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Summary record of the 2216th meeting

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

Extract from the Yearbook of the International Law Commission:-
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of international watercourses and of their different components. In that connection, the two versions of a draft article proposed by the Special Rapporteur were not alternatives: both were concerned with the definition of the watercourse system, even though alternative B spoke only of a watercourse. Nobody would question the fact that any watercourse was a system consisting of hydrographic components which, by virtue of their physical interrelationship, constituted a unitary whole. But was that concept, which was borrowed from the hydrologists, sufficiently precise for the limited legal purposes of a convention whose purpose was not to protect water resources?

20. It was not clear from the Special Rapporteur's proposed definition that the draft articles would cover certain components only, and only in so far as those components related to a watercourse or to the parts of that watercourse that were in two or more States. That defect was even more marked if the third paragraph of the Commission's working hypothesis was deleted, since the very purpose of that paragraph had been to counterbalance the extremely broad "system" concept. As the definition stood, it would mean that the draft articles would include all the watercourses of a country and would, for instance, have repercussions on the entire territory of a small State crossed by an international watercourse. Another problem was whether two international watercourses connected by a canal would be regarded as one system. Would the link between surface water and groundwater mean that the two could not be separated in legal instruments? Notwithstanding the examples of the Seoul Rules and the Bellagio Draft, to which the Special Rapporteur had referred, matters relating to transboundary groundwater which were not directly connected with an international watercourse should not come under the Commission's draft. That should be clear from the definition, particularly since the object was a framework agreement whose scope and limits should be specified. Unless it was combined with the necessary restrictions, the concept of the unity of hydrographic components was perhaps not the best way of achieving that end.

21. He agreed with the proposed change in the structure of part I of the draft articles and with the inclusion of existing article 3 in the draft article on use of terms.

The meeting rose at 11.10 a.m.

2216th MEETING

Thursday, 30 May 1991, at 10 a.m.

Chairman: Mr. John Alan BEESLEY

Present: Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Díaz González, Mr. Francis, Mr. Graefrath, Mr. Hayes, Mr. Mahiou, Mr. McCaffrey, Mr. Ogiso, Mr. Pawlak, Mr. Sreenivasa

Rao, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

The law of the non-navigational uses of international watercourses (continued) (A/CN.4/436,¹ A/CN.4/L.456, sect. D, A/CN.4/L.458 and Corr.1 and Add.1, ILC(XLIII)/Conf.Room Doc.2)

[Agenda item 5]

SEVENTH REPORT OF THE SPECIAL RAPPORTEUR (continued)

PART I OF THE DRAFT ARTICLES

ARTICLE [1] [2] (Use of terms)² (continued)

1. Mr. BARBOZA said that the seventh report, like the previous ones, was praiseworthy for its lucidity and intelligent approach. It reflected the commendable pragmatism and spirit of compromise that were features of the Special Rapporteur's work.

2. Previously, the Special Rapporteur had rightly placed special emphasis on conservation of the environment of the watercourse system and of the marine environment, in which rivers played a major role. The current report now focused attention on the all-important issue of groundwater, which constituted 97 per cent of the planet's available fresh water, excluding water in the form of ice in the polar caps and in glaciers, which was not, in any case, available to satisfy human needs.

3. He supported the idea of reversing the order of the articles on the use of terms and on scope, for the reasons given by the Special Rapporteur.

4. The first question of substance dealt with in the report was the definition of international watercourses, and the Special Rapporteur, in the light of international practice, recommended that the "system" concept should be retained. For his own part, he endorsed that conclusion, for without the "system" concept the present exercise would be futile. It was essential to take account of the 1980 provisional working hypothesis,³ which had guided the Commission's work to date. The essence of the definition of a watercourse system was the interdependence of its various components, which made the system a unitary whole.

