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SUMMARY RECORD OF THE 28th MEETING

Chairman: Mr. DENG (Sudan)

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The meeting was called to order at 10.15 a.m.

AQENDA ITEM 1341 REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTIETH SESSION (continued) (A/43/10, 539)

AQENDA ITEM 1301 DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND (continued) (A/43/525 and Add.l, A/43/621-5/20195, A/43/666-6/20211, A/43/709, A/43/716-5/20231, A/43/744-6/20238)

1. Mr. CORELL (Sweden), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the International Law Commission should concentrate its efforts on the topic of the law of the non-navigational uses of international watercourses, as it seemed the most likely to make progress in the ehort term, The world, and especially the developing countries,. had an increasing need for sufficient water supplies of good quality. Increasing pollution, moreover, proved the urgency of the topic,

2. With regard to the general structure of the draft articles the Nordic countries shared the view that a framework convention should be prepared, but they felt that its provisions must be of a binding character and be based on generally accepted legal principles and State practice in that regard, The convention should explicitly encourage the conclusion of separate watercourse agreements reflecting the characteristics of each international watercourse, while at the same time recognizing the features common to all of them, It ehould not be limited to being an instrument of auxiliary or residual nature.

3. The convention itself could also set Porth model rules of a general nature, which would be adaptable to other types of agreements or which could serve as models Cor negotiation. However, non-binding recommendations, guidelines and other provisions should not be included in the main text but rather in such additional instruments as annexes, protocols and appendices, whoee procedure for amendment could be simplified to allow for the constant updating required by the progreae of research and technology.

4. He then reforred to the three new article8 which appeared in part V of the draft.. Article 16, paragraph 1, contained a definition of pollution which could be transferred to article 1. In any case, the current definition appeared too narrow in comparison with that in a number of other generally accepted international instruments, and it therefore required a few amendments. The Nordic countries recommended that the words "effects detr imental" should be replaced by the word "hazards". Account should also he taken of foreseeable risks, and the phrase "likely to result in" might therefore be added in the appropriate place, The provision should also cover harm to living resources and aquatic life, reduction of amenities and impairment of the quality of water. Lastly, the Nordic countries saw no merit in changing the established structure of the definition) they preferred the form proposed by the previous Rapporteur.

5. The basic obligation in paragraph 2 of article 16 should also cover the prevention of pollution. The approach used in this provision, although

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systematically correct, overlooked the fact that pollution of the marine environment caused by land-based sources had brcomr an alarming problem. The Nordic countries felt that the protection should be extended to the marine environment and estuaries, and that a reference to article 207 of the 1982 United Nations Convention on the Law of the Sea should be included in the text. The term "appreciable harm" should also be replaced by "appreciable adverse effects", as used in other articles of Part III of the draft, and the issue of strict liability of States for private activities under their jurisdiction should be explicitly addressed.

6. As for paragraph 3 of article 16, the Nordic countries felt that the preparation of lists should be obligatory, and they expressed preference for the text proposed by thr previous Special Rapporteur. They felt that the tort should also contain a provision requiring States to take duly into account the model lists appearing in annexes to the convention. They agreed with the Rapporteur as to the merit of singling out certain pollutants1 however, mention should be made of not only toxins but also other substances of particular persistency. Accordingly, they suggeeted that watsrcouroe States should "undertake to eliminate, if necessary by stages, pollution by rubrtances responding to certain criteria and listed in annexes".

7. In article 17, the obligation for protective action contained in paragraph 1 could be widened by replacing "territory" by "jurisdiction and control". Moreover, the phrase "take all reasonable measures" was rather weak, and the phraee "to the extent possible take neceueary measures" could be substituted for it. In respect of paragraph 2 of article 17, he felt that new measures should be taken "individually and jointly", and he expressed some hesitation as to whether the phraee "on an equitable basis" sufficiently took into account the national capacity of developing countries,

8. As tc article 18, he felt that the title could be changed to "emergency action" , and that paragraph 1 might be deleted, moving the definition of "emergency" to article 1 and beginning paragraph 2 wit: the reference to the emergency or serious threat of emergency. Furthermore, the notification circle could be extended to States other than watercourse States that were likely to be affected, and also to executive bodies of relevant agreements. With regard to paragraph 3, it seemed advisable for the State in which the emergency had occurred not only to take appropriate action but to make the necessary environmental assessments. The Nordic countries also proposed that two new paragraphs should be added to article 18. The first should contain ruler on the obligation to co-operate in the particular context in question, and the second should refer to remedial action by third States and the obligation of watsrcourre States to pay the costs of such measures.

