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SUMMARY RECORD **OF THE 29th MEETING**

Chairman: Mr. **DENG (Sudan)**

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The meeting was called to order at 3.10 p.m.

AGENDA ITEM 134: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE YORK OF ITS FORTIETH SESSION (continued) (A/43/10, A/43/639)

AGENDA ITEM 130J DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND (continued) (A/43/525 and Add.1, A/43/621-S/20195, A/43/666-S/20211, A/43/709, A/43/716-5/20231, A/43/744-8/20238)

1. Mr. LEE (Canada) said that the topic of the law of tha non-navigational uses of international watercourses was of conridarable importance to his country, and reflected the international community's growing realisation of the nerd for legal measures to safeguard the natural environment, including international rivers.

2. His delegation war generally satisfied with the progress so *far* achieved on the draft articles in parts II and III, which had been presented by the Special Rapporteur and discussed and adopted in revired *form* by the Commission. *Canada* concurred in principle with draft articles El to 21, subject to further detailed consideration. It would also like them *to* be harmonised with the Commission's *work* on related subjects. *For* example, artialr 8 on the "Obligation not to cause appreciable harm" rhould be consistent with related texts in the eventual instrument on liability *for* injurious consequences. Articles 11 to 21 provided adequately for notification and reply on measures planned by one State for an international watercourse which might have effects, often adverse ones, upon another Stats, It might be useful to provide for some aort of dispute-settlement mechanism if the consultations and negotiationa envisaged in draft articles 3.7 and 18 did not bear fruit. His delegation tended to favour the idea of a joint faat-finding mechanism, although it would assume that such a proposal would normally be embodied in an annex to thr propoaed framework agreement.

3. The obligation to warn of impending haoarda was so importsnt that it warranted a aeparate article outside the ambit of notification of planned measures. Where there was particular urgency in conveying such warnings, the usual stipulations concerning the period of notification and reply should not be rigidly applied. In his delegation's view, the Special Rapporteur had handled those questions well.

4. The special Rapporteur had also concentrated in his fourth report on two af the most important aspects of his topic, namely exchange of data *and* information (A/CN.4/412) and environmental protection, pollution and other matters (A/CN.4/412/Add.1). Those subjects were expected to form parts IV and V rerpectively of the draft articles, and merited serious discussion in the Sixth Committee in order to assist the Commission in its further consideration of the topic.

5. On the practical issue of exchange of data and information, his delegation found the *language* used in draft article 10 as adopted by the Drafting Committee suitably precise. Since some States might require some technical and financial assistance *in* collecting and producing suah data, his delegation was able to

(Mr. Lee, Canada)

endorse the concepts of "reasonably available data and information", "best efforts" and "reasonable costs". It also considered that demands for such information and thr responses thereto rhould be aimed at eliciting thr reasons behind the notif icationa and replies.

6. Him delegation welcomed the widening of the definition *of* information to include information of ♋■ ● colo9ical nature. The result was a wider obligation to warn of *haaarda* which had their source in hydrological, meteorological or hydrogeological situations.

7, Canada supported the Special Rapporteur's auggeation that environmental protection and pollution control should be dealt with in a separate part *of* tho draft. Such an approach would be conaiatont with thr treatment accorded to that topic in the 1982 United Nations Convention on tho Law of the Sea. Also, since the topic of pollution was likely to 93 beyond the *area* of national jurisdiction and to affect other States which were not necessarily watercourse States, it was highly desirable that the problem ahould be addressed in a separate part. Indeed, his delegation supported the formulation of separate article8 to deal specifically *with* the relationship between watercourao States *and* non-watorcourao States in that matter.

6. Since, however, the Commiaaion was proparing a framework agreement, the number *of* articles on any aub-topic should be kept to the necessary minimum, *and* it would be left to Member States to *adopt* rpscific and detailed measures on the protection of the environment and the control of pollution *of* international watercourses.