5. That interdependence was not an invention of the Special Rapporteur. It was a reality and had to do with the actual nature of water: most of the uses of the water in one part of the system affected the uses of the water in other parts. It happened not only within one and the same component—for instance, in the upper or lower portion of a stream—but between different components: what was done to a lake could affect a river and what

¹ Reproduced in *Yearbook . . . 1991*, vol. II (Part One).

² For text, see 2213th meeting, para. 66.

³ See 2213th meeting, footnote 12.

was done to a river could affect the related groundwater. Again, the essential concept of interdependence provided an answer for many questions posed in the report. One such question was the determination of what components should be included in the notion of a watercourse system and whether the system would include groundwater. Plainly, the answer was that the system must include all elements which were interdependent. The Special Rapporteur thought that the watercourse system should cover groundwater because of the close interrelationship between groundwater and the water of rivers and lakes. Moreover, groundwater was constantly in motion, a quality which tended to equate it with surface water. The seventh report also properly stressed the importance of including groundwater in water resources planning and management, for it examined State practice as reflected in international agreements and drafts, the Seoul Rules adopted by the International Law Association, and the *Donauversinkung* case.⁴

6. In the debate, some reservations had been expressed about extending a watercourse system so as to cover groundwater. Mr. Tomuschat (2215th meeting) had pointed out that practically all the territory of Germany would thus fall within the purview of the proposed articles. Actually, groundwater was a rather passive component of a watercourse system with few uses. All that could be done was to pump it out so that it could be utilized, for example, for washing, irrigation or industrial purposes. One important point was that groundwater could be affected by pollution from the surface components more easily than the other way round. To take Mr. Tomuschat's example, the fact that most of Germany's groundwater would fall within the scope of the draft articles would really be a blessing, particularly in view of the pollution that affected the Rhine and the Danube, which threatened the groundwaters of all the riparian countries, including Germany.

7. It seemed that wells for groundwater were mostly used in order to satisfy individual needs. At some point the number of individual wells started to cause appreciable harm to other parts of the system or even to underground water on the other side of the border. On the strength of the principles contained in the draft, affected system States could agree to fix quotas or to determine places where pumping would be permitted, as appeared to have been done by Mexico and the United States of America in the 1973 agreement mentioned in the report. Furthermore, if one system State planned some important measure affecting the groundwater of a watercourse system, the chapter of the draft on planned measures was applicable, and rightly so.

8. The members of the Commission knew little about confined groundwater, and the enormous quantitative importance of such water had actually come as a surprise. Perhaps more information should be obtained before a decision was reached in the matter, although, in principle, he saw no reason why such water should be excluded from the watercourse concept.

9. In the work on the present topic, the term "watercourse" itself had nowhere been defined. The Special

Rapporteur had chosen in alternative A for the article on the use of terms to define a "watercourse system", and in alternative B had defined a watercourse as a "system of waters". Since "system" constituted a cultural concept with human and social connotations, the question was to determine what a watercourse was in the natural, rather than the cultural, sense—in other words, regardless of the social elements. A "natural" watercourse was a quantity of water that followed a certain course, i.e. moving in a certain direction on a fixed, or relatively fixed, course. "Water", "flow" and "course" were the fundamental elements. The fact that water flowed, that it could be used by man, and that the uses in one part were closely interconnected with the uses in other parts made the watercourse a unity and a system. Hence, confined groundwater was a watercourse and consequently a system: it consisted of water, it flowed and the uses made of it in one part influenced the uses made of it in another part. It would therefore seem appropriate for confined groundwater to fall under the provisions of the draft articles. The water contained in the atmosphere was part of the water cycle and it influenced surface water. It was not, however, part of a watercourse because it followed no fixed course.

10. He preferred alternative B for the article on the use of terms, for it would be in conformity with the title given by the General Assembly. He disagreed with the suggestion that alternative A was better because it emphasized for the reader the fact that the waters of an international watercourse formed a system. The impression created on the reader was not a matter of great importance in a legal text. Besides, all the draft articles were based on the notion of system and all the essential concepts were to be found in alternative B.