9. He then referred to articles 8 to 21, submitted by the Drafting Committee to the Sixth Committee. The Governments of the Nordic countries, although they approved of the new version of article 8 because it clarified and strengthened the text, felt that it was incomplete in some essential respects. The word "utilize"

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did not express clearly enough the duty not to cause appreciable harm, and it might be replaced by word3 to the effect that States "shall prevent and refrain from uses within its jurisdiction and control",

10. The new version of article 9, although simpler than the previous one, watered down the obligations established by it, since it excluded the duty of States to act in good faith, and there was no reference to the obligation to refrain from causing *adverse* effect3 either to other States or to areas beyond the limits of national jurisdiction. The qusrtion of relations between watercourse States and other States wa3 of great importance. The Nordic delegation3 recommended that a provision should be added to the present article establishing that the watercourse States should take into account their responsibility to ensure that activities subject to their jurisdiction or oontrol did not cause adverse effects to the environment of other States or areas, Furthermore, the term "adequate protection" might leave the door open for definition problems, and it would therefore perhaps he better to use terms already defined in generally accepted international instruments.

11, Article 10 was another central article of the convention, but the obligations it prescribed were more restricted than those laid down by other global instruments, The Nordic countries wished to know why the requirement for a regular exchange of information was limited to information which was "reasonably available" to States. They also felt that the obligation to exchange data and information should likewise include scientific, technical, commercial and socio-economic information and data relevant to different parts of the watercourse and to environmental aspects outside the ecology of the watercourse, In addition, in accordance with the law of the sea, the article should lay down the obligation to exchange data and information on matter3 which were likely to have an impact on the marine environment1 the information should also cover such major changes in national policies and industrial development as were likely to influence the uti lization of the watercourse. Lastly, the Nordic countries stressed the need of developing countries for transfers of technology and recommended that the draft should include a reference to the transfer of technologies for controlling and reducing emission3 into watercourses. Such a provision was particularly pertinent; whore developed and developing countries shared a watercourse.

12. A few comments of a minor character on articles 11, 15, 17 and 16 would be communicated directly to the Special Rapporteur,

13. The Nordic delegation3 were glad that the Special Rapporteur's preliminary schedule included the questions of the relationship between navigational and non-navigational uses, the security of hydraulic installations and the eettloment of disputes. In that context, he referred to the presentation on the protection of watercourse installation8 in the event of armed conflict made by Norway and Sweden in 1983, The text on that issue should be drafted taking due account of Additional Protocol I to the Geneva Convencions, relating to the protection of victims of international armed conflicts, The final convention should also include a binding procedure for the settlement of disputer, Moreover, the settlement of disputes and

the definition of appreciable harm should be considered in the same context as other topics on the agenda of the Commission and in particular the topic of international liability for injurious consequences arising out of acts not prohibited by international law. The future work of the Commission should include an item on flood control and another on erosion, as some Nordic Governments had suggested in their replies to the 1975 United Nations questionnaires, Lastly, the Nordic countries questioned whether it would be possible to finalise the drafting of the convention without appropriate scientific support and considered that the preparation of lists of specific substances called for expert advice.

14. Mr. TREVES (Italy) said that although his delegation fully agreed that it was wise to consider separately the various topics studied by the International Law Commiseion, it would prefer on the current occasion to comment simultaneously on chapters II and III of the Commission's report, dealing respectively with international liability for injurious consequences arising out of acts not prohibited by international law and the law of the non-navigational uses of international watercourses, because the two topics had much in common. His delegation noted that the work on the law of the non-navigational uses of international watercourses wao more advanced than the work on the other topic, and therefore felt that the Commission should give full priority to the draft on the former topic and take up international liability for acts not prohibited by international law at a later stage, when the various questions of principle would have been sorted out in connection with the specific problems of international watercourses.

