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**Second report on the law of the non-navigational uses of international watercourses, by
Mr. Jens Evensen, Special Rapporteur**

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THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

[Agenda item 6]

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Second report on the law of the non-navigational uses of international watercourses, by Mr. Jens Evensen, Special Rapporteur

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CHAPTER I

Status of work on the topic

1. A first report to the International Law Commission on the non-navigational uses of international watercourses was introduced by the present Special Rapporteur to the Commission at its thirty-fifth session in 1983.¹ Based, *inter alia*, on the work of the two previous Special Rapporteurs on the topic, the Special Rapporteur proposed an outline for a draft convention consisting of 39 articles contained in six chapters. The aim was to present a more or less comprehensive, albeit preliminary, draft which might serve as a concrete basis for an exchange of views on the topic in the Commission and subsequently in the Sixth Committee of the General Assembly.

2. The Special Rapporteur considered that there were compelling reasons for such a comprehensive, concrete approach. The fundamental importance of this topic politically and economically, as well as in terms of international law, is generally acknowledged. Fresh water is a source of life for all living things, including fauna and flora. Its quantity and quality are of fundamental importance for all countries, not least in the developing world. The rational administration and management of this invaluable resource are of constantly increasing significance in the wake of the population explosion, the urbanization and industrialization of the globe, the increasing pollution hazards, deforestation and desertification—in short, the increasing power of man to tamper with the laws of nature and ecology. Adequate fresh water supply has become a world problem. According to WHO, lack of adequate fresh water is a major scourge for more than one third of the population of the world.

3. In preparing for his first report, the Special Rapporteur felt the acute necessity of obtaining guidance from the Commission as well as from the Sixth Committee of the General Assembly on all the main issues involved. He thought that that guidance should, to the extent possible, focus on concrete issues and aspects. That goal could best be achieved by placing a comprehensive concrete first draft before the Commission and the Sixth Committee. Because of the delicate nature of many of the factors involved, it

seemed inadvisable for the Special Rapporteur to look at the various aspects of the topic as isolated questions. A comprehensive approach seemed necessary in order to strike the right balance in those matters between the interdependence of riparian States and their sovereignty, independence and right to benefit from the natural resources within their borders. To strike this highly delicate balance must be one of the major concerns in preparing the law of the non-navigational uses of international watercourses. The discussions of his first report in the Commission during its thirty-fifth session, in 1983,² and in the Sixth Committee of the General Assembly at its thirty-eighth session,³ were extremely helpful to the Special Rapporteur in that respect. But those discussions also seemed to imply that the Special Rapporteur had not been entirely successful in striking the necessary balance between the interests involved.

4. The discussions in the Commission as well as in the Sixth Committee were of a preliminary nature. That was due to the preliminary nature of the text presented to those organs as well as from the magnitude and complexity of the topic. Thus it seems difficult to draw too absolute conclusions from those discussions, as the purpose of submitting preliminary draft articles was to obtain the reaction of the Commission to such tentative articles. However, the Special Rapporteur received invaluable guidance from the discussions not only in the form of general comments, but also in the form of concrete proposals on specific issues and formulations.

5. As to the more general questions and issues discussed, the approach of a *framework agreement* seemed to have considerable support. But it was also stressed that the drawing up of a framework agreement was a delicate task. In formulating the general principles and the concrete articles of a convention on the non-navigational uses of international watercourses, that fact must constantly be taken into consideration.

¹ *Yearbook* . . . 1983, vol. II (Part One), p. 155, document A/CN.4/367.

² *Yearbook* . . . 1983, vol. II (Part Two), pp. 65 *et seq.*, paras. 207-260.

³ See "Topical summary, prepared by the Secretariat, of the discussion in the Sixth Committee on the report of the Commission during the thirty-eighth session of the General Assembly" (A/CN.4/L.369), sect. F.

6. At the same time, it was repeatedly emphasized that each international watercourse had its distinctive characteristics and thus its specific and unique set of problems, both those deriving from the hands of mother nature and those arising from the political, economic and legal issues involved. But international watercourses also have common features and follow general laws which likewise will make their imprint on the management, administration and use of international watercourses. Thus, in drawing up a draft convention on this topic, it seems essential to recognize and accept the common features of international watercourses, but also to accept the limitations to the venture of drawing up an international instrument on international watercourses on account of the unique features of each watercourse. Consequently the Special Rapporteur agrees that specific watercourse agreements pertaining to a special watercourse of parts thereof, to the watercourses of a region or to special activities in or uses of watercourses, may frequently be required for the satisfactory administration and management of international watercourses. Nevertheless, such concrete approaches to specific watercourses or specific problems do not make a general framework agreement on the topic superfluous. A framework convention should accept the necessity and validity of such specific watercourse agreements, whether concluded prior or subsequent to the adoption of a general convention on the non-navigational uses of international watercourses.

7. As stated by the previous Special Rapporteur, Mr. Schwebel, in his first report, submitted to the Commission at its thirty-first session, in 1979:

One of the problems that must be faced in drafting articles on the law of the uses of international watercourses is the immense diversity of international river systems. In size, they range from such enormous systems as the Congo, the Amazon, the Mississippi and the Ganges, all of which drain more than 1 million square kilometres, to the smallest of streams. Many are located in arid parts of the earth . . . Many others are in water surplus areas, so that the major concern is not too little water but too much . . . In short, there are international watercourses in almost every part of the world, and this means that their physical characteristics and the human needs they serve are subject to the same extreme variations as are found in other respects throughout the world.

Each watercourse is unique. Each has a special congeries of uses which differs from that of any other system. One may be used principally for drinking and household purposes, another for irrigation, a third for industrial production and a fourth for hydroelectric production. Normally, of

course, a river serves—or has the potential for serving—a variety of uses. . . .⁴

In the discussions in the Commission as well as in the Sixth Committee of the General Assembly, the importance of preparing a general convention on the non-navigational uses of international watercourses was acknowledged. But the importance of preserving the validity of existing specific watercourse agreements and the possibility of concluding such agreements in the future as necessary elements in the law of international watercourses were likewise emphasized. Thus, as stated by the previous Special Rapporteur in his second report, there is a “need for a method of dealing with watercourse problems that would permit the development of principles of general applicability within a framework sufficiently flexible to allow adaptation to the unique aspects”⁵ of each individual watercourse.

8. The discussion of the present Special Rapporteur’s first report in the Commission as well as in the Sixth Committee in 1983 seems to support the approach chosen by the previous special rapporteurs, as well as by the present Special Rapporteur, that the term “uses” should not be taken in the narrow sense of the term but should also relate to such issues as environmental protection and pollution, prevention and control of water-related hazards, as well as the various aspects thereof.⁶ Considerable attention was focused on drought and its disastrous consequences and on the report of the United Nations Water Conference, held at Mar del Plata, Argentina, in 1977, which drew attention to the fact that “the negative economic impact of water-related natural disasters in developing countries was greater than the total value of all the bilateral and multi-lateral assistance given to these countries.”⁷ In the work towards mitigating the disastrous effects of drought, the co-ordinated development and management of water resources as well as drought forecasting on a long-term basis should be viewed as a key element.⁸

⁴ *Yearbook . . . 1979*, vol. II (Part One), p. 159, document A/CN.4/320, paras. 63-64.

⁵ *Yearbook . . . 1980*, vol. II (Part One), p. 160, document A/CN.4/332 and Add.1, para. 3.

⁶ Document A/CN.4/367 (see footnote 1 above), paras. 60-63.

⁷ See *Report of the United Nations Water Conference, Mar del Plata, 14-25 March 1977* (United Nations publication, Sales No. E.77.II.A.12), p. 112, part three, para. 100.

⁸ Document A/CN.4/367 (see footnote 1 above), para. 63.

CHAPTER II

Introduction

[Chapter I of the draft]

9. In his second report, the Special Rapporteur has attempted to take into consideration the observations made in the course of the discussions in the Commission at its thirty-fifth session, and in the Sixth Committee of the General Assembly at its thirty-eighth session, in 1983.⁹

⁹ See footnotes 2 and 3 above, respectively.

The Special Rapporteur has been somewhat in doubt about how to approach this task.

10. The Special Rapporteur’s first draft was rather voluminous, as it attempted to represent a comprehensive approach to the topic in order to focus attention on concrete issues as well as on concrete formulations. By the same token, his proposals were intended to be of a prelimi-

nary and tentative nature, to be amended and refined extensively as a consequence of the first rounds of a comprehensive debate. However, he had included in his draft the six articles provisionally adopted by the Commission at its thirty-second session, in 1980¹⁰—with some minor changes—as the starting-point for his proposed draft of a convention.