9. While welcoming tho Special Rapporteur's draft definition *of* pollution, *and* recognising that its proper place was in the introductory article with other definitiona, him delegation felt that, to ensure uniformity of international law, it should be harmoniard with thr definition found in article 1, paragraph 1 (4), *of* the Convention on the Law of the Sea, Similarly, the rule prohibiting States *from* polluting international. watercourses in a way that might cause appreciable harm to other watercourse States or to the ecology of international watercouraer ahculd be harmonised with the provisions on all other forma *of* harm dealt with under the general principles, and with the texts on other related topics, such as liability *for* injurious consequences arising out of acts not prohibited by international law, That rule must reflect the increasing interdependence of States and the welcome interpenetration of international and national *law.*

10. The queatfon of whether strict liability arose when a State caused appreciable harm by pollution to another watercourro State had been discussed by some members at the Commission's fortieth session, even though the articles propoaed by the Special Rapporteur had not raised the issue. In a uaeful clarification, referred to in paragraph 162 of the Commission's report (A/43/10), the Special Rapportour had stated that paragraph 2 of the draft article on pollution was intended to give rise to responsibility for wrongfulness, and not to strict liability. Him delegation supported the Special Rapporteur's suggestion that paragraph 2 ahould require that "watercourse State8 take all measures *necessary* to ensure that

(Mr. Lee, Canada)

ativitiea under their juriadiation or control be so conducted am not to cause ppreaiablr harm by pollution to other watercourse States cr to the ecology of the international watercourar [system]".

11. At the current stage, him delegation could support the Special Rapporteur's view that "due diligence" was the measure of thr obligation *in* that paragraph, bearing la mind that the principle had been implicit in tranaboundary pollution cases since the Trail Smelter award. It afforded a welcome degree of flexibility, and allowrd adaptation of the rule of responsibility to different aituationa, for example, to the level of *a* State's development. While *due* diligence was essential by a defence, and the burden of proof should be on the State which was the source of the pollution, it would be a mistake to intcrpret the Spoaial Rapporteur's proposal am raising the question of absolute liability. Absolute liability was a aonaept quite distinct from strict liability, and the two terms should not be treated am being interchangeable.

12. Most important was the aonaept of a positive duty to protect the environment, found in the draft article on pollution proposed by the Spoaial Rapporteur but not yet adoptrd by the Commiaaion. The Special Rapporteur had rightly pointed out that much obligations wore additional to other obligations concerning pollution of international watercourses. Him delegation supported the inclusion of that general obligation, which *war* well grounded in State practice.

13. *On* the important queation *of* the equitable utilisation *of* international watrrcouraea, Canada believed that the *concept* of SO-SO sharing represented one formula by which the criterion of equitable utilisation could be fully aatiafied, and indeed might be the moat appropriate formula in aome instances.

14, It had been pointed out that there war a possibility of conflict between the principle of "equitable utilisation" and the "no harm" principle. He wondered, however, whether in practice *an* unqualified "no harm" principle might prohibit any change in existing uses. The "no harm" principle could prevent an upstream or downstream State from takinç benefits from an international watercourse if such action would affect the other riparian State, whereas the "equitable utilisation" principle provided a basis for determining permissible and impermissible "harm".

15. In conclusion, he expressed atiafaction at the Commission's work on the subject at its fortieth session, and the hope that the topic could be completed within the current term of *membership.*

16. Mr. SZEKELY (Mexico), referring to the law of the non-navigational uaea of international watercourses, said that many of the comments made by States, including those made by Mexico, had been *taken* Cnto account in the Special Rapporteur's fourth report on thr subject (A/CN.4/412 snd Add.1 and 2), resulting in an improvement in the draft articles in question.

(Mr. Szaksly, Mexico)

17, With a view to improving the articles yet further, Mexico suggested, firatly, that the following paragraph - complementing the right to participate - should be added as paragraph 3 to article 5:

> "Watercourse States shall refrain from holding the consultations or negotiations or from becoming parties to the agreements provided for in paragraph8 1 and 2 *above* if any other State whore territory is alsc affected by the watercourse in question is excluded in a discriminatory manner from ruah consultations, negotiations or agreements."