15. In the draft articles on international liability for injurious consequences arising out of acts not prohibited by international law which had been examined by the Commission, a decisive role was played by the concepts of risk and harm, on which the Commission had appropriately requested the views of Governments (pare, 102 of the report), His delegation conridered that the key concept was that of "harm" or "appreciable harm", since the general idea of "risk" involved an assessment of the likelihood of harm being produced, Draft article 12 on the law of the non-navigational uses of international watercourses, when mentioning planned measures "which may have an appreciable adverse effect", seemed to confirm that. the term "risk" could be left out., which would make its definition in article 2 of the draft articles on liability superfluous, including the subjective element contained in the adverb "highly".

16. The definition of "tranaboundary injury" should likewise be discussed, In that regard, his delegation considered that the activities referred to in article 1 could have detrimental effects not only "in spheres where another State exercises jurisdiction under international law" but also on the high seas or in the euperjacent airspace, so that some identifiable States could suffer detrimental effects as a result of activities not prohibited by international law. A specific example was that of the States which fished in certain areas of the high seas and took measures for the conservation of the resources of that area in accordance with conventiono such as thore mentioned in article 118 of the United Nations Convention on the Law of the Sea. That problem had at least boon identified in article 17 of

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the draft articles on the law of the non-navigational uses of international watercourses, which mentioned the duty of watercourse States to protect the marine environment, In reconsidering the articles on notification and consultation it would be useful for the Commission to envisage the possibility of also including obligations concerning the holding of consultations with those identifiable States which, although not watercourse States, could be detrimentally affected by the uses of the watercourse.

17. With regard to liability, his delegation fully shared some of the reservations expressed in the Commission concerning draft article 3. That article seemed to create confusion between responsibility without violation of a rule of international law, which should be the object of the draft articles, and responsibility for violation of such a rule (such as the commission of a wrongful act). That confusion made the article easy to criticise and a new text should be prepared, based on a reversal of the burden of proof. Articles 6 to 10 should likewise be reconsidered in the light of those obsrrvationa, Furthermore, the expression "carried out in areas under its jurisdiction or control" seemed inadequate, since it did not appear to include acts carried out on ships flying the flag of the States concerned or on aircraft of their registry, Lastly, a definition of the term "régime", used in articles 8 and 9, should be included.

18, Commenting more specifically on the topic of the law of the non-navigational uses of international watercourses, he said his delegation welcomed the work done by the Special Rapporteur and the Commission, for with the adoption by the Commission of articles 2 to 21, the whole draft was beginning to take shape, His delegation was particularly pleased to see that there had been no reiteration of the view that territorial sovereignty over a portion of an international watercourse should be the overwhelming consideration, *since in* some circumstances that view might defeat the very purpose of the draft articles,

19. With regard to articles 11 to 21, adopted after consideration by the Drafting Committee, Italy had no objection to the use of the concept "planned measures" instead of that of "new uses" ueed previously, However, it still maintained that the mechanism for triggering the procedures laid down in part III of the draft articles should be the "planned measures" as such and not planned measures that might have an appreciable adverse affect upon other *watercourse* States, since that concept implied a subjective assessment, Italy recognised that "procedures in the absence of notif ication" as set forth in draft article 18 made it possible, at least in part, to overcome tho problem that would be posed by the watercourse State that did not give notification *of* its planned measures under article 12. Never theless, there would still be the problem of the case of the State planning measures about which the other watercourse State had no information at all and, consequently, no possibility of reeortinq to article 18.

20. The addition of articles 11 and 23 was a definite improvement, particularly where article 21 was concerned, since that article amounted to indicating that lack of diplomatic relations, or bad political relations, should not be a reason for not resorting to the procedure provided for *in* part III. Articles 16, 17 and 18,

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proposed by the Special Rapporteur and discussed by the Commission in 1980, raised the fundamental qurrtion of whether the draft articles should contain specific provisions on problems relating to pollution and environmental protection - a question *on* which the Commission had invited comments from Governments. With regard to that question, it was important to bear *in* mind that land-bared sources were reeponrible for 80 per cent of the pollution *of* the marine environment and that land-bared pollution war transferred to the marine environment through watercourses, although not only through international watercourses. However, that fact was not in itself sufficient to justify the inclusion of article6 on protection of the environment. A requirement *for* including such articles was that there should be a need to add something to what was laid *down in* the general principler and in the procedural principler set forth in the articles,

21, Italy believed that there were indications that such a need existed and that *one* such indication could be found in the possibility that States that were not watercourse States could play a role in protection of the marine environment through their inclusion, by virtue of a direct interest, among the States that enjoyed procedural guarantees similar to those ret forth in part III, The possibility of encouraging such States to participate *in* "watercourse agreements" could also be considered.