11. In the course of the discussions in the Commission, and especially in the Sixth Committee, those six articles were subjected to close examination, in the same manner as the rest of the proposed articles. The concepts of “watercourse system” and “system States”, in particular, were analysed in considerable detail.

12. The concepts of “international watercourse system”, “system States” and “system agreements” had been introduced by the previous Special Rapporteur in his second report on the topic.¹¹ At its thirty-second session, in 1980, the Commission endorsed the “international watercourse system” concept in the note it adopted describing its tentative understanding of what was meant by the term “international watercourse system” (see para. 21 below), and in articles 1 to 4 which it provisionally adopted at the same session.

13. The concepts of “international watercourse system”, “system States” and “system agreements” were likewise applied by the present Special Rapporteur in the draft convention proposed in his first report. However, in that context the Special Rapporteur emphasized that, in his opinion:

... a definition of international watercourses based on a doctrinal approach to the topic would be counter-productive, whether the definition is based on the drainage basin concept or on other concepts of a doctrinal nature. The definition of the term “international watercourse” should not have as its purpose to create a superstructure from which to distil or extract legal principles. Such an approach would defy the purpose of drafting principles of general applicability that were sufficiently flexible “to allow adaptation to the unique aspects” of each individual international watercourse.¹²

He stressed, however, that it might be useful to attempt to formulate a definition of an international watercourse for the purposes of the draft convention.

14. The Special Rapporteur reverted to that question in his comments to article 1, entitled “Explanation (definition) of the term ‘international watercourse system’ as applied in the present Convention”. He stated, *inter alia*:

For several reasons, the concept of “international drainage basin” met with opposition in the discussions both of the Commission and of the Sixth Committee of the General Assembly. Concern was expressed that “international drainage basin” might imply a certain doctrinal approach to all watercourses regardless of their special characteristics and regardless of the wide variety of issues of special circumstances of each case. It was likewise feared that the “basin” concept put too much emphasis on the land areas within the watershed, indicating that the physical land area of a basin might be governed by the rules of international water resources law.¹³

15. The purpose of introducing and adopting the con-

cepts of “international watercourse system”, “system States” and “system agreements” was to apply terms that would not be exposed to the reservation and criticism with which the concept “international drainage basin” had been met. But those efforts did not seem entirely successful. Certain doubts were raised at the thirty-fifth session of the Commission.

16. A number of representatives in the Sixth Committee commended the approach adopted with regard to article 1, which had been drafted in a purely descriptive manner and from which no legal rules could be deduced. The expressions “international watercourse system” and “system States” should be considered as convenient descriptive tools from which no legal rules or principles could be deduced. However, others maintained that the terms “watercourse system” and “system States” were not distinguishable to any appreciable extent from the “drainage basin” concept, and should therefore be avoided. Furthermore, according to those representatives, no practical advantage seemed to arise from the use of the “watercourse system” concept. It was likewise stressed that the “unitary approach” inherent in the “drainage basin” concept did not differ much from the approach inherent in the “watercourse system” concept.¹⁴

17. Other representatives, however, maintained that the approach adopted in the draft, based on the concepts of “watercourse system” and “system States”, was an objective and valuable approach that should not be lightly abandoned.¹⁵

18. The drafting of a convention on the topic under consideration involves political as well as legal aspects. In order to achieve the aim of conceiving a draft framework convention broadly acceptable to the international community, the political aspects of the task should not be underestimated. The discussions in the Sixth Committee of the General Assembly in 1983 seem to indicate that the use of the “system” concept approach may be a serious hurdle in the search for a generally acceptable instrument. Admittedly, the discussions of a preliminary draft are in themselves of a preliminary character. Even so, the Special Rapporteur deems that it might be advisable to indicate certain changes and amendments in the preliminary draft in order to ascertain whether such possible “refinements” will be accepted as improvements of the text or will be met with new reservations or additional criticism, implying that they would give little or no assurance of making the draft more generally acceptable.

19. Accordingly, in the present report, the Special Rapporteur tentatively suggests some changes in and amendments to articles of the draft convention contained in his first report. On the basis of the discussions in the Commission and the Sixth Committee, the outline of the draft and of the chapters has been slightly restructured. Some additional articles have likewise been included in the draft.

ARTICLE I. Explanation (definition) of the term “international watercourse” as applied in the present Convention

20. At the time of the provisional adoption, at its thirty-

¹⁰ *Yearbook* . . . 1980, vol. (Part Two), pp. 110 *et seq.*

¹¹ *Yearbook* . . . 1980, vol. II (Part One), p. 159, document A/CN.4/332 and Add.1.

¹² Document A/CN.4/367 (see footnote 1 above), para. 14.

¹³ *Ibid.*, para. 71.

¹⁴ See “Topical summary . . .” (A/CN.4/L.369), paras. 379-380 and 385-386.

¹⁵ *Ibid.*, para. 396.

second session, in 1980, of six articles (arts. 1 to 5 and X), the Commission felt that discussions had not yet reached a sufficiently advanced stage to provide for a definition. Consequently, it confined its provisional efforts to a descriptive note giving concrete indications and introducing the concepts of "watercourse system" and "international watercourse system".¹⁶

21. The note adopted by the Commission indicated the Commission's tentative understanding of what was meant by the term "international watercourse system". It provided as follows:

A watercourse system is formed of hydrographic components such as rivers, lakes, canals, glaciers and ground water constituting by virtue of their physical relationship a unitary whole; thus, any use affecting waters in one part of the system may affect waters in another part.

An "international watercourse system" is a watercourse system, components of which are situated in two or more States.

To the extent that parts of the waters in one State are not affected by or do not affect uses of waters in another State, they shall not be treated as being included in the international watercourse system. Thus, to the extent that the uses of the waters of the system have an effect on one another, to that extent the system is international, but only to that extent; accordingly, there is not an absolute, but a relative, international character of the watercourse.¹⁷

22. In article 1 of his first report, the Special Rapporteur provided an "Explanation (definition) of the term 'international watercourse system' as applied in the present Convention". As stated above (para. 16), the use of the terms "international watercourse system" and "system States" met with considerable opposition in the discussions in the Sixth Committee. As a consequence, the Special Rapporteur has made an attempt to reformulate article 1 and subsequent articles in order to ascertain whether the aforementioned terms are necessary or useful.¹⁸

23. The Special Rapporteur tentatively proposes the following amended text¹⁹ of article 1:

¹⁶ *Yearbook . . . 1980*, vol. II (Part Two), p. 108, para. 89.

¹⁷ *Ibid.*, para. 90.

¹⁸ All changes (amendments, additions or deletions) made to the original text of the draft are shown in italics in the titles of chapters and in the body of the text, and in roman type in the titles of articles.

¹⁹ See footnote 18 above.

Article 1 as presented in the first report read as follows:

"CHAPTER I. INTRODUCTORY ARTICLES

"Article 1. Explanation (definition) of the term "international watercourse system" as applied in the present Convention

"1. An 'international watercourse system' is a watercourse system ordinarily consisting of fresh water components, situated in two or more system States.

"Watercourses which in whole or in part are apt to appear and disappear more or less regularly from seasonal or other natural causes such as precipitation, thawing, seasonal avulsion, drought or similar occurrences are governed by the provisions of the present Convention.

"Deltas, river mouths or other similar formations with brackish or salt water forming a natural part of an international watercourse system shall likewise be governed by the provisions of the present Convention.

"2. To the extent that a part or parts of a watercourse system situated in one system State are not affected by or do not affect uses of the watercourse system in another system State, such parts shall not be treated as part of the international watercourse system for the purposes of the present Convention".

CHAPTER I

INTRODUCTORY ARTICLES

Article 1. Explanation (definition) of the term "international watercourse" as applied in the present Convention

1. *For the purposes of the present Convention, an "international watercourse" is a watercourse—ordinarily consisting of fresh water—the relevant parts or components of which are situated in two or more States (watercourse States).*

2. *To the extent that components or parts of the watercourse in one State are not affected by or do not affect uses of the watercourse in another State, they shall not be treated as being included in the international watercourse for the purposes of the present Convention.*

3. *Watercourses which in whole or in part are apt to appear and disappear (more or less regularly) from seasonal or other natural causes such as precipitation, thawing, seasonal avulsion, drought or similar occurrences are governed by the provisions of the present Convention.*

4. *Deltas, river mouths and other similar formations with brackish or salt water forming a natural part of an international watercourse shall likewise be governed by the provisions of the present Convention.*

24. In proposing this new formulation of article 1, the Special Rapporteur has relied heavily on the note provisionally adopted by the Commission in 1980 (see para. 21 above). For the reasons already indicated, the Special Rapporteur has deleted, in his amended version of article 1, any reference to "watercourse system" or "system States", etc. He likewise considers it useful to emphasize that the explanations of terms given in the draft are solely "for the purposes of the present Convention". Furthermore, the Special Rapporteur feels that it may not be useful, in the text of article 1, to make reference to the "hydrographic components such as rivers, lakes, canals, glaciers and ground water constituting by virtue of their physical relationship a unitary whole". The Special Rapporteur feels that such an express reference in the article may once more open up the discussion of the merits of the "drainage basin" concept or "watercourse system" concept in connection with the ongoing attempts to formulate a broadly acceptable framework agreement. It goes without saying that the Special Rapporteur accepts as a fact that international watercourses have a wide variety of "source components". They may, *inter alia*, include rivers, lakes, canals, tributaries, streams, brooks and springs, glaciers and snow-capped mountains, swamps, ground water and other types of aquifers. But the nature and types of these components as well as their concrete relevance will vary from watercourse to watercourse, from region to region.

