstract logic and common sense. No speaker had denied

[17] See 2125th meeting, footnote 13.

[18] *Yearbook . . . 1980*, vol. II (Part Two), pp. 30 *et seq.*

that the field was susceptible of regulation by international law or challenged the need for rules in that area.

46. Mr. Mahiou (2123rd meeting) had suggested that, since all the agreements cited in the section of the report on floods were bilateral ones, they might be of limited value as a precedent for the Commission's framework agreement, which was intended as a multilateral instrument. As Mr. Beesley (2124th meeting) and others had pointed out, however, the problems involved were chiefly of a bilateral nature; hence the provisions of bilateral agreements were relevant and instructive. That was not to say that the problems were not regulated in multilateral agreements: one example was the 1980 Convention creating the Niger Basin Authority, to which nine countries were parties.

47. No member of the Commission had been particularly enthusiastic about the idea of formulating secondary rules. Several speakers had pointed out that, if water-related hazards and dangers were handled in that manner, all the other areas covered in the draft would have to receive the same treatment and it was too late in the day to embark on such an undertaking. Many speakers thought that entering into the kind of detail required for the formulation of secondary rules would complicate the draft unduly and be contrary to the framework-agreement approach. Most speakers had pointed out that the problem would best be treated in connection with the Commission's work on the topics of State responsibility and international liability for injurious consequences arising out of acts not prohibited by international law and that duplication of efforts should be avoided. He agreed and did not plan to pursue the matter further.

48. Most speakers had supported the general thrust of draft articles 22 and 23 and the approach to the subtopic of water-related hazards and dangers. The vast majority of comments had been on matters of detail rather than on major questions of substance.

49. Mr. Njenga (*ibid.*) had referred to the vital and imperative need for co-operation in respect of shared natural resources and the "global commons". Mr. Shi (2125th meeting) had supported the approach of dealing with all types of water-related hazards and dangers in a single set of articles, since it was difficult to separate purely natural consequences from those resulting from human activity. The view expressed by Mr. Barboza (*ibid.*), namely that the draft articles demonstrated the interrelationship between the uses of land and water and that the word "system" should be removed from square brackets in the draft, had been supported by a number of other members. While expressing agreement with the approach adopted in the draft articles, Mr. Sreenivasa Rao (2124th meeting) had indicated that their main emphasis should be on prevention through, *inter alia*, institutional co-operation. Mr. Díaz González had been the only member to interpret article 22 as creating a responsibility on the part of watercourse States for damage arising from *force majeure*. Such responsibility was not supported by State practice, would certainly be unacceptable to States and went far beyond what he himself had envisaged in drafting the article.

50. Many of the terminology problems brought up during the discussion could be attributed to the fact that all the issues dealt with in articles 22 and 23 were physically interrelated. Human activity interacted with natural causes to produce harmful water-related consequences and it was extremely difficult to find general terms to cover all such phenomena. The "harmful effects of water" was the expression most often used by specialists, but he had avoided it because it seemed imprecise: it could cover almost any harmful effects, from pollution to floods. The expression might also be misleading because it was not only water that produced harmful effects: water might simply be a vehicle for transmitting harmful substances from one State to another, as in the case of pollution. Yet the term "hazards" was problematic because of what one member had described as its "double meaning".

51. On the whole, members had questioned the use of certain terms but offered few suggestions for better ones. Most speakers had said that the expression "other adverse effects" in article 22 was too general and he agreed that it could be deleted. Yet he doubted whether it would be possible to find a single expression to cover all the problems dealt with in article 22. Clearly, both conditions and effects would have to be covered, but he agreed with Mr. Calero Rodrigues (2125th meeting) that the phrase "harmful conditions and other adverse effects" was not entirely satisfactory, since a condition would normally produce an effect. On the other hand, such conditions as erosion, flow obstructions and siltation were themselves the effects of other conditions, which might be directly or indirectly related to a given watercourse.

52. The most important thing was that the problems dealt with in the part of the draft under consideration should be clearly understood by the Commission. He believed that they were and that it was only a matter of deciding whether a general term should be used to describe them and, if so, of selecting the appropriate terminology. The Drafting Committee was well equipped to tackle that problem.