22. *On* the issue *of* etandardr *of* behaviour, Italy had some doubte as to the wfrdom *of* maintaining "appreciable harm" in article 16 as the basic concept concerning the obligation of States regarding the environment, after having defined "pollution" as aomething that, although "detrimental", "might not rise to the level of appreciable harm" (par as. 158-159 of the report). It was perhaps too goon to express a definite view on the specific articles in question, which would be needed only if they did not merely repeat the general principles. Lastly, the articles on reparation, which war essential for a proper appreciation of the *differences* between general and specific formulationr, murt be considered before a definitive opinion could be expressed.

23. Mr. MICKIEWICZ (Poland), referring to international liability *for* injurious consequence8 arising out *of* acts not prohibited by international law, raid that the importance of the topic could no longer be questioned by anyone. However, there were still differences of opinion among the members of the International Law Commieeion with respect to the concept and scope of the topic and the approach to be taken to it, Further coneultatione were required between the members of the Commieeion and the Sixth Committee in order to provide a response concerning the points on which Governments' views had been sought by the Commieeion. Consequently, the Special Rapporteur's view that the general debate was over and that it was now time to consider specific articles seemed to be too optimistic.

24, Draft article 1 provided the framework within which ths whole topic should be developed, International liability could be based on two concepts: that of appreciable risk and that of tranrboundary harm, Draft article 1 urrd the first concept, It was obviour that the strict liability model (responsabilité de plein droit) had been taken from civil law, That legal institution had come into being

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in the second half of the nineteenth century, Irrespective of the internal legal systems of States, such liability did not require that guilt should be proved in respect of acts that were economically useful but gave rise to specific hazards. The theoretical justification of strict liability was based on the assumption that in situations entailing a high risk of causing injury or harm there was no reason why individuals or economic entities carrying out a profitable and lawful but hazardous activity should not bear the full costs of such activity including the costs of unavoidable accidents.

25. Poland doubted that it was possible to implant that kind of institution of civil law in the sphere of international law, in view of tho different character of the subjects of international law and national law - inter alia, in the context of proving guilt. Moreover, it would be difficult to draw up a complete list of dangerous activities in order to determine appreciable risk, owing to the rapid development of technology. Preventive measures should be taken if the concept of appreciable risk waa associated with an activity,

26, It would be fruitful to give consideration to Brazil's call for the drafting of a general instrument to cover situations that were becoming increasingly frequent owing to technological progress and might, with or without apparent risk, cause transboundary harm.

27, On the issue of territorial limitation, Poland reaffirmed its position that, in view of the accelerating deterioration of the environment and the threats connected with such deterioration, it would not be proper to exclude the possibility of dealing with liability for harm in areas beyond the limits of the national jurisdiction of any State, Poland shared the Special Rapporteur's view that the mechanisms currently provided for in the draft were not suitable for dealing with a situation in which all mankind would be affected, In that context, principle 21 of the generally recognized Stockholm Declaration, which laid down the responsibility of States to ensure that activities within their jurisdiction or control did not cause damage to the environment of other States or of areas beyond the limit.8 of national jurisdiction, should he fully reflected in the draft articles under consideration.

28. With regard to the delimitation of the scope of the topic, Poland shared the Special Rapporteur's view that the concepts of jurisdiction and control were the most appropriate. It was also of the opinion that the activities dealt with under the topic should he limited to those with physical consequences; it therefore welcomed the announcement that the reference to physical consequences was to be reintroduced into article 1.

29. In view of its doubts about the qualification "with regard to activities involving risk", Poland wished to suggest that the reading of articles 6, 9 and 10 should not be prejudged. Furthermore, it shared the view that articles 7 and 8 should be combined, since the duty to participate was a specific form of co-operation. Lastly, the obligation of notification, consultations and prevention should be included in the text of article 7.

30. Mr. GODET (Observer for Switzerland), referring to international liability for injurious consequences arising out of acts not prohibitad by international law, said it was clear from a reading of chapter II of the International Law Commission's report that there were still profound differences between members of the Commission as to the solution of problems arising from thr transboundary effects of activities involving risk, Accordingly, his delegation's comments should not be regarded as definitive.