25. Consequently the Special Rapporteur considers that a more flexible approach is to make a broad reference to the relevant components and parts only, and then in the commentary to the article to refer to various types of such components, without attempting of course to give an exhaustive enumeration. The relative importance of the various components may of course vary with the uses and

problems involved. Thus pollution problems, especially the problems of persistent and dangerous pollutants, may be more relevant in regard to a wider variety of components and over wider areas than other problems, thus again enhancing the relevancy of components.

Specific ground-water aspects

26. In concluding his observations on article 1, the Special Rapporteur will devote a few paragraphs to the aspect of ground water and aquifers. Ground water, as mentioned above, forms an important component of international watercourses at their source as well as along the entire course or part of the course of such rivers. However, in many areas of the earth underground water deposits have become or have the potential to become major water resources for human use in one way or another. Mention may be made of desert areas like the Sahara region or arid areas like the Sonora and Arizona border regions of Mexico and the United States of America. Especially in border regions, the increasing demand for water and improved technology for drilling for untapped ground-water resources create conflicts or possibilities of potential conflicts over transboundary ground-water resources independently of the existence of international watercourses. These problems are sometimes related to the increased pollution of international watercourses, such as the salinization of the Colorado River in Arizona. That pollution caused considerable damage to Mexican agriculture in the Sonora region and resulted *inter alia*, in the drilling of a major field of deep water wells by the Mexican authorities in the San Luis area with the capacity to extract some 160,000 acre feet (197,358,000 cubic metres) of water annually. As the waters thus used belonged to a transboundary ground-water resource, the project threatened to reduce the ground-water resources on the United States side of the border if indiscriminately drawn on.

27. The United States-Mexican International Boundary and Water Commission, which had dealt with this problem in 1944,²⁰ acknowledged in its recommendation (minute 242 of 30 August 1973) that ground-water exploitation had become a major new issue in Mexican-United States relations. The recommendation sought to limit the annual extraction of transboundary ground water by each nation to a maximum level of 160,000 acre feet (197,358,000 cubic metres).²¹

28. The International Boundary and Water Commission considered its recommendation as a tentative and interim measure pending the conclusion of a comprehensive agreement on ground water in the border area. The Commission

²⁰ Originally established in 1889 as the International Boundary Commission whose original functions were limited to boundary adjustments, its jurisdiction was gradually expanded to the development and management of water resources, including storage, diversion, flood control, channel rectifications, sewage and sanitation controls, salinity control and hydroelectric power production. See the Treaty of 3 February 1944 between the United States of America and Mexico (United Nations, *Treaty Series*, vol. 3, p. 313).

²¹ See United States of America, *The Department of State Bulletin*, vol. LXIX, No. 1787, 24 September 1973, pp. 395-396. See also S. P. Mumme, "The U.S.-Mexican conflict over transboundary ground waters: some institutional and political considerations", *Case Western Reserve Journal of International Law* (Cleveland, Ohio), vol. 12, No. 3, (1980), p. 505.

foresaw additional ground-water conflicts in at least six other hydrological regions located throughout the length of the United States-Mexican border.²²

29. The conservation and management of transboundary ground-water resources have much in common with the management and administration of international watercourses. Admittedly, ground-water resources will to a large extent be a relevant component or part of an international watercourse and should as such fall under the applicable rules and principles laid down in a framework convention on the non-navigational uses of international watercourses.

30. On the other hand, ground-water resources may form totally independent resources unrelated to a specific surface watercourse. Especially in deserts and arid areas, such resources may be of paramount importance and must be conserved and managed with wisdom and scientific knowledge. It must be admitted that neither general principles of international law nor specific instruments of international law are sufficiently developed to meet adequately these problems and conflict areas in general. The principles and rules elaborated in a framework convention and in specific watercourse agreements may have a bearing on or be analogously applied to independent ground-water resources. But the Special Rapporteur holds the view that the present elaboration of a watercourse convention should not attempt to include such special resources under its general domain, nor should special provisions be included in such an instrument to regulate such specific resources.²³

ARTICLE 2. Scope of the present Convention

31. As stated in the first report,²⁴ the proposed article 2 corresponded to article 1 provisionally adopted by the Commission at its thirty-second session, in 1980. The discussion in the Sixth Committee in 1983 revealed no major reservations to the article as proposed in the first report.

32. Taking* into account the adjustments explained above, article 2 as amended²⁵ reads as follows:

²² Mumme, *loc. cit.*, p. 506.

²³ For an interesting examination, see "Studies of shared ground-water resources in North-East Africa", prepared by the Ministry of Irrigation of Egypt, presented at the Interregional Meeting of International River Organizations, convened by the United Nations at Dakar, Senegal, from 5 to 14 May 1981, and included in the proceedings of the Meeting: United Nations, *Experiences in the Development and Management of International River and Lake Basins*, Natural Resources/Water Series No. 10 (Sales No. E.82.II.A.17), p. 303, part three: "Selected papers prepared by international river organizations, Governments and intergovernmental organizations."

²⁴ Document A/CN.4/367 (see footnote 1 above), para 76.

²⁵ See footnote 18 above.

Article 2 as presented in the first report read as follows:

"Article 2. Scope of the present Convention

"1. The present Convention applies to uses of international watercourse systems and of their waters for purposes other than navigation and to measures of administration, management and conservation related to the uses of those watercourse systems and their waters.

"2. The use of the waters of international watercourse systems for

(Continued on next page.)

Article 2. Scope of the present Convention

1. The present Convention applies to uses of international *watercourses* and of their waters for purposes other than navigation and to measures of administration, management and conservation related to the uses of those *watercourses* and their waters.

2. The use of the waters of international *watercourses* for navigation is not within the scope of the present Convention except in so far as other uses of the waters affect navigation or are affected by navigation.

ARTICLE 3. Watercourse States

33. As stated in the first report,²⁶ article 3 on system States proposed by the Special Rapporteur corresponded to article 2 provisionally adopted by the Commission at its thirty-second session, in 1980. The article contained a definition of the term "system State". If the concepts of "watercourse system" and "system States" are abandoned, the question arises whether the article should be deleted as superfluous. The Special Rapporteur holds the opinion that tentatively the article should be retained but amended so as to give a definition of "watercourse States" instead of "system States". The Special Rapporteur has introduced a minor additional amendment in order to make it clear that no legal rules or principles could be deduced from this article.

34. Article 3 as amended²⁷ provides as follows:

Article 3. Watercourse States

For the purposes of the present Convention, a State in whose territory *relevant components or parts* of the waters of an international *watercourse* exist is a *watercourse State*.

35. The reference to "relevant component or parts" is intended to convey the opinion hereinbefore expressed that each watercourse is unique, as it has unique features of its own. What should be considered as "relevant components or parts" must be decided in each separate case.

ARTICLE 4. Watercourse agreements

36. Article 4, on "system agreements", proposed in the first report, was taken verbatim from article 3 provisionally adopted by the Commission at its thirty-second ses-

(Footnote 25 continued.)

navigation is not within the scope of the present Convention except in so far as other uses of the waters affect navigation or are affected by navigation."

²⁶ Document A/CN.4/367 (see footnote 1 above), para. 77.

²⁷ See footnote 18 above.

Article 3 as presented in the first report read as follows:

"Article 3. System States

"For the purposes of the present Convention, a State in whose territory components/part of the waters of an international watercourse system exist[s] is a system State."

sion in 1980. Certain proposals for drafting changes were put forward during the discussions of the first report in the Commission and in the Sixth Committee. Among criticisms of a substantive nature, the concern was expressed that the formulation contained in paragraph 1 that "A system agreement is an agreement between two or more system States which applies and adjusts the provisions of the present Convention . . ." seemed to imply a degradation of previously concluded watercourse agreements. Possibly it implied that already existing agreements must be re-evaluated and adjusted to the provisions of the draft convention. It was not the purpose of that formulation to establish such a hard and fast rule.