18. Where article 6, paragraph 1, was concerned, Mexico suggested that the middle of the second sentence rhould read: "with a viow to attaining the optimum utilisation thereof and benefits therefrom which are sustainable and consistent with adequate protection". Furthermore, thr following two paragraphs, which were based on articles 300 and 304 of the United Nations Convention on the Law *of* tha Sea, should be added at the end of article 6:

> "3. Watercourse States shall fulfil in good faith the obligation8 assumed under the present articles and shall exercise their rightr recognised herein in a manner which would not conatituto an abuse of rights.
>
> "4. Any provisions of those articloa that may entail responsibility and liability for damage are without prejudice to the application of ● xiating rules and the development of further ruler regarding responsibility *and* liability under international law,"

19. Article 7, paragraph 1 (b), should read: "The social and economic n~eds of the watercourse States concerned, particularly the needs of the population dependent on the resources of the watercourse in each State", In article 7, paragraph 1 (d), "existing and potential uses of the international watercourse" should above all include "historical uses". Lastly, the word8 "and good-neighbourly relations" should be added at the *end of* article 7, paragraph 2.

20. The subjective term "appreciable" ahould be deleted from article 8, as well as from article 4, paragraph 2, and article 16 (on pollution of international watercourses) as proposed by the Special Rapportrur. The term "harm" waa sufficient by itself snd should not be qualified at all, as indicated at the end of paragraph 154 of the Commission's report. Perhaps the aolution t.: the problem would be to draft article 7, paragraph 2, in such a way as to reflect the need for States to negotiate specific agreement8 on scientifically determined levels of permissible emissions, and the need to determine morr objectively when a drtrimontal activity or effect was below or exceeded the threshold of "appreciable harm" (paragraphs 156 and 158 *of* the Commission's report), Furthermore, the following words should be added at the end *of* article 8: "and shall refrain from carrying out activities in the area under their jurisdiction or control that may entail a risk of causing such harm".

(Mr. Szekely, Mexico)

21. The Special Rapportour for the topic of jurisdictional immunities of States and their property had notrd that there had been differences of opinion between countries that favoured the so-called restrictive theory of State immunity and countries that supported the absolute theory (paragraph 501 of the Commission's report). Mexico believed that the propoarnta of the absolute theory had become more flexible and were now willing to accept reasonable restrictions, whereas some proponents of the restrictive theory had in thr mean time adopted a more radical position that would make oxcaptions to Statr immunity the general rule, That latter approach could be discerned in certain recently adopted domestic laws, which were not in keeping with international legal opinion. The Commission should therefore make a greater effort to achieve rapid progress in that aroa, before certain unilateral acts impeded progress oven more. As the Chairman of the Commission had indicated in his introduction to the Commission's report, States did not ● □□□□♦ a situation in which they were the passive aubjeata of laws prepared by others. Only if the Commission made progress on that topic, would it be possible to prevent such unacceptable aituationa from occurring,

22, Mr. TANG Chengyuan (China) raid that his delegation welcomed the progress made on thr topic of the law of the non-navigational uses of international watercourses at thr Commission's fortieth session, and ● upportod in principle the schedule of work suggested by the Special Rapporteur for deniing with the whole topic.

23. Concerning thr obligation to co-oprrate and to ● xchungo data and information, whioh had been the focus of discussion at that session, it war his delegation's belief that the new draft article 9 represented a significant improvement over the original version. It not only stipulated that States had a general obligat:on to co-oporatr, but also contained explicit formulations covering the nature and goals of ruah ao-operation, as well as its relationship with other basic principle4 of general international law, In that respect, it provided a clear formulation on the interrelationship between a State's sovereignty over the international watercourses within its territory and the obligation to co-operate with other watercourse States.

24. Regular exchange of data and information, a;. provided for in article 10, was also necessary in order to enhance the equitable and rational use of water resources by watercourse States, and to avoid harm to other States concerned. However, a number of situations and factor4 should be taken into account. For example, the exchange of watercourse information should be determined mainly by the needs of the watercourse States; if those States did not require information, there was no reason to impose an obligation. The information to be exchanged should rela ɔ mostly to watercourses already in use or expected to be in use. Only relevant data and information should he exchanged; the obligation did not generally extend to the exchange of sensitive information relating to national defence and security.