53. It might be that some of the difficulties relating to terminology stemmed from confusion as to the purpose of articles 22 and 23. Article 22 required watercourse States to address two very different kinds of problems: one was chronic, continuing or accumulative, while the other was sudden, short-lived and seriously harmful in most cases. The article required watercourse States to work on the prevention and amelioration of the chronic problems and to take measures to prevent or lessen the effect of the catastrophic ones.

54. Article 23, on the other hand, dealt exclusively with emergency situations, in other words with catastrophic events. The article had two parts: paragraphs 1 to 3 concerned action to be taken in response to an emergency situation, whether it was created by nature or by human conduct, while paragraph 4 required watercourse States to anticipate such situations by jointly developing and implementing contingency plans.

55. It might have been somewhat misleading for him to have said that article 22 dealt with chronic problems, whereas article 23 covered emergency situations. Technically, article 22 dealt with both; it was simply that the measures to be taken under article 22 in relation to floods, ice-jams and other hazards were of an anticipatory and primarily preventive nature, whereas those provided for in article 23 were of an emergency and reactive nature. If that sort of structure was too complex, it could easily be remedied, either by dealing in article 23 with the obligation to prevent floods and similar situations or by making the obligations of preventing and mitigating disasters the

subject of a separate article. If such a change were needed, it could easily be made in the Drafting Committee.

56. Turning to the comments relating specifically to article 22, he said that Mr. Njenga had correctly noted that the list of problems in paragraph 1 was not exhaustive and had pointed out that water-borne diseases had been omitted. He agreed that water-borne diseases should be expressly mentioned, in view of their seriousness in some parts of the world. Generally, however, there should be no attempt to draw up an exhaustive list, especially in a framework agreement, since a number of particularly serious problems would inevitably be omitted. Mr. Illueca's suggestion (para. 15 above) that the words "Without prejudice to other forms of co-operation" be added at the beginning of paragraph 2, in order to make it clear that the forms of co-operation identified in the article were not the only ones that might be envisaged, was a useful one and should be given further consideration.

57. Mr. Calero Rodrigues had suggested that articles 22 and 23 be restructured to deal first with the obligation of notification, secondly with measures to be taken by individual watercourse States and, thirdly, with co-operative action to be taken jointly by watercourse States. He would point out that the fundamental obligation in that field, as revealed in virtually all of the international agreements surveyed, was that of co-operation. It therefore did not seem logical to begin with the means of implementing the fundamental obligation and only later to refer to that obligation itself. He had an open mind on the question, however, particularly if other members of the Commission shared that view.

58. In article 22, paragraph 1, the expression "on an equitable basis" had provoked a number of reactions. Mr. Beesley and Mr. Barsegov (2125th meeting) had supported its use, Mr. Sreenivasa Rao had proposed its deletion, Mr. Díaz González had confessed that he did not understand what it meant in that specific context, Mr. Al-Baharna (*ibid.*, para. 27) had suggested that it be replaced by the phrase "in accordance with the provisions of the present Convention", Mr. Ogiso had said that it should be brought into line with the wording used in articles 6 and 7, and Mr. Calero Rodrigues had asked why a similar expression did not appear in article 23, paragraph 3, on the obligation to co-operate in eliminating the causes and effects of the danger or situation. The idea behind the use of the expression "on an equitable basis" was that all relevant factors should be taken into account in determining the respective "contributions" of each watercourse State to the prevention or mitigation of water-related hazards and dangers. The adoption of such a flexible approach was supported by State practice, as reflected in the treaties reviewed in his report. He would welcome suggestions as to how the idea could be expressed more fully and would have no objection if the expression "on an equitable basis", or similar wording, were included in article 23, paragraph 3.

59. Mr. Reuter (2123rd meeting) had asked about the legal basis for the duty of compensation mentioned in paragraph (3) of the comments on article 22. As other speakers had noted, such an obligation could be based on the general theory of unjust enrichment, but there were limits to that doctrine. If State A took measures principally for the benefit of State B, then State B might well be obliged to make some kind of contribution. If, on the other hand, State A took such measures mainly for its own benefit, there would ordinarily be no duty of compensation. It also seemed obvious that State A could not enrich itself by demanding compensation for measures allegedly taken for State B's benefit when State B had not wished those measures to be taken.