37. In the light of amendments already made in the preceding draft articles and the observations made concerning article 4 in the discussions, the Special Rapporteur proposes an amended text,²⁸ as follows:

Article 4. Watercourse agreements

1. *Nothing in the present Convention shall prejudice the validity and effect of a special watercourse agreement or special watercourse agreements which, taking into account the characteristics of the particular international watercourse or watercourses concerned, provide measures for the reasonable and equitable administration, management, conservation and use of the international watercourse or watercourses concerned or relevant parts thereof.*

The provisions of this article apply whether such special agreement or agreements are concluded prior to or subsequent to the entry into force of the present Convention for the watercourse States concerned.

2. *A special watercourse agreement should define the waters to which it applies. It may be entered into with respect to an international watercourse in its entirety, or with respect to any part thereof or particular project, programme or use, provided that the use by one or more other watercourse States of the waters of such international watercourse is not, to an appreciable extent, affected adversely.*

3. *In so far as the uses of an international watercourse may require, watercourse States shall negotiate in good faith for the purpose of concluding one or more watercourse agreements or arrangements.*

38. The new formulations proposed in article 4, paragraph 1, should alleviate any misgivings as to whether

²⁸ See footnote 18 above.

Article 4 as presented in the first report read as follows:

"Article 4. System agreements

"1. A system agreement is an agreement between two or more system States which applies and adjusts the provisions of the present Convention to the characteristics and uses of a particular international watercourse system or part thereof.

"2. A system agreement shall define the waters to which it applies. It may be entered into with respect to an entire international watercourse system, or with respect to any part thereof or particular project, programme or use, provided that the use by one or more other system States of the waters of an international watercourse system is not, to an appreciable extent, affected adversely.

"3. In so far as the uses of an international watercourse system may require, system States shall negotiate in good faith for the purpose of concluding one or more system agreements."

States parties to the convention should have the obligation to change or readjust special watercourse agreements and be obliged to draft possible new agreements in strict compliance with the provisions of the framework convention. The Special Rapporteur will not in this context enter into an examination of the question to what extent the convention—especially when entering into force—should be considered as *jus cogens* for special watercourse agreements. Great caution should, in the opinion of the Special Rapporteur, be exercised, especially in claiming that special watercourse agreements in force must be re-examined in the light of the provisions of the framework convention.

39. In the opinion of the Special Rapporteur, considerable restraint should be demonstrated in regard to allegations that special watercourse agreements concluded in good faith subsequent to the entry into force of the framework convention would have to apply and adjust the provisions of the framework convention to a special watercourse agreement or arrangement if the States parties held a different opinion. This view has been expressed in the new formulations suggested in paragraph 1 of article 4.

40. Minor amendments have been made to paragraphs 2 and 3 of article 4 on the basis of the discussions in 1983.

ARTICLE 5. Parties to the negotiation and conclusion of watercourse agreements

41. As stated in the first report,²⁹ the proposed article 5 corresponds verbatim to article 4 provisionally adopted by the Commission at its thirty-second session, in 1980. The underlying principle of the article, namely that any watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement concerning the watercourse as a whole, was discussed. In the Sixth Committee, some representatives objected to the adoption of this notion as a general principle. The very nature of the issues involved in managing and controlling international watercourses and the obvious need for close co-operation between watercourse nations seem, however, to justify the inclusion of this principle.

42. The more limited principle contained in paragraph 2 of article 5, namely that a watercourse whose rights or interests may be affected “to an appreciable extent” by an agreement between other watercourse States with regard to a part of a watercourse, or to a particular programme or

²⁹ Document A/CN.4/367 (see footnote 1 above), para. 79.

use, shall have a right to participate in such negotiations, seems likewise justified. The wording of paragraph 2 provides that such a State has the right to participate in the negotiations in order to make its concerns known to the negotiating States. But contrary to paragraph 1, paragraph 2 contains no express provision to the effect that such a State is entitled to become a party to the said special agreement. However, the last words of paragraph 2, referring to article 4 on special watercourse agreements, seems to becloud somewhat this interpretation. The Special Rapporteur proposes that the reference to article 4 should be deleted. The reference in the article to “system agreements” must likewise be adjusted.

43. The Special Rapporteur furthermore holds the opinion that the legal standard “to an appreciable extent”, stated in paragraph 2, is preferable to formulations such as “to a substantial extent”, etc. Whatever standard is used, a concrete evaluation must take place in each instance.

44. Accordingly, the Special Rapporteur proposes an amended text,³⁰ as follows:

Article 5. Parties to the negotiation and conclusion of watercourse agreements

1. Every *watercourse State* is entitled to participate in the negotiation of and to become a party to any *watercourse agreement* that applies to that international *watercourse* as a whole.

2. A *watercourse State* whose use of the waters of an international *watercourse* may be affected to an appreciable extent by the implementation of a proposed *watercourse agreement* that applies only to a part of the *watercourse* or to a particular project, programme or use is entitled to participate in the negotiation of such an agreement, to the extent that its use is thereby *affected*.

³⁰ See footnote 18 above.

Article 5 as presented in the first report read as follows:

“Article 5. Parties to the negotiation and conclusion of system agreements

“1. Every system State of an international watercourse system is entitled to participate in the negotiation of and to become a party to any system agreement that applies to that international watercourse system as a whole.

“2. A system State whose use of the waters of an international watercourse system may be affected to an appreciable extent by the implementation of a proposed system agreement that applies only to a part of the system or to a particular project, programme or use is entitled to participate in the negotiation of such an agreement, to the extent that its use is thereby affected, pursuant to article 4 of the present Convention.”

CHAPTER III

General principles, rights and duties of watercourse States

[Chapter II of the draft]

45. The Special Rapporteur dealt with the general principles and the rights and duties of “system” States in chapter II of the draft convention presented in the first report. Fruitful exchanges of views took place in 1983 in

the Commission, at its thirty-fifth session, and subsequently in the Sixth Committee of the General Assembly, at its thirty-eighth session.

46. A certain refinement in the general outline of the draft

convention was proposed. Thus it was suggested that articles 11 to 14, on notification, procedures in case of protest, etc., belonged in the chapter on general principles rather than in chapter III, on co-operation and management in regard to international watercourses. The Special Rapporteur has considered these proposals, but has come to the conclusion that it is preferable to retain a chapter on general principles with regard to rights and obligations and to assemble the more detailed and procedural articles on management and co-operation in chapter III.

47. As to the substance, considerable doubt and opposition were expressed with regard to the concept of the waters of a watercourse being a "shared natural resource". In that context, it was suggested that the Special Rapporteur had not been successful in expressing the basic principle of sovereignty, to the effect that States had the right to utilize the waters of a watercourse system within their territories pursuant to their needs provided that they did not thereby cause damage or harm to the rights and interests of other States. In the present report, the Special Rapporteur has tried to meet these reservations with certain amendments to article 6.

ARTICLE 6. General principles concerning the sharing of the waters of an international watercourse

48. In article 6 as initially proposed, and entitled "The international watercourse system—a shared natural resource. Use of this resource", the Special Rapporteur introduced the concept of the international watercourse system as a "shared natural resource". That article, with some minor changes, was taken almost verbatim from article 5 as provisionally adopted by the Commission at its thirty-second session, in 1980. In view of the opposition to the concept of an international watercourse as a "shared natural resource" expressed by a number of representatives during the discussions on the first report, it seems doubtful whether it will prove conducive to the attainment of a generally acceptable convention to retain that concept in the form in which it was expressed in article 6. In the light of those discussions, the Special Rapporteur has also deemed it useful to lay down expressly the obvious starting-point that a State within its territory has the right to a fair and equitable share of the uses of the waters of an international watercourse.

49. As a consequence, the Special Rapporteur proposes an amended text,³¹ as follows:

³¹ See footnote 18 above.

Article 6 as presented in the first report read as follows:

"CHAPTER II
"GENERAL PRINCIPLES: RIGHTS AND DUTIES
OF SYSTEM STATES

*"Article 6. The international watercourse system —
a shared natural resource. Use of this resource*

"1. To the extent that the use of an international watercourse system and its waters in the territory of one system State affects the use of a watercourse system or its waters in the territory of another system State or other system States, the watercourse system and its waters are, for the purposes of the present Convention, a shared natural resource. Each system State is entitled to a reasonable and equitable participation (within its territory) in this shared resource.