11. He was inclined to agree with the Special Rapporteur that the clause on the "relative international character" of a watercourse, contained in the 1980 provisional working hypothesis, was unnecessary and could only complicate the matter. Besides, there was a contradiction between that clause, which suggested that there were an indefinite number of watercourse systems that were not pre-established but only came into being when there was evidence that parts of the water in one State affected or were affected by the uses of the waters in another State. Those propositions conflicted with the first part of the working hypothesis, which stated that there was only one watercourse system and that it was established by the mere fact of the physical interdependence of the water in different parts. Moreover, in the "single system" approach, certain effects were anticipated, as in the case of planned measures. In the "multiple systems" approach, only certain systems would be anticipated and the chapter on planned measures, along with other chapters, would need some reformulation. For instance, article 11⁵ would have to be reworded more or less on the following lines: "Watercourse States shall exchange information and consult each other on the systems that possible effects of planned measures would establish by modifying the conditions of the watercourse". He saw no reason why the solution in the *Flathead River* case, which the Special Rapporteur had discussed in the section of the

⁴ *Ibid.*, footnote 13.

⁵ See 2215th meeting, footnote 3.

report dealing with the “relative international character” of a watercourse, could have been any different if the “multiple systems” approach had been adopted. What one approach called “effects” the other called “system”. Admittedly, such a complex intellectual mechanism would make for a completely unnecessary complication in the functioning of the draft.

12. Mr. Sreenivasa RAO said that the seventh report was commendable for its clarity and precision. The Special Rapporteur’s recommendations, which appeared to be motivated by a number of reasons, such as the unity of the hydrological cycle, the necessity to conserve water resources in the interest of the needs of burgeoning human populations, the possible interrelationship between surface fresh water and groundwater, the protection of watercourses and water resources from pollution and other hazards, the planning, management and development of water resources, the education of government officials in their own State’s international obligations, and the need to nip in the bud potential inter-State problems, deserved careful consideration. The report contained an interesting analysis of the unity of the hydrological cycle and the interrelationship between its various components, not only within a State but also across international borders, and provided some helpful diagrams. The Special Rapporteur’s enthusiasm for the adoption of hydrological unity as the basis for a legal regime to govern water resources in general and international watercourses in particular was evident throughout.

13. The report raised some fundamental questions. What kind of factors should the Commission consider for the purpose of formulating a policy which could, in turn, form the basis for specific recommendations? Geographical and hydrological factors certainly deserved attention in connection with watercourses. But when watercourses crossed international boundaries and hence were common to two or more States, it seemed equally important to take into consideration, among other things, the concepts of State sovereignty and mutual benefit and to recognize the primary interest of the State in its natural resources, including watercourses and water resources in its territory. Protection, planning and development of water resources should be based on the needs of the population of the territory through which the river first passed, in accordance with the principles of optimal, reasonable and equitable utilization of water resources. Integrated basin-wide and regional development, protection and planning were desirable and should be encouraged, but they none the less were subject to the principle of mutual interest and were a natural consequence of cooperation based on common interest rather than a mandatory legal obligation. The only legal obligation, under the principle of sovereignty and mutual interest, or reciprocity, was to avoid substantial or appreciable harm to the other watercourse States. In other words, a proper policy formulation should address itself to all relevant factors, with geological and hydrological factors forming only a small, though necessary, part of the overall context. Specific policies should promote a proper balance of the interests of all States and avoid any attempt to shift natural priorities within those interests or to accord unacceptable rights of interference to one or more States in the sovereign domain of another State. Realistic and acceptable solutions in all areas had to take into account

the existence of sovereign and equal States and had to be based on the common interests of those States. Any other course was likely to be dismissed as utopian, unrealistic and even illegal. The management of international watercourses could not be treated in isolation from those broader conditioning factors or realities. Accordingly, the unity of the hydrological cycle—a fact that was not at issue in the Commission—could not in itself provide the basis for a legal regime.