31, In principle, his dolegation rupported the idea *of* international liability whore scope would depend essentially *on* the *occurrence of* injury arising from *an* activity involving risk. Technological progress, the handling of dangerour or toxic products, and the increasing haaardr to human hralth and the human environment, posed by industrialisation, made it opportune to establish a lrgal régime independent of the concept of wrongfulnere. His delegation conridered that a régime of that *kind,* baaed primarily on thr occurrence of injury linked to an activity involving risk, would not place any qroup of countries in a disadvantageous position vis-à-vis another, inasmuch as it was assumed that the States knew, or had means of knowing, that an activity involving risk war taking place in their territory, Moreover, the scope of the convention should be as broad as possible, and rhould include both direct assaults *on* the ● nvironmont, such as ecological accidents, and cares of covert pollution, Nor should it be overlooked that it *was* difficult to establish a comprehensive régime of liability, in other *words,* a régime which would be applicable *to* unspecified activities.

32, While the *idea* that the entire convention rhould be based on the principle *of* causal responsibility was acceptable, that principle should not go so far as to attribute the primary obligation *of* compensation to the State *of* origin, The obligation ehould be regarded only as a subsidiary one, inasmuch as compensation for the injury was in the first place the responsibility of the author *of* the act, In other words, the liability of the State of origin should not be invoked unless, for whatever reason, the party responsible for the injury failed to comply with its obligation to compensate. That aspect of the draft article should be amplified or clarified,

33. The Special Rapporteur had correctly pointed out in him most recent rspor that the draft articles referred to liability *for* the risk caused, It was not a matter of making reparation for injury simply because that injury had occurred, but because it had resulted from an activity regarded as dangerous. Bearing that in mind, his delegation considered that it would be useful, as other delegations had suggested, to draw up a list enumerating the activities involving risk which would, in the event *of* traneboundary injury, engender the obligation of compensation. Although any list was by *definition* incomplete, it would offer undeniable practical advantages. The list should not be exhaustive, but merely indicative, and should leave room for the inclusion within the scope of the convention, by a reasonable process of analogy, of other activities regarded as dangerous, The list should appear as an annex to the convention, and there rhould be provision for *a* flexible review procedure, so that it could be updated from time to time.

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34. Transboundary injury par se did not provide grounds for compensation. In order to do 80, it must be on a certain scale, in other words, it must be "appreciable" within the meaning of paragraph (a) of draft article 2. However, thr adjective literally meant "capable of being ● mtimatod or assessed", which would imply a contrario that unforeseeable injury whose relationship to the dangerous activity could not be estimated would not necessarily be compensable. It did make sense, on thr other hand, to refer to "appreciable risk", since that element of general foresight wan fundamental *to* the liability régime proposed. To avoid any kind of ambiguity, injury rhould be qualified as "significant" or "substantial", according to the limit of liability to be ● rtabliahd,

35. A twofold responsibility drvolvrd on the State party undrr whose jurisdiction or control the activities *involving* risk whioh might cause tranrboundary harm were taking place : it entailed both the obligation to make reparation for the harm, and the obligation to co-operate, including the measures to be adopted in order to "prevent or minimise injury that may result from *an* aativity whiah presumably involves risk *and* for which *no* régime ha8 boon ● rtablirhod" (art. 9). There was no denying the solid foundation8 of the obligation of prevention. However, respect for that obligation rhould not, when, *in any* event, tranrboundary injury occurred, serve to make thr obligation to compensate relative; to do • o would be tantamount to reintroducing the aonarpt of due diligence and therefore that *of* wrongfulness, a concept which specifically was to be omitted in thr performance of the obliqation to compensate. Thr State wan liable ● ithor because the harm resulted *from* a wrongfu! *act or because an* injury related to *an* activity involvj 9 risk had occurred, whioh meant that the only exemption from liability was in the case of force majeure. His delegation considered that it was difficult to reconcile the two approaches : it would be desirable if the draft article8 wore to eliminate any uncertaintier in that regard.