CHAPTER II

GENERAL PRINCIPLES, RIGHTS AND
DUTIES OF WATERCOURSE STATES

*Article 6. General principles concerning the
sharing of the waters of an international watercourse*

1. *A watercourse State is, within its territory, entitled to a reasonable and equitable share of the uses of the waters of an international watercourse.*

2. *To the extent that the use of the waters of an international watercourse within the territory of one watercourse State affects the use of the waters of the watercourse in the territory of another watercourse State, the watercourse States concerned shall share in the use of the waters of the watercourse in a reasonable and equitable manner in accordance with the articles of the present Convention and other agreements and arrangements entered into with regard to the management, administration or uses of the international watercourse.*

50. Article 6 expresses a basic principle which, in article IV of the Helsinki Rules on the Uses of the Waters of International Rivers of 1966,³² has been expressed as follows as far as the drainage basin concept is concerned:

Each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin.

51. Paragraph 1 of the proposed text is new. Paragraph 2 uses to some extent the wording of the original paragraphs 1 and 2. The formulation "watercourse system" as "a shared natural resource" has not been retained, for the reasons mentioned above. Certain observations contained in the commentary to the original article 6³³ also seem pertinent, to some extent, to the amended text.

ARTICLE 7. Equitable sharing in the uses of the waters of an international watercourse

52. In article 7 proposed in his first report, the Special Rapporteur introduced provisions concerning the "equitable sharing in the uses of an international watercourse system and its waters". The article was a corollary to article 6. In view of the amendments to article 6 and the discussions on the first report in 1983, the Special Rapporteur proposes an amended text,³⁴ as follows:

"2. An international watercourse system and its waters which constitute a shared natural resource shall be used by system States in accordance with the articles of the present Convention and other agreements or arrangements entered into in accordance with articles 4 and 5."

³² Rules adopted by the International Law Association at its Fifty-second Conference, held at Helsinki in 1966. See ILA, *Report of the Fifty-second Conference, Helsinki, 1966* (London, 1967), pp. 484 *et seq.* See also *Yearbook ... 1974*, vol. II (Part Two), pp. 387 *et seq.*, document A/CN.4/274, para. 405.

³³ Document A/CN.4/367 (see footnote 1 above), paras. 83-84.

³⁴ See footnote 18 above.

Article 7 as presented in the first report read as follows:

Article 7. Equitable sharing in the uses of the waters of an international watercourse

The waters of an international watercourse shall be developed, used and shared by watercourse States in a reasonable and equitable manner on the basis of good faith and good-neighbourly relations with a view to attaining optimum utilization thereof consistent with adequate protection of the international watercourse and its components.

53. The amendments made to draft article 7 are minor. By and large, the commentary to the article contained in the first report³⁵ is applicable to the amended text.

ARTICLE 8. Determination of reasonable and equitable use

54. In the view of the Special Rapporteur, article 8, on determination of reasonable and equitable use of an international watercourse, is a useful corollary to the legal standard set forth in article 7. Although not exhaustive, the enumeration of factors contained in article 8 provides elements for a better understanding of the content, nature and interpretation of the legal standard applied in article 7.

55. On the basis of the 1983 discussions and the ideas set forth at that time, the Special Rapporteur proposes an amended text,³⁶ as follows:

"Article 7. Equitable sharing in the uses of an international watercourse system and its waters

"An international watercourse system and its waters shall be developed, used and shared by system States in a reasonable and equitable manner in accordance with article 7, all relevant factors shall be taken into account, whether they are of a general nature or specific for the watercourse system concerned, with adequate protection and control of the watercourse system and its components."

³⁵ Document A/CN.4/367 (See footnote 1 above), paras. 87-93.

³⁶ See footnote 18 above.

Article 8 as presented in the first report read as follows:

"Article 8. Determination of reasonable and equitable use

"1. In determining whether the use by a system State of a watercourse system or its waters is exercised in a reasonable and equitable manner in accordance with article 7, all relevant factors shall be taken into account, whether they are of a general nature or specific for the watercourse system concerned. Among such factors are:

"(a) the geographic, hydrographic, hydrological and climatic factors together with other relevant circumstances pertaining to the watercourse system concerned;

"(b) the special needs of the system State concerned for the use or uses in question in comparison with the needs of other system States, including the stage of economic development of all system States concerned;

"(c) the contribution by the system State concerned of waters to the system in comparison with that of other system States;

"(d) development and conservation by the system State concerned of the watercourse system and its waters;

"(e) the other uses of a watercourse system and its waters by the State concerned in comparison with the uses by other system States, including the efficiency of such uses;

"(f) co-operation with other system States in projects or programmes to attain optimum utilization, protection and control of the watercourse system and its waters;

Article 8. Determination of reasonable and equitable use

1. In determining whether the use by a watercourse State of the waters of an international watercourse is exercised in a reasonable and equitable manner in accordance with article 7, all relevant factors shall be taken into account, whether they are of a general nature or specific for the international watercourse concerned. Among such factors are:

(a) the geographic, hydrographic, hydrological and climatic factors together with other relevant circumstances pertaining to the watercourse concerned;

(b) the special needs of the watercourse State concerned for the use or uses in question in comparison with the needs of other watercourse States;

(c) the attainment of a reasonable and equitable balance between the relevant rights and interests of the watercourse States concerned;

(d) the contribution by the watercourse State concerned of waters to the international watercourse in comparison with that of other watercourse States;

(e) development and conservation by the watercourse State concerned of the international watercourse and its waters;

(f) the other uses of the waters of an international watercourse by the State concerned in comparison with the uses by other watercourse States, including the efficiency of such uses;

(g) co-operation with other watercourse States in projects or programmes to obtain optimum utilization, protection and control of the watercourse and its waters, taking into account cost-effectiveness and the costs of alternative projects;

(h) pollution by the watercourse State or States concerned of the international watercourse in general or as a consequence of the particular use, if any;

(i) other interference with or adverse effects, if any, of such use for the uses, rights or interests of other watercourse States including, but not restricted to, the adverse effects upon existing uses by such States of the waters of the inter-

"(g) the pollution by the system State in question of the watercourse system in general and as a consequence of the particular use, if any;

"(h) other interference with or adverse effects, if any, of such use for the uses or interests of other system States including, but not restricted to, the adverse effects upon existing uses by such States of the watercourse system or its waters and the impact upon protection and control measures of other system States;

"(i) availability to the State concerned and to other system States of alternative water resources;

"(j) the extent and manner of co-operation established between the system State concerned and other system States in programmes and projects concerning the use in question and other uses of the international watercourse system and its waters in order to attain optimum utilization, reasonable management, protection and control thereof.

"2. In determining, in accordance with paragraph 1 of this article, whether a use is reasonable and equitable, the system States concerned shall negotiate in a spirit of good faith and good-neighbourly relations in order to resolve the outstanding issues.

"If the system States concerned fail to reach agreement by negotiation within a reasonable period of time, they shall resort to the procedures for peaceful settlement provided for in chapter V of the present Convention."

national watercourse and its impact upon protection and control measures of other *watercourse* States;

(j) availability to the States concerned and to other *watercourse* States of alternative water resources;

(k) the extent and manner of co-operation established between the *watercourse* State concerned and other *watercourse* States in programmes and projects concerning the use in question and other uses of *the waters of the international watercourse* in order to obtain optimum utilization, reasonable management, protection and control thereof.

2. In determining, in accordance with paragraph 1 of this article, whether a use is reasonable and equitable, the *watercourse* States concerned shall negotiate in a spirit of good faith and good-neighbourly relations in order to resolve the outstanding issues.

If the *watercourse* States concerned fail to reach agreement by negotiation within a reasonable period of time, they shall resort to the procedures for peaceful settlement provided for in chapter V of the present Convention.

56. The commentary to article 8 appearing in the first report³⁷ likewise applies to the amended text.

³⁷ Document A/CN.4/367 (see footnote 1 above), paras. 94-98.

ARTICLE 9. Prohibition of activities with regard to an international watercourse causing appreciable harm to other watercourse States

57. The Special Rapporteur proposes an amended text,³⁸ as follows:

Article 9. Prohibition of activities with regard to an international watercourse causing appreciable harm to other watercourse States

A *watercourse* State shall refrain from and prevent (within its jurisdiction) uses or activities with regard to an *international watercourse* that may cause appreciable harm to the rights or interests of other *watercourse* States, unless otherwise provided for in a *watercourse* agreement or other agreement or arrangement.

58. The commentary to article 9 contained in the first report³⁹ is generally applicable to the amended text.

³⁸ See footnote 18 above.

Article 9 as presented in the first report read as follows:

"Article 9. Prohibition of activities with regard to an international watercourse system causing appreciable harm to other system States

"A system State shall refrain from and prevent (within its jurisdiction) uses or activities with regard to a watercourse system that may cause appreciable harm to the rights or interests of other system States, unless otherwise provided for in a system agreement or other agreement."