14. The report contained the questionable statement that legal rules governing the relations of States with regard to international watercourses should take account of the interrelationship between components which functioned as a unitary whole, so that the operation of the rules—and thus the protection of fresh water as well as the rights of watercourse States—would not be frustrated. Actually, the attempt to separate the objective of protecting fresh water from that of safeguarding the rights of watercourse States was incorrect in itself. That conclusion was supported by the passage from James Brierly’s *The Law of Nations* quoted in the report, which seemed to indicate that an international watercourse could be treated as a system only in the limited sense of its uses causing appreciable harm or material injury to co-riparian States.

15. As to the recommendation that the notion of the relative internationality of a watercourse should be allowed to fall away now that the edifice of a legal regime to govern the non-navigational uses of international watercourses had been fully erected, some members had expressed concern that the suggested legal regime might assume a scope which had not been intended and would not be acceptable to many States. It should be remembered that the provisional working hypothesis had not been merely a temporary arrangement but had constituted the very basis for developing the framework agreement now under consideration. To abandon the concept at the present stage would be tantamount to removing the very foundation for the edifice of the legal regime. The reasoning given by the Special Rapporteur was not very convincing and perhaps even contradictory in places. For example, it was stated that the notion of relative internationality was incompatible with the draft articles, in particular those in Part III. But at the same time, the assurance was given that there was no need to rely on the notion of relative internationality, as it would seem to have been incorporated in the draft articles already adopted by the Commission, in particular by the most important obligations, contained in articles 6, 8, 23 and Part III.⁶

16. If the concept of relative internationality was dropped, problems among States would not be nipped in the bud. They would all too soon mature, in some cases even needlessly, because of excessive interference by States in each other’s legitimate internal affairs and because of undue internationalization of the process of enjoyment of watercourses by States. Hence it was essential to retain the entire working hypothesis as a basis for the draft. To make the purpose of the draft articles clear, the working hypothesis should be explained with refer-

⁶ For texts, see *Yearbook* . . . 1990, vol. II (Part Two), para. 312.

ence to James Brierly's opinion, to which reference had already been made.

17. The present report was also notable for the case it made for including groundwater in the legal system. To that end, it drew on the recommendations of a number of learned bodies and included a survey of State practice and a case analysis. Yet the survey of State practice and the opinion of a number of experts clearly indicated that a case could be made for including groundwater in inter-State regulation only to the extent that the water crossed international boundaries, flowed into a common terminus and its utilization could cause appreciable harm to others. The United States-Mexico treaty, for example, mentioned in the report, concerned the pumping of groundwater near the border to control the possible adverse effects of such pumping by one country in the other. The areas of concern were limited. Johan Lambers, whom the Special Rapporteur had also quoted, had only spoken of diffused surface water and groundwater which flowed into a common terminus. The Helsinki Rules defined an international drainage basin as including groundwaters flowing into a common terminus. Consequently, it was not clear on what basis ILA in its Seoul report had recommended inclusion of groundwater in the legal regime on surface waters even when it did not "form with surface waters part of a hydraulic system flowing into a common terminus". The Special Rapporteur appeared to have accepted the Seoul recommendation without any further critical analysis. If the whole argument was based on a system theory and the unity of the hydrological cycle, the argument seemed to be defeated by dealing with groundwater that did not in any way form part of the hydrologic system.

18. The Special Rapporteur's conclusions that all "groundwater will eventually reach the main stream channels" and that groundwater "is normally closely associated with rivers and lakes" also ran counter to the idea of dealing with groundwater separately. Moreover, the question of the possible pollution of river waters through the contamination of groundwater or vice versa was covered by the same concept of the obligation not to cause appreciable harm and did not require the different or more extensive legal framework that was being proposed.

19. The *Donauversinkung* case had only demonstrated, as the Special Rapporteur himself pointed out, that the two principles of equitable utilization and the obligation not to cause appreciable harm were well recognized, and as the court itself had noted, the application of those principles was governed by the circumstances of each particular case. It was not possible to draw any other particular conclusion from that case on the question of whether groundwater should be included in the various components of the watercourse system.