36. Without trying to diminish the obligation to comprnratr and ao-operate, the Commission rhould ensure that the future convention did not impose on any State8 intending to *engage* in a new aativity a systematic obligation to consult all the States which might potentially be affected, since to do so would be to confer on any State which considered itself exposed to risk the right of veto over activities involving risk which were undertaken in that content in the State of origin,

37. Finally, the draft would perhaps gain *In* logic and clarity if the order of the provisions wore different. The basic principles of the convention should precede the general provisions. The convention would then begin with the present article 6, *on* freedom of action and the limit8 thereto, The provision would be followed by the present article8 1 to 3 (on the scope, the use of terms, and the basis *of* the obligation8 imposed) and article 10 (on reparation). The obligations of prevention, co-operation and participation would come next, It would be much better if article8 4 and 5, on the relationship between the *convention* and other international agreements and other rule8 of intrrnrtional law, appeared in the final provisions, whiah would inaluds clauses on the settlement of disputes. There was no doubt thet only an appropriate procedure for the settlement of disputes would allow the convention to take full effect. In his delegation's view, a

(Mr. Godet, Observer, Switzerland)

suitable procodurr rhould include the right of each of the parties to the dispute to appral unilaterally to a third party if negotiations brokr down, The result of thr intervention of thr third party rhould, moreover, be binding where possible.

38. In connection with the law of the non-nrvigrtionrl uses of international watercourses, he raid that the Commission had made considerable progress. Its general rpproroh seemed to meet with the rpproval of the majority, although certain important issues had not yrt bern clarified.

39, With its neighbours, Switserland had conaludrd a system of agreements *on* the modalities of co-oprrrtion *in* the use of watercourses situated in its territory. His delegation agreed with the Special Rapporteur that a framework agreement rhould be prepared which would contain residual general rules, would be applicable to all international watercourses, and would be supplemented by specific agreements between riparian Staten, Such agreements rhould hrvr as their rim both to apply the provioions of thr framework ● groomrnt and to adapt thorn to the features and specific uses of the watercourse or pert of the watercourse. It was quite possible that watercourse States might conclude specific agreements which diverged from the solutions proposed by the framework agreement. In hi8 delegation's view, there was *no* lmprratlve law from which, by definition, States might not derogate. Furthermore, Staten which were not parties to the framework agreement would be more inolined to rely on thr rules ● at8bllahod by the specific agreement, since thry would aonrtltute the expression of customary law.

40. Thr Commlaslon had decldea to portpone the definition of an international watercourse, In the opinion of hia delegation, the term "watercourse" was preferable to "watercourse system", whlah, because it wan broader, covered tributaries, including those which were entirely situated in the territory of a riparian State. Although it was necessary to take into account thr right of watercourse Staten to participate in the development of thr watercourse, it was not 80 obvious that the obligation to co-oprrato ● xtonded to tributaries which were *in* only one of the watercourse States. Furthermore, thr Commission's definition of "international wetercouror system", which *wan* still a *working* hypothesis, corresponded rather to that of a hydrogrsphical brain,

41. The Commlrrion ohould ensure, in general, that the regulations elaborated and the procedure8 of consultation and notification ● atabliahed in order to put in concrete form the obligation to co-operate which was incumbent on watercourse States did not have the effect of paralysing rny kind of new use. Article 5, as it stood, granted a genuine right of veto to any watercourse State which was opposed to a new use, through lte participation in consultations on an agreement, project or programme relating to part of the watercourse, when the use which the said State made of the watercourse might be affected to an appreciable ertont by tho agreemont, project or programme, To *prevent* or at least delay any development project, it was sufficient for the State to provo unilaterally that the implementation of a partial agreement to which it was still not a party uould affect appreciably ltr use of the watercourse.

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(Mr. Godet, Observer, Switzerland)

42. While no environmental damage which had transboundary effects was negligible, the exigencies of interdependence and good-neighbourliness made it necessary that some pollution should be tolerated. Therefore, the extent of participation of watercourse States should be increased. In view of the work done by the Commission on international liability for injurious consequences arising out of acts not prohibited by international law, the expression "substantial risk" might be replaced by the expression "appreciable risk", or it might be specified that any reference to substantial effects meant that the effects could be observed in an objective and appreciable manner.

43. In that context, there was a problem of terminology which affected various expressions: in article 5, affected to an appreciable extent: in article 8, appreciable harm; in article 11, possible effects; in article 12, appreciable adverse effect: in article 16 on the pollution of international watercourses as proposed by the Special Rapporteur, detrimental effects: and in article 17 on environmental protection, serious danger. Those expressions were ambiguous, and the Commission should try to make them more precise.