³⁹ Document A/CN.4/367 (see footnote 1 above), paras. 99-101.

CHAPTER IV

Co-operation and management in regard to international watercourses

[Chapter III of the draft]

59. In chapter III of the draft convention proposed in the first report, the Special Rapporteur dealt with principles relevant to co-operation and management in regard to international watercourses. He expressed the view that co-operation among watercourse States, and the orderly and effective management and administration of such watercourses by States on the basis of co-operation and friendly relations among the States concerned, was a condition for the orderly protection and preservation of such resources in order to obtain optimum utilization of those resources so invaluable for mankind. It is increasingly recognized that such international co-operation and inter-State management and administration are necessary as an international political principle and as a principle of progressive international law as well. This follows, *inter alia*, from the basic tenets of international law and international relations as laid down in the Charter of the United Nations, Article 2, paragraphs 3 and 4, and Article 33, and in the United Nations Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations;⁴⁰ it follows likewise from the principle of good-

⁴⁰ General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

neighbourly relations between States. Furthermore, both the United Nations Water Conference, held at Mar del Plata, Argentina, from 14 to 25 March 1977, and the Inter-regional Meeting of International River Organizations, convened by the United Nations in Dakar, Senegal, from 5 to 14 May 1981, stressed the importance of inter-State co-operation and of the necessary organizational structure at both the international and the regional levels and for specific watercourses.

60. Thus recommendation 85 of the 1977 Mar del Plata Action Plan provides:

85. Countries sharing water resources, with appropriate assistance* from international agencies and other supporting bodies, on the request of the countries concerned*, should review existing and available techniques for managing* shared water resources and co-operate* in the establishment of programmes, machinery and institutions* necessary for the co-ordinated development* of such resources. Areas of co-operation* may with agreement of the parties concerned include planning, development, regulation, management, environmental protection, use and conservation, forecasting, etc.* Such co-operation should be a basic element in an effort to overcome major constraints such as the lack of capital and trained manpower as well as the exigencies of natural resource development.⁴¹

⁴¹ Report of the United Nations Water Conference ... (see footnote 7 above), p. 51, part one.

61. The urgent need for technical and financial support as well as for training possibilities through international agencies was likewise stressed at the Interregional Meeting of International River Organizations held at Dakar in 1981. Thus, in the summary of conclusions reached at the Meeting with regard to progress in co-operative arrangements, it was stated:

12. In the light of the desirability of intensifying exchange of information and experience among international river or lake organizations in various regions, and with a view to promoting greater co-operation between *neighbouring States*,* and where the *interested States request the establishment of new or strengthened institutional arrangements*,* it is desirable that the Secretary-General of the United Nations strengthen the support available within the Department of Technical Co-operation for Development to service the various needs for such organizations and of States concerned.⁴²

62. It was further concluded:

5. *The prevention and mitigation of floods, droughts** and other hazards natural and man-made, are increasingly of concern to the co-operating States because of the numerous changes that are taking place at accelerating rates within the watersheds; therefore, new or strengthened activities must be undertaken to deal effectively with the detrimental effects of water-related hazards and conditions. *The international river and lake organizations are appropriate bodies for initiating studies and recommending measures, contingency plans and warning systems*,* as well as for conducting the necessary ongoing review of conditions and the adequacy of measures undertaken.⁴³

63. In chapters III and IV of the draft convention proposed in his first report, the Special Rapporteur attempted to follow up the ideas and recommendations set forth by the United Nations Water Conference and the Dakar Meeting.

ARTICLE 10. General principles of co-operation and management

64. The Special Rapporteur has the impression, from the 1983 discussions, that this article might probably be generally acceptable. Consequently he has restricted his present efforts to some minor drafting changes, except for a new paragraph 2.

The amended text⁴⁴ reads as follows:

⁴² United Nations, *Experiences in the Development and Management* . . . (see footnote 23 above), p. 15, part one: Report of the Meeting, para. 49, conclusion 12.

⁴³ *Ibid.*, p. 14, para. 49, conclusion 5.

⁴⁴ See footnote 18 above.

Article 10 as presented in the first report read as follows:

"CHAPTER III

"CO-OPERATION AND MANAGEMENT IN REGARD TO INTERNATIONAL WATERCOURSE SYSTEMS

"Article 10. General principles of co-operation and management

"1. System States sharing an international watercourse system shall, to the extent practicable, establish co-operation with regard to uses, projects and programmes related to such watercourse system in order to attain optimum utilization, protection and control of the watercourse system. Such co-operation shall be exercised on the basis of the equality, sovereignty and territorial integrity of all system States.

"2. System States should engage in consultations (negotiations) and

CHAPTER III

CO-OPERATION AND MANAGEMENT IN REGARD TO INTERNATIONAL WATERCOURSES

Article 10. General principles of co-operation and management

1. *Watercourse States sharing an international watercourse shall, to the extent practicable, establish co-operation with regard to uses, projects, programmes, planning and developments related to such watercourse in order to obtain optimum utilization, protection and control of the watercourse. Such co-operation shall be exercised on the basis of the equality, sovereignty and territorial integrity of all the watercourse States concerned.*

2. *For these purposes watercourse States should obtain the appropriate assistance from the United Nations Organization and other relevant international agencies and supporting bodies, at the request of the watercourse States concerned.*

3. *Watercourse States should engage in consultations (negotiations) and the exchange of information and data on a regular basis concerning the administration, management and uses of such watercourse and other aspects of regional interest with regard to relevant watercourses.*

4. *Watercourse States shall, when necessary, establish joint commissions or similar agencies or arrangements as a means of promoting the objects and measures provided for in the present Convention.*

65. The commentary to article 10 appears in the first report.⁴⁵

66. A new paragraph 2 has now been included in order to focus attention on the obvious need for assistance, for example from the United Nations Department of Technical Co-operation for Development, etc. Such possibilities could not be formulated as a hard and fast legal obligation but as an indication of the tasks and institutional challenges of the appropriate organizations and agencies.

ARTICLE 11. Notification to other watercourse States. Content of notification;

ARTICLE 12. Time-limits for reply to notifications;

ARTICLE 13. Procedures in case of protest; and

ARTICLE 14. Failure of watercourse States to comply with the provisions of articles 11 to 13

67. Article 11 on notification and article 12 on time-limits for reply to notifications did not seem controversial in principle, although proposals for improvement both with regard to drafting and substance were put forward during the 1983 discussions. Articles 13 and 14, especially

exchange of information and data on a regular basis concerning the administration and management of such watercourse and other aspects of regional interest with regard to watercourse systems.

"3. System States shall, when necessary, establish joint commissions or similar agencies or arrangements as a means of promoting the measures and objects provided for in the present Convention."

⁴⁵ Document A/CN.4/367 (see footnote 1 above), paras. 107-110.

article 13 on procedures in case of protest, caused wide concern. This was especially the case in relation to the provisions of paragraph 3 of article 13, which seemed to imply that a protesting State had a veto power, or at least the power to postpone for a longer or shorter period of time the construction of a disputed project or programme. The Special Rapporteur has attempted, in the new text he tentatively proposes, to take into consideration the conflicting interests involved on the basis of the above-mentioned exchanges of view.

68. With regard to *article 11*, on notification, the Special Rapporteur has merely made a few minor drafting amendments.

The amended text⁴⁶ reads as follows:

**Article 11. Notification to other watercourse States.
Content of notification**

1. Before a *watercourse* State undertakes, authorizes or permits a project or programme or alteration of or addition to existing projects or programmes with regard to the utilization, regulation, conservation, protection or management of an international *watercourse* which may cause appreciable harm to the rights or interests of another *watercourse* State or other *watercourse* States, the *watercourse* State concerned shall submit at the earliest possible date due notification to the *other* relevant *watercourse* State or States about such project, programme, alteration or addition.

2. The notification shall contain *inter alia* sufficient technical and other necessary specifications, information and data to enable the other *watercourse* State or States to evaluate and determine as accurately as possible the potential for appreciable harm to the rights or interests of the *other watercourse State or States* by such intended project, programme, alteration or addition.