20. Reference had been made by the Special Rapporteur to the Indus system of waters. As he understood it, the Indus system was different from the "system" concept used for a watercourse. Indeed, the Indus Waters Treaty dealt with different rivers of the Indus system separately, and not together as a system, with rights and obligations of the parties clearly defined in respect of each river.

21. Lastly, he saw no reason to extend the proposed legal regime to cover groundwater in general, despite its importance in hydrology, and no convincing case had been made for including it in the "system" hypothesis adopted by the Commission. The Special Rapporteur's recommendation to place the article on scope before the article on the use of terms was acceptable, and he agreed with members who had pointed out that, in effect, there was no difference between alternative A and alternative B for the proposed article on the use of terms. The phrase "constituting by virtue of their physical relationship a unitary whole", in paragraph (a) of alternative A, should be replaced by the relevant wording in the Helsinki Rules, assuming that it had to be used at all. The reference to groundwater should be deleted, and he would prefer the "system" concept to be employed, together with the concept of the relative international character of a watercourse.

22. Mr. SHI, speaking in reference to the structure of Part I of the draft, said he had no objection to the Special Rapporteur's proposal that the article on the scope of the draft should precede the one on the use of terms. That was not only a matter of logical sequence but was also consistent with the Commission's normal practice.

23. The seventh report dealt with two issues, namely, whether the draft articles should apply to all the hydrographic components of international watercourses, i.e. whether the concept of an international watercourse system should be adopted, and whether watercourses should be treated as having a "relative international character". The very acceptability to States of the draft articles as a whole was to a considerable degree dependent on the Commission's decisions on those two issues, and therefore caution must be exercised.

24. From the scientific point of view, the hydrographic components of a watercourse were clearly part of the hydrologic cycle. Yet one might ask whether the legal definition of a watercourse must coincide with the natural phenomenon of a watercourse. The answer depended on the purposes and needs that the legal definition was to serve. Although the hydrographic components of a watercourse formed a whole, the geographical configuration and geological structure of the parts of an international watercourse situated in different States, as well as the climatic variations in the riparian States, might not all be the same. That was also true of the different social and economic needs of the riparian States. Those factors helped to create divergent and often conflicting interests, which the draft articles were designed to reconcile on the basis of equitable and reasonable utilization and cooperation, without impairing the territorial sovereignty of riparian States. In addition, the draft articles would take the form of a framework agreement for general application to any international watercourse, regardless of the specific characteristics of any particular one.

25. The articles provisionally adopted by the Commission to date appeared to be modest in character and did not place great demands upon riparian States, and the chances of them being accepted by States in general seemed to be good. On the other hand, if the Commission decided to adopt a definition of a watercourse embracing the "system" concept, a number of riparian

States would hesitate to accept the draft, for fear that much or most of their countries would be covered by such a definition, particularly if the "system" concept included groundwater; acceptance of the draft might then mean internationalization of much of their territories, leaving them with little sovereignty. At the previous meeting, Mr. Tomuschat had given a convincing illustration of the possible consequences of the inclusion of groundwater in the definition of a watercourse by citing the example of watercourses in his country. Exclusion of the "system" concept from the draft would not prevent States from adopting the concept in a specific agreement on a particular international watercourse.

26. As to the proposed draft article on the use of terms, he agreed with Mr. Graefrath (2215th meeting) that there was no difference in substance between alternatives A and B. Each was the same in essence, namely, the concept of a watercourse as a system of waters. Moreover, the idea of a system of waters flowing into a common terminus, as adopted by ILA in its Helsinki Rules, was perhaps more precise and limitative than the wording "system of waters...constituting by virtue of their physical relationship a unitary whole", contained in the Special Rapporteur's alternatives.