60. Mr. Barsegov (2125th meeting, para. 41) had advocated the inclusion of the phrase "as the circumstances of the particular international watercourse system warrant" in article 22, paragraph 1. He agreed that that might be a constructive change, especially in view of the draft's status as a framework agreement that would have to cover many different types of watercourses and the varying needs of States at different stages of development.

61. The only comments made on article 22, paragraph 2 (*a*), had been that it should be moved to the beginning of the article, that a reference to article 10 (Regular exchange of data and information) should be incorporated, together with a provision for more frequent exchange of relevant data and information and that the word "problems" should be replaced by a better term. He had no objection to any of those suggestions.

62. With regard to paragraph 2 (*b*), several members had referred to the expression "structural and non-structural", and he had already explained that it was used in a number of instruments to refer merely to physical structures such as dams, barrages and embankments which watercourse States might co-operate in building in order to alleviate or prevent water-related hazards. In view of the confusion created by the expression, however, the subparagraph might refer instead to "joint measures, whether or not involving the construction of works. . . ".

63. As to paragraph 2 (*c*), he fully endorsed the suggestion by Mr. Tomuschat (2124th meeting) that it be made more concise and looked forward to receiving specific proposals. Mr. Reuter had suggested the use of the term "pursuance", since the process was of an ongoing nature. He himself had no particular objection to that term, but Mr. Njenga had opposed it. The point was that watercourse States should constantly evaluate the efficacy of the measures they had taken to prevent and mitigate the problems referred to in paragraph 1.

64. Paragraph 3 had elicited numerous comments, many of them favourable. One member had described it as a useful elaboration of article 8 (Obligation not to cause appreciable harm). Another had held that it could not be disputed that land-use management was a necessary ingredient of the kind of co-operation envisaged by article 22 as a whole. However, several speakers had considered that paragraph 3 was unnecessary and that article 8, the general article on not causing appreciable harm, would suffice.

65. Paragraph 3 was of crucial importance, since it drew attention to the interrelationship between human activities and disasters which might otherwise appear to be purely natural in origin and reminded watercourse States of the need to determine whether activities being conducted in their territories would have harmful effects on other watercourse States. He therefore could not understand how it could be said to serve no practical purpose, particularly in view of the effects on watercourses of, for instance, the construction of canals and roads, deforestation and range-management practices. Moreover, recent events pointed to

the urgent need for such a provision, in which connection he would refer members not only to the discussion in his report (A/CN.4/421 and Add.1 and 2, paras. 55-63) of two cases between the United States of America and Mexico and to the United Nations report on the 1988 Bangladesh floods, but also to the front page of the *International Herald Tribune* of 27 June 1989. If the Commission failed to tackle the problem in a forthright manner, it would be deemed to have ignored one of the major environmental problems of the times.

66. On the other hand, he had an open mind about the wording of paragraph 3; if it was thought to be unduly burdensome, some other appropriate wording could no doubt be found. He would have no objection, for instance, to Mr. Barsegov's suggestion to refer to both "individual and collective measures" or to Mr. Sreenivasa Rao's proposal to speak of "all practical measures". It had also been suggested that it was inappropriate to refer to "appreciable" harm in that context and that the standard should be as high as "substantial" or "significant" harm. He had used the word "appreciable" because it was used in article 8, but it might well be that the obligations in question should arise only where the damage resulting from water-related hazards would be more than merely appreciable. Again, he had an open mind on the point.

67. There was a general preference among members who had spoken on the question for the term "territory" rather than the expression "jurisdiction or control", in view of uncertainty about the scope of activities that would be covered by the latter expression. He agreed that the term "territory" should be used both in article 22, paragraph 3, and in article 23, paragraph 2.

68. With regard to article 23, Mr. Reuter had expressed the view that, notwithstanding the *dicta* in the *Lake Lanoux* award,[19] it was now questionable whether States did have unfettered discretion to create risks and had added that the tribunal might have decided otherwise if its decision had been handed down subsequent to the disastrous flood caused when a dam had burst in France shortly after the case had been decided. He agreed with Mr. Reuter that the demands of contemporary international law exceeded the jurisprudence in the *Lake Lanoux* case.

69. Some members believed that a definition of the expression "emergency situation" should be included either in article 23 itself or in the article on the use of terms, although one member thought it would be better not to define the expression, since emergencies were always exceptional and thus defied definition. He personally had an open mind on the matter.