69. The commentary to article 11 is contained in the first report.⁴⁷

70. With regard to *article 12*, on time-limits for reply to notifications, the question was raised whether a time-limit of six months was sufficient for such reply. A reasonable extension of the time-limit has been provided for in paragraph 2 of article 12 in cases where the receiving State deems that additional data, information or specifications

are needed. The Special Rapporteur has now also included the possibility of an extension of the time-limit in article 12, paragraph 1. The provision contained in paragraph 3, to the effect that the notifying State shall not initiate the project or programme during the time-limits, obviously also applies to the extension of time-limits provided for in the above-mentioned paragraphs. Minor drafting amendments have also been made in article 12, the amended text of which⁴⁸ reads as follows:

Article 12. Time-limits for reply to notifications

1. In a notification transmitted in accordance with article 11, the notifying *watercourse* State shall allow the receiving *watercourse* State or States a *reasonable period of time* of not less than six months from the receipt of the notification to study and evaluate the potential for appreciable harm arising from the planned project, programme, alteration or addition and to communicate its reasoned decision to the notifying State.

Should the receiving State or States deem that the time-limit stipulated in the notification is not reasonable due to the complexity of the issues or the magnitude of the work involved or for other reasons, they may request a reasonable extension of the time-limit concerned.

2. Should the receiving *watercourse* State or States deem that additional information, data or specifications are needed for a proper evaluation of the *issues* involved, they shall inform the notifying State to this effect as expeditiously as possible. Justifiable requests for such additional *information*, data or specifications shall be met by the notifying State as expeditiously as possible and the parties shall agree to a reasonable extension of the time-limit set forth in the *notification*.

3. During the time-limits *set forth* in paragraphs 1 and 2 of this article, the notifying State may not initiate the *works* referred to in the notification without the consent of the *notified watercourse* State or States concerned.

⁴⁶ See footnote 18 above.

Article 12 as presented in the first report read as follows:

“Article 12. Time-limits for reply to notification

“1. In a notification transmitted in accordance with article 11, the notifying system State shall allow the receiving system State or States a period of not less than six months from the receipt of the notification to study and evaluate the potential for appreciable harm arising from the planned project or programme and to communicate its reasoned decision to the notifying system State.

“2. Should the receiving system State or States deem that additional information, data or specifications are needed for a proper evaluation of the problems involved, they shall inform the notifying system State to this effect as expeditiously as possible. Justifiable requests for such additional data or specifications shall be met by the notifying State as expeditiously as possible and the parties shall agree to a reasonable extension of the time-limit set forth in paragraph 1 of this article for the proper evaluation of the situation in the light of the available material.

“3. During the time-limits stipulated in paragraphs 1 and 2 of this article, the notifying State may not initiate the project and programme referred to in the notification without the consent of the system State or system States concerned.”

⁴⁶ See footnote 18 above.

Article 11 as presented in the first report read as follows:

*“Article 11. Notification to other system States.
Content of notification*

“1. Before a system State undertakes, authorizes or permits a project or programme or alteration or addition to existing projects and programmes with regard to the utilization, conservation, protection or management of an international *watercourse* system which may cause appreciable harm to the rights or interests of another system State or other system States, the system State concerned shall submit at the earliest possible date due notification to the relevant system State or system States about such projects or programmes.

“2. The notification shall contain *inter alia* sufficient technical and other necessary specifications, information and data to enable the other system State or States to evaluate and determine as accurately as possible the potential for appreciable harm of such intended project or programme.”

⁴⁷ Document A/CN.4/367 (see footnote 1 above), paras. 111-115.

71. The commentary to article 12 is contained in the first report.⁴⁹

72. *Article 13* presented in the first report contained provisions concerning procedures in case of protest. During its consideration in 1983, doubts were raised as to the advisability of the provisions contained in paragraph 3 of the article, on the grounds that they might lead to unacceptable results if a suspension of the initiation of the planned project or programme should be the main guideline in such disputes. The Special Rapporteur has attempted to meet these objections in the following amended text,⁵⁰ which he tentatively proposes:

Article 13. Procedures in case of protest

1. If a *watercourse* State having received a notification in accordance with article 12 informs the notifying State of its determination that the project or programme referred to in the notification may cause appreciable harm to the rights or interests of the State concerned, the parties shall without undue delay commence consultations and negotiations in order to verify and determine the harm which may result from the planned project or programme. They should as far as possible arrive at an agreement with regard to such adjustments and modifications of the project or programme or agree to other solutions which will either eliminate the possible causes for any appreciable harm to the other *watercourse* State or otherwise give such State reasonable satisfaction.

2. If the parties are not able to reach such agreement through consultations and negotiations within a reasonable period of time, they shall without delay resort to the settlement of the dispute by other peaceful means in accordance

⁴⁹ Document A/CN.4/367 (see footnote 1 above), paras. 116-119.

⁵⁰ See footnote 18 above.

Article 13 as presented in the first report read as follows:

"Article 13. Procedures in case of protest

"1. If a system State having received a notification in accordance with article 12 informs the notifying State of its determination that the project or programme referred to in the notification may cause appreciable harm to the rights or interests of the State concerned, the parties shall without undue delay commence consultations and negotiations in order to verify and determine the harm which may result from the planned project or programme. They should as far as possible arrive at an agreement with regard to such adjustments and modifications of the project or programme or agree to other solutions which will either eliminate the possible causes for any appreciable harm to the other system State or otherwise give such State reasonable satisfaction.

"2. If the parties are not able to reach such agreement through consultations and negotiations within a reasonable period of time, they shall without delay resort to the settlement of the dispute by other peaceful means in accordance with the provisions of the present Convention, system agreements or other relevant agreement or arrangement.

"3. In cases where paragraph 1 of this article applies and the outstanding issues have not been resolved by agreement between the parties concerned, the notifying State shall not proceed with the planned project or programme until the provisions of paragraph 2 have been complied with, unless the notifying State deems that the project or programme is of the utmost urgency and that a further delay may cause unnecessary damage or harm to the notifying State or other system States.

"4. Claims for damage or harm arising out of such emergency situations shall be settled in good faith and in accordance with friendly neighbourly relations by the procedures for peaceful settlement provided for in the present Convention."

with the provisions of the present Convention, *watercourse* agreements or other relevant agreement or arrangement.

3. In cases where paragraph 1 of this article applies and *where* the outstanding issues have not been resolved by agreement between the parties concerned, the notifying State *may proceed with the planned project, programme, alteration or addition if that State deems that its rights or interests or the rights or interests of another watercourse State or other watercourse States may be substantially affected by a delay. In such cases the notifying State must proceed with the necessary works in good faith and in a manner conformable with friendly neighbourly relations.*

4. *Disputes and issues arising out of measures taken under paragraph 3 of this article must be settled as expeditiously as possible by the States concerned by means of the procedures for peaceful settlement provided for in chapter V of the present Convention, in relevant watercourse agreements or in other agreements or arrangements.*

73. The proposals set forth in article 13, paragraphs 3 and 4, are basically new proposals, based on the discussions in the Commission and in the Sixth Committee of the General Assembly in 1983.

74. *Article 14* proposed in the first report dealt with the failure of system States to comply with the provisions of articles 11 to 13. The substantive amendments now tentatively proposed to articles 11 to 13 also take account of the observations made with regard to the content and consequences of article 14. Consequently the Special Rapporteur proposes merely minor drafting changes in this article, the amended text of which⁵¹ reads as follows:

Article 14. Failure of watercourse States to comply with the provisions of articles 11 to 13

1. If a *watercourse* State having received a notification pursuant to article 11 fails to communicate to the notifying *watercourse* State within the time-limits provided for in article 12 its determination that the planned project or programme may cause appreciable harm to its rights or interests, the notifying *watercourse* State may proceed with the execution of the project or programme in accordance with

⁵¹ See footnote 18 above.

Article 14 as presented in the first report read as follows:

"Article 14. Failure of system States to comply with the provisions of articles 11 to 13

"1. If a system State having received a notification pursuant to article 11 fails to communicate to the notifying system State within the time-limits provided for in article 12 its determination that the planned project or programme may cause appreciable harm to its rights or interests, the notifying system State may proceed with the execution of the project or programme in accordance with the specifications and data communicated in the notification.

"In such cases the notifying system State shall not be responsible for subsequent harm to the other system State or States, provided that the notifying State acts in compliance with the provisions of the present Convention and provided that it is not apparent that the execution of the project or programme is likely to cause appreciable harm to the other system State or States.

"2. If a system State proceeds with the execution of a project or programme without complying with the provisions of articles 11 to 13, it shall incur liability for the harm caused to the rights or interests of other system States as a result of the project or programme in question."

the specifications and data communicated in the notification.

In such cases the notifying *watercourse* State shall not be responsible for subsequent harm to the other *watercourse* State or States, provided that the notifying State acts in compliance with the provisions of the present Convention and provided that it is not apparent that the execution of the project or programme is likely to cause appreciable harm to the other *watercourse* State or States.

2. If a *watercourse* State proceeds with the execution of a project or programme without complying with the provisions of articles 11 to 13, it shall incur liability for the harm caused to the rights or interests of other *watercourse* States as a result of the project or programme in question.