25. In the formulation of obligations relating to tho exchange of information and notification, an attempt should be made, to *the* extent possible, to reduce the burden on developing countries, without compromising the fundamental balance

(Mr. Tang Chengyuan, China)

between the rights and obligations of the watercourse States concerned, Such a balance would be conducive to the equitable and rational use of watercourses by watercourse States in both legal and real terms,

26. Concerning the drsft articles submitted by the Special Rapportaur on pollution of international watercourses, he noted that it was still not agreed whether harm caused by pollution should be regarded as giving rise to liability based on fault, The question was cbvioualy closely related to the topics of State responsibility and international liability *for* injurious consequences arising out of acts not prohibited by international law, The Commission should try to ensure a proper interrelationship between those issues in order to avoid inconsistency. At thr current stage, his delegation doubted the validity *of* using strict liability as the basis *for* liability for appreciable harm by pollution. That did not, of course, preclude tho watercourse States from applying the principle of strict liability in respect of harm caused by watercourse pollution, on thr basis of specific international watercourse agreements concluded between them in accordance with draft. article 4.

27, Mr. MONAGAS (Venezuela) raid it was clear that the Commission had made a great effort to advance in its *work* on the *law* of the non-navigational uses of international watercourses. It should continue with its preparation of the draft,

28. Venenurla was in favour of devoting a number of draft articles solely to the issue *of* the protection of thr environment and pollution of international watercourses. With regard to specific articles, Venezuela shared the concerns expressed about the words "which results directly or indirectly from human conduct" in article 16, paragraph 1, as proposed by the Special Rapporteur. The definition in question should contain a reference to reduction *of* amenities *and* pollution produced by new technologies and radioactive elements, as well as references to changes ir the river bed and to the ecological balance that might be altered as a result of pollution of the watercourse, Since the principle laid down in article 16, paragraph 2, was particularly important, it should perhaps be the subject of a separate article or be transferred to the part of the draft dealing with general principles. Moreover, that paragraph should be drafted in such a way as to make the obligation in question stricter.

29, At the current stage, "appreciable harm" war the moat appropriate term, and Veneauela was therefore not in favour of replacing it with the term "substantial harm". Furthermore, it would porhapr not be appropriate to use the term "harm" without qualifying it, Another important issue that *needed* to be clarified in connection with article 16 waa that of reconciling the concept of appreciable harm under paragraph 2 with the concept of "effects detrimental to human health or safety" under paragraph 1. *The* question of "detrimental effects" should *be* given further consideration by the Commission at its next session. On the issue of strict liability, Veneauela supported the view that a State *of* origin that caused appreciable harm to another watercourse State should be strictly liable under paragraph 2. Moreover, it endorsed the Special Rapporteur's suggestion that the paragraph might provide that watercourse States should take all measures necessary

(Mr. Monagas, Venezuela)

to prevent thr pollution of an international watercourse. However, since the issue was so complex, it would seem preferable to consider it iu the context *of* ruah other topics as State responsibility and international liability for injurious consequences arising out *of* aatr not prohibited by international law. Naturally, thr obligation not to pollute and the obligation to avoid appreciable harm rhould be retained in thr draft articles.

30. With regard to draft article 17 a8 proposed by thr Special Rapporteur, provision rhould be made for an obligation on the part of watercourse States to adopt measures and régimes ♦□ • n8ure protection of the • nvironmont of international watercourses. Such a régime rhould be • rtablirhod, and all necessary measures should be taken to protec. thr marina • nvironmant from degradation or destruction occasioned through an internationa". watercourse. It might be appropriate ta have paragraph 2 as a separate article and to divide paragraph 1 into two, Venezuela war also in favour of including in paragraph 1 the obligation to "prevent, reduce and control" pollution of the • nvironmont of intornationrl watercourses. The term "ecology of the watercourse" aould be replaced by the broader term "environment", and a definition of the term "environment of an intornationrl watercourse" aould be inaludrd in an introductory article to th draft, a8 suggested by the Spraial Rapporteur. The appropriateness of the phrase "or serious danger thereof", which appeared in both paragraphs, should be considered further.

31, Venezuela was in favour of thr inclusion of draft article 1! on pollution or • nvironmontal • morgoncto8, a8 proposed by the Special Rapporteur. It a'so supported the suggestion that paragraph 1 of the • rtialo rhould be moved to an article of the draft on the definition of terms, and that the definition rhould refer to natural as well a8 man-made • mrrgouoior. Furthermore Venezuela ■♎□□□□♎ thr suggestion that, rather than being limited to notification, the obligation in paragraph 2 rhould be • xpandod to include the obligation *of* co-operation in minimiring the h\rm caused by an emergency.