70. He would have no objection in principle to rearranging article 23 to take account of Mr. Tomuschat's suggestion that the duty of prevention, as laid down in paragraph 3, be incorporated in paragraph 1, since the duty to co-operate was based on the duty of prevention and individual action still took precedence over collective measures.

71. There had been no fundamental disagreement among members regarding the principles set forth in paragraphs 1 and 2. A number of suggestions to improve the drafting of paragraph 1 had, however, been made and could be taken into account in the Drafting Committee. It had been asked, for instance, why the term "intergovernmental" was used in paragraph 1 and the term "international" in paragraph 3. His only explanation for the difference was that the term "international" in paragraph 3 had been drawn from the 1982 United Nations Convention on the Law of the Sea, and that the term "intergovernmental" was, in his view, somewhat more precise than "international", which could include non-governmental organizations. He agreed, however, that the two terms should be harmonized.

72. Mr. Pawlak, who considered that paragraph 2 was too narrowly drafted, had suggested (para. 26 above) that the words "other watercourse States" be replaced by "other potentially affected States". That was a useful suggestion and it could be taken into account, along with other drafting suggestions, in the Drafting Committee.

73. Paragraph 3 had been the subject of far more detailed comment. A number of members had rightly noted that States and international organizations which were not parties to the future instrument could not be bound by it. That problem could, as suggested by various members, be solved by redrafting the article to make it clear that non-parties were not so bound. On the other hand, Mr. Illueca had pointed out that States might agree that other potentially affected States should be warned of imminent disasters or situations that might give rise to such disasters.

74. He welcomed Mr. Njenga's suggestion that States which possessed certain kinds of technology, such as remote-sensing capabilities, should be encouraged to assist potentially affected States by sharing data on such matters as flood forecasting. A provision to that effect would, however, require careful drafting to make it clear that it did not purport to bind States not parties to the future instrument.

75. Mr. Ogiso, who considered that the wording of paragraph 3 was too restrictive, had suggested that it be made more flexible so as to cover voluntary assistance in the form, for instance, of food and medicine contributed by non-watercourse States not affected by the disaster. There would be no difficulty in incorporating such a provision in the draft, although it would not be binding on States, but would simply recognize the value of such voluntary contributions. All the other drafting suggestions made with regard to paragraph 3 could be dealt with in the Drafting Committee.

76. There had been no support for the inclusion in the draft of an obligation to accept assistance, particularly in view of the political strings that might be attached. A number of members did, however, think that States should be encouraged to accept such assistance, and the safeguard clause proposed in that connection by Mr. Mahiou (2123rd meeting, para. 46), which would become article 23 *bis*, should be considered by the Drafting Committee. Mr. Bennouna (2124th meeting) had also suggested that provision be made for some modality through which assistance could be rendered and had explained, in private discussions, that such a provision could cover regular or *ad hoc* meetings held by the contracting parties to the future convention to deal with any questions that might arise. That approach had a strong precedent in the General Agreement on Tariffs and Trade, which provided for the Contracting Parties to decide on certain important matters.

[19] See 2123rd meeting, footnote 6.

77. Another point which deserved further consideration and on which an appropriate provision might be included in the draft was the possibility of prior agreement by States on the desirability of offering and accepting assistance, with a view to precluding any difficulties about a possible obligation to accept assistance. Reference had also been made to the improved climate of international co-operation and solidarity, in which connection Mr. Barsegov had stated that it should be supported by legal measures. That, too, was a very positive suggestion and he was very much open to any proposal along those lines.

78. Paragraph 4 of article 23 was based on the 1982 United Nations Convention on the Law of the Sea and that explained its wording. That wording could, however, be reconsidered with a view to making it more binding, as suggested by Mr. Bennouna, who regarded the preparation of contingency plans as the most important aspect of the article.

79. He would suggest that draft articles 22 and 23 be referred to the Drafting Committee for consideration in the light of the discussion. He noted, however, that one member of the Commission, Mr. Díaz González, was of the opinion that more time was required to consider article 22. In that connection, he wished to point out that the same subject had been treated in much the same way in the very report to which Mr. Díaz González had referred, namely the third report by Mr. Schwebel.[20] The matter had also been dealt with in Mr. Evensen's two reports[21] and was therefore not new, having been before the Commission since 1982. It was, of course, possible to defer consideration of the matter until the next session, but he feared that, if it were unduly delayed, the Commission would not be in a position to complete the first reading of the draft articles before the end of its current term of office.

80. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to refer draft articles 22 and 23 to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.

PARTS VII AND VIII OF THE DRAFT ARTICLES

81. The CHAIRMAN invited the Special Rapporteur to introduce articles 24 and 25 of parts VII and VIII of the draft as contained in the remaining part of his fifth report (A/CN.4/421 and Add.1 and 2), namely in chapters II and III, respectively. Those draft articles read as follows:

PART VII

RELATIONSHIP TO NAVIGATIONAL USES AND ABSENCE OF PRIORITY AMONG USES

Article 24. Relationship between navigational and non-navigational uses; absence of priority among uses

1. In the absence of agreement to the contrary, neither navigation nor any other use enjoys an inherent priority over other uses.

2. In the event that uses of an international watercourse [system] conflict, they shall be weighed along with other factors relevant to the particular watercourse in establishing equitable utilization thereof in accordance with articles 6 and 7 of these articles.

PART VIII

REGULATION OF INTERNATIONAL WATERCOURSES

Article 25. Regulation of international watercourses

1. Watercourse States shall co-operate in identifying needs and opportunities for regulation of international watercourses.

2. In the absence of agreement to the contrary, watercourse States shall participate on an equitable basis in the construction and maintenance or, as the case may be, defrayal of costs of such regulation works as they may have agreed to undertake, individually or jointly.

82. Mr. McCAFFREY (Special Rapporteur) said that, at first glance, the two articles might not seem to be in their logical order, since the subject of article 24 would normally come at the end of a draft. However, as he had stated in his fourth report (A/CN.4/412 and Add.1 and 2), while, as he saw it, the topic should consist of a hard core of certain principles and obligations, there were also other matters, such as that dealt with in article 25, which deserved the Commission's consideration. If the Commission decided that article 25 should have a place in the draft, that article would have to come before article 24.

83. Referring to draft article 24, he said that, historically, of course, navigation had taken precedence over other uses of international watercourses. That, however, was no longer generally the case. None the less, there was a clear interconnection between the navigational and non-navigational uses of watercourses. Accordingly, the only point which paragraph 1 sought to regulate was whether navigation or non-navigational uses should be given priority.

84. Paragraph 2, which was concerned primarily with the non-navigational uses of international watercourses, addressed the question whether a particular use should receive priority over other uses. Although some watercourse agreements listed priorities among uses, that seemed to be an outmoded technique, as he had explained in his fifth report (A/CN.4/421 and Add.1 and 2, para. 126). Accordingly, paragraph 2 provided that no one use should receive priority, but, rather, that all the relevant factors should be weighed with a view to determining, in the event of conflict, which use should prevail or what measures should be taken to resolve the conflict, in accordance with articles 6 and 7 of the draft.

85. Draft article 25 dealt with the subject of regulation, which had a very specific and technical meaning in international watercourse law and was not to be broadly construed. In that particular context, it meant control of the water of the watercourse by the construction of works or other measures with a view to preventing such harmful effects as floods and erosion and maximizing the benefits to be obtained from the watercourse, for instance by regularizing the flow of the water, which could often be of immense benefit for agricultural uses. Since that subject did not lie at the heart of the draft, he had proposed a very

[20] See footnote 10 above.

[21] *Yearbook . . . 1983*, vol. II (Part One), p. 155, document A/CN.4/367; and *Yearbook . . . 1984*, vol. II (Part One), p. 101, document A/CN.4/381.

modest provision designed to draw attention to the importance of co-operation between watercourse States with regard to the regulation of international watercourses. If the Commission decided that the subject deserved more detailed treatment, however, he would be happy to expand on the provision.

86. Mr. KOROMA said that the articles proposed by the Special Rapporteur were most timely and relevant and had his full support. He knew how important the whole topic was for riparian and lacustrine States, since he had had the privilege of representing the Commission at a meeting on the subject held in Addis Ababa in 1988. At the same time, the obligations laid down in the draft articles should not be too restrictive, for otherwise States might be reluctant to comply with them. States should, rather, be encouraged to co-operate in the prevention of harmful effects.

The meeting rose at 12.55 p.m.