27. The concept of the "relative international character" of a watercourse, had originally been conceived as part of the provisional working hypothesis accepted by the Commission as the basis of its work on the topic. The concept could not be dissociated from the other parts of the working hypothesis. The purpose of the paragraph on the relative international character of a watercourse was to serve as a guarantee of sorts for riparian States against excessive or improper broadening of the scope of application of the draft articles, thereby dispelling fears of any encroachment upon the sovereignty of riparian States. In the Special Rapporteur's view, the concept was purely artificial, incompatible with hydrologic reality and without any basis in scientific or technical works or State practice. The Special Rapporteur also feared that it was not only likely to produce intractable disputes between watercourse States but would also eviscerate entire sections of the draft articles, and had therefore proposed to abandon it. In proposing to give up the concept, the Special Rapporteur recommended incorporating the other two parts of the working hypothesis into the draft article on the definition of a watercourse system. Actually, if the scope of the draft was confined to uses of international watercourses unrelated to the "system" concept, the notion of relative international character might no longer be needed. Should the Commission ultimately decide to preserve the first two paragraphs of the working hypothesis, the concept of a system of waters must be included in the definition of a watercourse. In that case, groundwater should not be included, because the Commission was dealing with uses of watercourses, not with water resources. Nor could the concept of relative international character be abandoned. He was not convinced that the concept would, in practice, eviscerate some sections of the draft.

28. The legal concept of an international watercourse should not only take into account the natural phenomenon of a watercourse but also be acceptable to States as a

legal norm for general application to any international watercourse, regardless of the peculiarities of particular international watercourses. On the other hand, watercourse States were free to make provisions for the "system" concept in specific agreements on a given international watercourse if they saw fit.

29. The Special Rapporteur had made an invaluable contribution to the topic and he hoped that the Commission would be able to adopt the complete set of draft articles on first reading by the close of the session.

30. Mr. BARSEGOV associated himself with other members in thanking the Special Rapporteur for a detailed report, which raised the highly important issue of the actual subject and sphere of application of the draft articles. Strictly speaking, the Commission should have begun its work with that issue, but the question was so complex and so controversial that the decision had been taken to leave it aside for the time being so as to expedite work on the topic. The Commission had thus almost completed the construction of an edifice which still lacked a foundation.

31. The question raised in the report, of whether the draft articles should apply to all hydrographic components of international watercourses including rivers, their tributaries, lakes, canals, reservoirs and groundwater, was of immense importance. The point at issue was not so much that adoption of the "watercourse system" concept would extend the scope of international regulation to cover entire territories of States, whether large or small, but that it would entail international regulation of water resources, which fell within the scope of State sovereignty. He therefore failed to see how the problem could be described simply as a matter of semantics.

32. The alternative versions of the draft article on use of terms resembled one another so closely as to remind him of the elections which used to be held in his country in the not too distant past: a choice seemed to be offered, but it was not a real choice. The argument that alternative B was preferable because it maintained the title of the topic as it had been referred to the Commission by the General Assembly was unfounded since the definitions contained in subparagraphs (b) and (c) of both variants were identical. The real choice facing the Commission was a most important and responsible one, and it had to be made in full awareness of what the decision implied.

33. The interrelationship between everything in nature went without saying. It was as true of the waters of a watercourse as of everything else. It was not by chance that the Special Rapporteur had gone to great lengths to describe the hydrologic cycle in order to explain the need to adopt the concept of a system comprising all waters, including groundwater.

34. The Special Rapporteur rejected the notion of the "relative international character" of a watercourse, not because it entailed legal contradictions, but because its purpose was to limit the scope of the draft articles by excluding those parts of the waters in one State which were not affected by or did not affect uses of waters in another State. According to the maximalist approach recom-

mended by the Special Rapporteur, the "watercourse system" concept would cover even those parts which did not affect use of other parts of the watercourse in a neighbouring State. The Special Rapporteur attached no importance to that distinction.