32, Mr. BADAWI (Egypt) raid that his delegation wished to respond to thr invitation • xtondod by the Commission and present it8 views on the degree *of* • lrboration with which tha draft article8 *on* the law of the non-navigational uses *of* international watercourses rhould deal with problems *of* pollution and • nvironmontal protection, and on tho concept of "appreciable harm" in that context.

33, In the view *of* hi8 delegation, there war no need for a separate part devoted solely to the sub-topic Of pollution, and obligations relating to environmental protection and pollution control would best *be* treated a8 an integral part *of* those other rights and duties of States enumerated in different part8 of the draft. Such an approach would reflect the general principles to which States rhould adhere, and it would be for the watercourse States themselves ♦□ • at8bli8h more precise and detailed procedures that took aaaouat of the specific characteristics of the watercourse in question and the particular problems to which they gave rise.

34, In connection with the concept of "appreciable harm", there was a need for consistency among the various articles of thr draft. In addition to its use in the

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(Mr. Badawi, Egypt)

contort of pollution, the trrm had ● l8o been used in draft ● rtiCl0 8, as provisionally adopted by thr Commission at it8 fortieth session, on the obligation of watercourse States to utilise an international watercourse in such a wry as not to cause ● pprwiablo harm to other watercourse States. It was rare for "harm" to be accompanied by any qualifying criterion in matters involving an ● lomont of responsibility, since any such qualification might narrow thr scope of application atthe ● ☒□□■ Of legitimate right8 and interests. The nature of the topic dealt with by the draft articles, however, and the fact that special ● groomont8 would be concluded by watercourse States in order to ● n8uro equitable utilisation enabled hi8 delegation to accept the concept of "appreciable harm" a8 a general principle within the contex: of the topic.

35. His delegation was pleased with the approach adopted by the Special Rapporteur and with the articles provisionally adopted by the commission at its fortieth sejsion. It would nevertheless like to make a number of observations that thr Commirrion might take into ● aaount in connection with the draft ● rtialo8 already provisionally adopted or those to be adopted in future.

36. His delegation would hrvr liked draft article 9, on thr general obligation to co-operate, to contain a reference to good faith as one of the fundamental principles on which co-operation between watercourse States was founded. As currently formulatod, the text might carry that implication, but the ● 88onti81 link between article 9 and the other obligation8 stipulated in the draft ● rtialo8 as a whole, such as ● quitablr and reasonable utilisation, the ● voidanao of harm to the interests of others, consultation among watercourse States and notification concerning planned measures, had convinced hi8 delegation that that principle should be mentioned in thr context of the obligation to co-operate.

37. With regard to draft articles 17 and 18, *on* consultations and negotiations concerning planned measures *and* on procedures in the absence of notification, hi8 delegation would like to point out that the proposed texts wore silent as to the procrduro to be followed in the ● ❖ℳ■♦ of the failure of consultations and negotiations. A possible solution that the Commission might wish to consider was the inclusion of a text along the lines of article 12 of the 1975 Statute *of* the River Uruguay. Consideration should also be given to the possibility of appropriate compensation for harm caused by the postponement of the implementation of planned measures, in a case where a request for postponement was made by a watercourse State without sufficient justification or in bad faith,

38. It might be appropriate for thr draft articles to contain a recommendation to watercourse States to establish an authority to be entrusted with the task *of* administering the watercourse, disseminating information and data, and making the necessary arrangement8 for consultations and negotiations. There wore many precedents for such a mechanism, some of which had been mentioned by the members of the Commission.

39. The draft articles were, generally speaking, free of obscurity, and they ● 8tabli8hed a just balance between the different interests involved, It was to be hoprd that the Commirrion was on the way to completing the draft articles *and* codifying a set of legal rules that had born long ● waitrd.

40. Mr. KOTSEV (Rulgaria), referring to the topic "International liability for injurious consequences arising out of acts not prohibited by international law", said that the current state of international relations made it necessary to elaborate a legal mechanism to promote concerted State action in preventing environmental degradation and the negative consequences of scientific and technological progress.

41. The scope of the topic should be limited to those activities that posed the greatest risks, instead of covering all acts not prohibited by international law that might result in injurious consequences. It would be worth while to define the term *''dangerous activity''* on the basis of a study of existing international legal documents and established State practice. The draft before the Commission should be directed at the development of a legal mechanism that encouraged States to maintain close co-operation, and the problems related to compensation and reparation should he considered under the topic of State responsibility.