2127th MEETING

Wednesday, 28 June 1989, at 3.10 p.m.

Chairman: Mr. Bernhard GRAEFRATH

Present: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Al-Qaysi, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Hayes, Mr. Illueca, Mr. Koroma, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Reuter, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.

State responsibility (*concluded*)* (A/CN.4/416 and Add.1,[1] A/CN.4/L.431, sect. G)

[Agenda item 2]

***Parts 2 and 3 of the draft articles*[2]**

PRELIMINARY REPORT OF THE SPECIAL RAPPORTEUR (*concluded*)

ARTICLE 6 (Cessation of an internationally wrongful act of a continuing character) *and*

ARTICLE 7 (Restitution in kind)[3] (*concluded*)

1. Mr. McCAFFREY congratulated the Special Rapporteur on his exemplary preliminary report (A/CN.4/416 and Add.1), which contained an extremely thorough analysis of the authorities in the field. He would confine his comments to the general structure proposed for the draft, the legal consequences of an internationally wrongful act, cessation and the new draft article 7 on restitution in kind.

2. With regard to the general structure, the Special Rapporteur advanced cogent arguments for giving separate treatment to provisions on "implementation" (*mise en oeuvre*) and provisions on the settlement of disputes (*ibid.*, para. 4). The analysis he gave (*ibid.*, para. 19) justified placing the rules on implementation in part 2 of the draft rather than in part 3. As Mr. Ogiso had pointed out at the thirty-seventh session, in 1985,[4] a State could only claim, or allege, that an internationally wrongful act had been committed and the legal status of that act was determined only upon completion of the claim, counter-claim or other dispute-settlement process.

3. On the other hand, he was not sure that it was appropriate to give separate treatment to international delicts and international crimes, for he simply could not accept the concept of an international crime of a State and its corollary, penal responsibility of a State. While it was true that violations of international law differed in seriousness, it was also true that they formed a continuum in which it was difficult to identify two distinct categories. Positing a dichotomy between delicts and crimes might, by opening the door to misunderstanding, do a disservice to work on the present topic. There was no doubt that separate treatment should be given to the consequences of the breach of obligations *erga omnes*, but it was precisely there that the Commission could make a real contribution, rather than in vainly pursuing the spectre of a crime of a State. He could not accept the other arguments advanced by the Special Rapporteur (*ibid.*, para. 15) to justify the distinction between two sets of consequences, one for crimes and the other for delicts; the peremptory language he used—"to impose cessation", "to inflict punishment"—did not conform to modern realities. The means of constraint provided for in the Charter of the United Nations were intended to be carried out through the Security Council and the organized international community it represented, not through actions by individual States.

4. The Special Rapporteur's approach to the legal consequences of internationally wrongful acts was the right one and he was correct in saying that "the whole subject-matter should be covered wherever possible in greater detail and depth" (*ibid.*, para. 24). If that intention was carried out, it would make a positive contribution to the elucidation of the subject, for States would be better able to determine

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* Resumed from the 2122nd meeting.

[1] Reproduced in *Yearbook . . . 1988*, vol. II (Part One).

[2] Part 1 of the draft articles (Origin of international responsibility), articles 1 to 35 of which were adopted on first reading, appears in *Yearbook . . . 1980*, vol. II (Part Two), pp. 30 *et seq.*

Articles 1 to 5 of part 2 of the draft (Content, forms and degrees of international responsibility), which were provisionally adopted by the Commission at its thirty-fifth and thirty-seventh sessions, appear in *Yearbook . . . 1985*, vol. II (Part Two), pp. 24-25. For the texts of the remaining draft articles of part 2, articles 6 to 16, referred to the Drafting Committee by the Commission at its thirty-sixth and thirty-seventh sessions, *ibid.*, pp. 20-21, footnote 66.

Articles 1 to 5 and the annex of part 3 of the draft ("Implementation" (*mise en oeuvre*) of international responsibility and the settlement of disputes) were considered by the Commission at its thirty-eighth session and referred to the Drafting Committee. For the texts, see *Yearbook . . . 1986*, vol. II (Part Two), pp. 35-36, footnote 86.

[3] For the texts, see 2102nd meeting, para. 40.

[4] *Yearbook . . . 1985*, vol. I, p. 121, 1895th meeting, para. 30.