35. He understood and sympathized with the Special Rapporteur's desire to expand the framework of the topic, and believed that the question of water resources in general would probably come to occupy the international community's attention at some time in the future. The question at that stage, however, was whether the Commission was entitled to change the topic assigned to it and whether States would agree to the internationalization of water resources throughout their territory. Even if the answers to both questions were in the affirmative, and if it could be established that the Commission was mandated by the General Assembly to deal with underground waters in the territory of States, a great deal of additional work would have to be done before any concrete results were achieved. It was to be feared that, by arbitrarily expanding the topic under consideration, the Commission would actually jeopardize the results of many years' work.

36. The fact that an interrelationship existed between the components of the hydrologic cycle or system did not mean that all components had to be dealt with at once; neither did the law necessarily have to follow the precise physical connection. There were many examples of different approaches. For instance, the geological concept of the continental shelf did not coincide with the legal concept. He was of the view that each separate component of the hydrologic cycle would require an approach of its own, and should be dealt with as the necessity for, and the possibility of, a solution became apparent.

37. If, nevertheless, the Commission were to adopt the "watercourse system" concept, it would have to review many of the draft articles already agreed on and probably add a number of others. In his opinion, it would be wiser to adopt the watercourse as the basis for the scope of the draft. If that was done, the articles prepared by the Commission would represent a major step in the progressive development of international law and would help to expand the sphere of activities regulated by international law.

38. Mr. OGISO said that, as one who had been interested from the outset in the concept of a watercourse system, especially from the point of view of resources preservation and management, he had taken particular note of the emphasis laid by the Special Rapporteur on the need to include groundwater as a component in water resources planning and management. He had also been impressed by the integrity with which the Special Rapporteur had again submitted the "system" concept in the context of the question of use of terms. He had some slight hesitation, however, since he wondered whether that concept might not give rise to problems as far as practical application of the articles was concerned. As already pointed out, it might not always be easy to determine the physical relationship between groundwater and other hydrographic components of a watercourse system. Moreover, it was difficult for a layman like himself to

understand what criteria would be used to separate one groundwater component from another. The practical difficulties which could ensue in the application of the "system" concept might become a source of unnecessary dispute between two or more States.

39. One possible solution might be to omit the word "system" from the proposed article—in which connection he agreed that there was no substantive difference between alternatives A and B, on the understanding that groundwater should be included as a hydrographic component. That would preclude the likelihood of a dispute between watercourse States and in particular between States that shared the same groundwater resources. Although the criterion of the relative international character of the watercourse could be used to differentiate between kinds of groundwater, there were a number of drawbacks and it would be better not to use it. In short, the "system" concept, though sustainable in theory, could give rise to problems in practice.

40. The Special Rapporteur's seventh report contained a diagram depicting the hydrologic cycle. Although the diagram was most instructive he saw the hydrologic cycle in a far wider context which would encompass, for instance, a typhoon that originated in the South Pacific causing heavy rainfall in a number of countries such as China, Japan and the Philippines.

41. Mr. SOLARI TUDELA said that, like other members, he was in general agreement with the definition laid down in the proposed article on use of terms. Either of the proposed alternatives would do, since they were much the same, and what mattered in a definition was content. He none the less had a slight preference for the "system" approach.

42. It seemed that the definition referred solely to groundwater connected with surface water, and not to confined water, since it referred to "groundwater and canals, constituting by virtue of their physical relationship a unitary whole". Since confined water lacked that physical relationship and thus did not form part of the "unitary whole", it must fall outside the definition. Consequently, he would like to know how the Special Rapporteur proposed to deal with confined water—whether under a new set of draft articles or under a rule dealing with confined water in the present draft, on either first or second reading.

43. He agreed that the concept of the "relative international character" of a watercourse would give rise to uncertainty and should therefore be abandoned. He also concurred with the proposal to reverse the order of the articles on scope and on the use of terms, so as to follow the order adopted in other codification conventions.

The meeting rose at 11.50 a.m.