42. The main difficulty related to whether it was possible to turn liability for acts not prohibited by law into a general principle. Liability for such acts could at present be claimed only on the basis of concrete agreements on specific types of activities between two or more States. In all other cases, there would be no legal grounds for liability. On the other hand, the development of international treaty practice concerning environmental protection would lead to liability for violation of the relevant international law. It would be difficult to raise the issue of liability for damage resulting out of acts that were not qualified as infringements of norms of international law.

43. In working on the problem, the Commission should strive to elaborate a document that guaranteed bona fide co-operation between States in preventing transboundary damage or, where such damage occurred that made provision for the adoption of measures necessary for its limitation, minimisation or elimination. His delegation therefore supported the view that the draft articles should serve as an incentive to States to conclude agreements establishing specific regimes to regulate activities in order to minimize potential damage (A/43/10, para. 32). That corresponded fully to the goal set by the Special Rapporteur, namely that the objective of the draft articles was to obligate States involved in the conduct of activities involving risk of extraterritorial harm to inform the other State which might be affected and to take preventive measures (para. 24). If damage occurred, no specified level of compensation was prescribed in the articles; rather there was an obligation to negotiate in good faith with a view to making reparation for harm caused, by taking into account such factors as those set out in sections 6 and 7 of the schematic outline. Adoption of that approach transferred the issue to the sphere of practical feasibility, and would certainly facilitate the Commission's task. Moreover, that approach would make it possible to ensure the necessary balance between the prevention of injurious consequences of acts not prohibited by iaternational law and compensation for damage in accordance with trends in international law.

44. His delegation had repeatedly proposed the compilation of a list by the Commission of the most dangerous activities, for the purpose of determining the

(Mr. Kotsev, Bulgaria)

scope of application of the draft. It was necessary to have a true picture of realities and needs so that the draft could be considered in full knowledge of the main situations to which the articles were meant to apply. However, the Special Rapporteur had proposed an alternative method, namely some general criteria to limit the scope of the draft articles. His delegation did not oppose that approach, but believed that the success of such a course would depend greatly on how clearly the criteria would be defined and how they rould be applied in practice. Draft article 1 limited the scope of application to acts that created an appreciable risk of injurious transboundary consequences. While it was advisable to try to limit the scope to the most dangerous activities, it was necessary to use precise criteria to define the respective thresholds. The Commission should be able to propose clear criteria that would make it possible to define the activities objectively on the basis of specific requirements.

45. His delegation believed that the Special Rapporteur had correctly applied the concept of appreciable risk, Application of that concept would create guarantees for the free use of the latest achievements of science and technology in any State. His delegation supported the comments in paragraphs 39 and 41 of the report regarding the advantages of that concept. At the same time, it adopted a flexible position on the issue. If the Commission deemed it necessary to use the term "harm" on the basis of the elaboration of suitable guidelines for determining reparation for injurious acts not prohibited by law, that should be duly reflected in the relevant draft articles. In common with several other delegations, his delegation would be inclined to substitute the term "significant" for "appreciable".

46. Article 7 was of great significance, and reflected the need for a concerted effort by States to prevent highly dangerous activities that could result in substantial damage.

47. Article 8 dealt with a point that concerned co-operation between States, and his delegation therefore thought that the draft could benefit by the inclusion of that provision in the text of article 7, the second paragraph of the latter being deleted.

48. Article 9 allowed for a flexible approach by envisaging the possibility that the interested States themselves could specify concrete regimes which required strictly defined measures to be undertaken in connection with certain types of activities. In his delegation's view, however, the term "reasonable" was not sufficiently precise: perhaps wording such as "the necessary measures" would be better.

49. Since the topic was closely linked to that of State responsibility, his delegation thought that the Commission should work on the two in parallel, but that the final adoption of the draft on international liability for injurious consequences should take place following the conclusion of consideration of the topic of State responsibility.

50. Mr. CULLEN (Argentina), referring to the topic "International liability for injurious consequences ● □ out of acts not prohibited by international law", said that the basic question was the concept of "risk". His delegation wondered whether thm draft rhould confine itself solely ♦□ ● ctivitirr involving risk and whether only injury caused by such ● otiviticlr rhould be compensable.