44. He noted that in article 4, paragraph 2, it was not necessary to specify that a watercourse agreement should define the waters to which it applied. The parties to the agreement would probably do so, but it was for them alone to make such a decision.

45. The list of factors relevant to equitable and reasonable utilization, mentioned in article 7, was based on the Helsinki Rules. The Convention for the Protection of the Rhine against Chemical Pollution, of 3 December 1976, also contained a catalogue of the uses of the river. Some items might perhaps be taken from that catalogue. Furthermore, paragraph 1 (c) of article 7 was redundant, since it said that the equitable and reasonable utilization of a watercourse required taking into account the effects of the use of the watercourse.

46. Mr. KULOV (Bulgaria), referring to the law of the non-navigational uses of international watercourses, said that his delegation maintained the position that in order to achieve the widest possible application of the results of the work of the Commission on that topic, it would be appropriate to consider seriously the desirabilty of having model rules as the end-product. His delegation continued to fear that attempts to build on the doctrine of "shared resources" could have the effect of restricting significantly the guidance which the current work of the Commission could provide to Member States in their present and future efforts to regulate relations which differed substantially from case to case.

47. With regard to the points in respect of which the Commission and its Chairman had requested the views of Governments (A/43/10, para. 191), his delegation shared the opinion expressed in the Commission that problems of pollution and environmental protection deserved special attention in the process of elaboration of norms on the non-navigational uses of international watercourses. Given the importance of that sub-topic, it would be necessary to deal with it in a separate

(Mr. Kulov, Bulgaria)

part of tha draft in order to address thr problem in its entirety. Moreover, integrating the provisions into the other draft articles would dilute the importance of the phenomenon, It had born rightly pointed out that the United Nations Convention on the Law of the Sea had devoted a separate part (part XII) to similar questions. The rules relating to the rub-topic rhould reflect thr general end most important principles concerning the subject-matter, leaving it to the States themselves to adopt more specific and detailed measures relating to the protection of the environment and control of pollution of international watercourses.

48. On the concept of "appreciable harm" in thr context of article 16, paragraph 2, his delegation shared the considered *opinion* already expressed by a number of delegations on the meaning and interpretation of thr term "appreciable" in connection with the topic "International liability for injurious consequences arising out of acts not prohibited by international law". It would therefore favour the substitution *of* the term "significant" fur thr term "appreciable". It also supported the view expressed in paragraph 153 *of* thr Commission's report (A/43/10) concerning the intrrprrtation of article 16, paragraph 2, to thr effect that it did not prohibit, pollution as such, but only placed an obligation *on* States not to cause appreciable pollution harm, which reflected aontomporary international law. The same paragraph rightly pointed out that while no harm was negligible, the exigencies of interdependence and good-noighbourliners made it necessary that some pollution ehould be tolerated, That gave expression to a general principle that States should be left to determine what level of a particular rubrtancr constituted significant harm. It was also interesting to note that "pollution", as defined in article 16, paragraph 1, proposed by the Special Rapportour, would not necessarily be detrimental in the context of paragraph 2 of the same article. It *war* only when pollution entailed detrimental effects that exceeded the threshold *of* significant harm thr t it would be prohibited by article 16.

49, Lastly, his delegation supported the marked tendency of the *draft* to ● nhrrnce, wherever possible, the application of tho principle of co-operation among States in dealing with the complex issues connected with the non-navigational uses of international watercourses. Nevertheless, such co-operation rhould not be used as a pretext to place obstacles in the way of the development and normal uses of those resources.

ORGANIZATION OF WORK

50. The CHAIRMAN said that he had still not received any comments from the regional groups on the letter from the Chairman of the Fifth Committee relating to agenda item 115, entitled "Programme planning". At tho 27th meeting, he had requested that such comments should be submitted to him not later than 3 November 1988; otherwire, following established practice, ho would inform the Chairman of the Fifth Committoe that the Sixth Committee would not express any

(The Chairman)

views on thr matter. However, it war his undrratsnding that the Group of Latin American and Caribbean States needed more time to harmonise its position, and ho therefore suggested that a decision should be postponed until the morning of 4 November.

51. It was so decided.

The meeting rose at 11.50 a.m.