51. The problrm related primarily to "creeping pollution", where a State was awara that if thr intensity of certain activities war increased or if certain ● lomontm were used, pollution above ♋■ ● OOOptabl0 threshold would certainly be produard, in other word8 "appreciable transboundary harm" would occur. In such cases, it might be considered that the ● lomont of contingency, essential to the concept of risk, was lacking, and that the drrit failed to cover the vast world of pollution, That would not be true with regard to accidents such a8 thr on8 at Chernobyl, whioh were typical cases of activities involving risk with harmful ● lomont8 produced by pollution. Those would be covered despite the limitation represented by the term "risk".

52. The Commission seemed divided in that respect, with a majority apparently prepared to ● xtond liability to harm caused by the activitiss ho had described. His delegation recognised the basis for that position, and was prepared to accept it provided that efforts were made to establish a now limit whioh did not ● xtond the scope of the draft to any damage produced by ♋■♎ ● otivity, Such an extension would load to concepts Of "absolute liability', which the international community was not prepared to accept.

53. In article 1, the terms "jurisdiction" and "control" rhould refer to the area where the aotivity was oonductod, not to the activity itself, thus linking any damage to a given jurisdiction. The ● rprorrion "effective control" referred *to* a situation where a State did not ● xoroire over a territory jurisdiction a8 recognised by international law, but had it under its de facto jurisdiction, a8 in the case of South Africa with regard to Namibia. The State in question rhould be liable for transboundary harm caused in the territory under it8 oontrol. Similar concepts had been used in other conventions, such a8 thr United Nationr Convention on the Law of thr Sea, without giving rise to any opposition,

54. His delegation agreed with the text proposed in articro 3, and believed that the ● XgrO88iOn "knew or had moan8 of knowing" \pplied to developing States which might not have the mean8 to supervise vast territories or maritime areas.

55. He stressed the importance which his delegation attached to the inolurion of a chapter On principles. In that respect, it would be necessary to determine whether there war a consensus in the Sixth Committee that such principles could be applied to the topic, whether or not they reflected general international law, Such an essential consensus seemed to have emerged in the Commission, with the possible exception of article 8 on participation, in respect of which several members had pointed out that it was merely a counterpart to the principle of co-operation. His delegation considered that thr principles contained in articles 6, 7, 9 and 10 wore adequate and necessary for the functioning of the draft, and that the principle of participation in article 8 could be subsumed in the article on co-operation,

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(Mr. Cullen, Argentina)

56. Referring to the topic "The law of the non-navigational uses of international watercourses", ho said hisdelegation believed that • avironmoatal protection and theregulation of poliution problomr had notyet boon sufficiently • nalyrod, The draft definition of pollution should be • raminrd in the light of definitions contained in other international instruments. It might be appropriate to group in a single section ruler to prevent, reduce and control thr pollution of watercourses.

57. In taking up the question of water pollution, thr Commission was oonfrontrd with thr problrm of striking a just balance between the legitimate interests of the watercourse States using the watercourses for different purposes. It had boon argued that pollution problomr involving international watercourses were regional problomr, that • nvironmontal protection rhould be loft to the discretion of States, and that good-neighbourliness made it necessary to tolerate some pollution, It was clear that, in principle, those problemr were regional and that in many cases efforts had boon made to solve thorn on a regional basis. In his delegation's view, however, the adoption of general rules adaptable to different cases aould be highly useful. With regard to the question of discretion, his delegation believed that it wan necessary in an interdependent world for States which shared a watercourse to consult each other and to co-ordinate their activities. As to the statement that some degree of pollution rhould be tolerated, his delegation believed that care rhould be *taken* not to give rise to any abuse.

58. His delegation considered that "harm" rhould be qualified. In that connection, ha recalled the statement by thr Special Rapportour that the term wan used in variour international agreements. His delegation did not think, therefore, that the expression was imprecise or subjective. A possible alternative would be the expression "signif icant injury" used, for • xamplr, in the 1964 Statute on the Lake Chad Basin, the 1971 Declaration of Asunción on thr use of international rivers *and* the 1966 Agreement between Austria, the Federal Republic of Germany and Switzerland.

The meeting rose at 4.50 p.m.