ARTICLE 15. Management of international watercourses. Establishment of commissions

75. In article 15 presented in the first report, the Special Rapporteur dealt in some detail with the management of international watercourses and the establishment of watercourse commissions. The history of the administration and management of international watercourses reveals a clear trend towards the institutionalization of the machinery for such administration, management and control. This trend is manifest in State practice as well as in the work of United Nations organs. In a paper on "Progress in co-operative arrangements" prepared by Professor Robert D. Hayton for the Interregional Meeting of International River Organizations, held in Dakar in 1981, the trend towards and the scope of river organizations are summed up in the following manner.

The range and effectiveness of the functions and powers vested in existing international river organizations, along with the scope of the treaty régime on which they are predicated, are prime indicators of the progress thus far achieved in key areas of institutionalized co-operation for the development, use and protection of shared water resources. These include, in order of increasing commitment to collaboration: (a) consultation, notification and data collection and exchange; (b) water resources utilization determinations; and (c) basin or system planning. Complementary areas of co-operation include (d) design and execution of projects; (e) design and execution of special programmes for such complex purposes as, *inter alia*, flood control, pollution abatement and drought mitigation; and (f) resolution of differences and formal disputes.⁵²

The first report contains a fuller commentary to article 15, particularly in connection with the joint watercourse commissions⁵³ referred to in paragraph 2 of that article.⁵⁴

76. The Special Rapporteur has made some minor changes in article 15, mainly of a drafting nature. The amended text⁵⁵ reads as follows:

⁵² United Nations, *Experiences in the Development and Management* . . . (see footnote 23 above), p. 66, part two: "Background papers". See also Guillermo J. Cano, "Institutional and legal arrangements", *ibid.*, pp. 44 *et seq.*

⁵³ See also the proceedings of the Dakar Meeting, which include detailed studies on various joint river commissions and other joint river authorities, *ibid.*, pp. 141 *et seq.*, part three: "Selected papers prepared by international river organizations . . .".

⁵⁴ Document A/CN.4/367 (see footnote 1 above), paras. 131-137.

⁵⁵ See footnote 18 above.

Article 15 as presented in the first report read as follows:

Article 15. Management of international watercourses.
Establishment of commissions

1. *Watercourse* States shall, where it is deemed *practical and* advisable for the rational administration, management, protection and control of the *waters* of an international *watercourse*, establish permanent institutional machinery or, where expedient, strengthen existing organizations or organs in order to establish a system of regular meetings and consultations, to provide for expert advice and recommendations and to introduce other *processes and* decision-making procedures for the purposes of promoting *effective and friendly co-operation between the watercourse States concerned with a view to enhancing optimum* utilization, protection and control of the international *watercourse* and its waters.

2. To this end, *watercourse* States should establish, where practical, bilateral, multilateral or regional joint watercourse commissions and agree upon the mode of operation, financing and principal tasks of such commissions.

Such commissions may, *inter alia*, have the following functions:

(a) to collect, verify and disseminate information and data concerning utilization, protection and conservation of the international *watercourse or watercourses*;

(b) to propose and institute investigations and research concerning utilization, protection and control;

(c) to monitor the international *watercourse* on a continuous basis;

"Article 15. Management of international watercourse systems.
Establishment of commissions

"1. System States shall, where it is deemed advisable for the rational administration, management, protection and control of an international watercourse system, establish permanent institutional machinery or, where expedient, strengthen existing organizations or organs in order to establish a system of regular meetings and consultations, to provide for expert advice and recommendations and to introduce other decision-making procedures for the purposes of promoting optimum utilization, protection and control of the international watercourse system and its waters.

"2. To this end system States should establish, where practical, bilateral, multilateral or regional joint watercourse commissions and agree upon the mode of operation, financing and principal tasks of such commissions.

"Such commissions may, *inter alia*, have the following functions:

"(a) to collect, verify and disseminate information and data concerning utilization, protection and conservation of the international watercourse system or systems;

"(b) to propose and institute investigations and research concerning utilization, protection and control;

"(c) to monitor on a continuous basis the international watercourse system;

"(d) to recommend to system States measures and procedures necessary for the optimum utilization and the effective protection and control of the watercourse system;

"(e) to serve as a forum for consultations, negotiations and other procedures for peaceful settlement entrusted to much commissions by system States;

"(f) to propose and operate control and warning systems with regard to pollution, other environmental effects of water uses, natural hazards or other hazards which may cause damage or harm to the rights or interests of system States."

(d) to recommend to *watercourse* States measures and procedures necessary for the optimum utilization and the effective protection and control of the *watercourse*;

(e) to serve as a forum for consultations, negotiations and other procedures for peaceful settlement entrusted to such commissions by *watercourse* States;

(f) to propose and operate control and warning systems with regard to pollution, other environmental effects of water uses, natural hazards or other hazards which may cause damage or harm to the rights or interests of *watercourse* States.

ARTICLE 16. Collection, processing and dissemination of information and data;

ARTICLE 17. Special requests for information and data;

ARTICLE 18. Special obligations in regard to information about emergencies; and

ARTICLE 19. Restricted information

77. The discussions that took place in 1983 would seem to indicate that the provisions on collection, processing and dissemination of information and data contained in *article 16* of the draft convention were broadly acceptable. The Special Rapporteur proposes no substantive amendments to article 16, but only some drafting changes,⁵⁶ as follows:

Article 16. Collection, processing and dissemination of information and data

1. In order to ensure the necessary co-operation between *watercourse* States, the optimum utilization of a *watercourse* and a fair and reasonable distribution of the uses thereof among such States, each *watercourse* State shall, to the extent possible, collect and process the necess-

⁵⁶ See footnote 18 above.

Article 16 as presented in the first report read as follows:

"Article 16. Collection, processing and dissemination of information and data

"1. In order to ensure the necessary co-operation between system States, the optimum utilization of a *watercourse* system and a fair and reasonable distribution of the uses thereof among such States, each system State shall to the extent possible collect and process the necessary information and data available within its territory of a hydrological, hydrogeological or meteorological nature as well as other relevant information and data concerning, *inter alia*, water levels and discharge of water of the *watercourse*, ground water yield and storage relevant for the proper management thereof, the quality of the water at all times, information and data relevant to flood control, sedimentation and other natural hazards and relating to pollution or other environmental protection concerns.

"2. System States shall to the extent possible make available to other system States the relevant information and data mentioned in paragraph 1 of this article. To this end, system States should to the extent necessary conclude agreements on the collection, processing and dissemination of such information and data. To this end, system States may agree that joint commissions established by them or special (regional) or general data centres shall be entrusted with collecting, processing and disseminating on a regular and timely basis the information and data provided for in paragraph 1 of this article.

"3. System States or the joint commissions or data centres provided for in paragraph 2 of this article shall to the extent practicable and reasonable transmit to the United Nations or the relevant specialized agencies the information and data available under this article."

ary information and data available within its territory of a hydrological, hydrogeological or meteorological nature as well as other relevant information and data concerning, *inter alia*, water levels and discharge of water of the *watercourse*, ground water yield and storage relevant for the proper management thereof, the quality of the water at all times, information and data relevant to flood control, sedimentation and other natural hazards and relating to pollution or other environmental protection concerns.

2. *Watercourse* States shall, to the extent possible, make available to other *watercourse* States the relevant information and data mentioned in paragraph 1 of this article. To this end, *watercourse* States should, to the extent necessary, conclude agreements on the collection, processing and dissemination of such information and data. To this end, *watercourse* States may agree that joint commissions established by them or special (regional) or general data centres shall be entrusted with collecting, processing and disseminating on a regular and timely basis the information and data provided for in paragraph 1 of this article.

3. *Watercourse* States or the joint commissions or data centres provided for in paragraph 2 of this article shall, to the extent practicable and reasonable, transmit to the United Nations or the relevant specialized agencies the information and data available under this article.

78. *Article 17* concerning special requests for information and data, as contained in the first report, should be retained, with drafting changes⁵⁷ as follows:

Article 17. Special requests for information and data

If a *watercourse* State requests from another *watercourse* State information and data not covered by the provisions of article 16 pertaining to the *watercourse* concerned, the other *watercourse* State shall upon the receipt of such a request use its best efforts to comply expeditiously with the request. The requesting State shall refund the other State the reasonable costs of collecting, processing and transmitting such information and data, unless otherwise agreed.

79. *Article 18*, concerning special obligations in regard to information about emergencies, should be retained without substantive changes. The following drafting changes⁵⁸ are suggested:

⁵⁷ See footnote 18 above.

Article 17 as presented in the first report read as follows:

"Article 17. Special requests for information and data

"If a system State requests from another system State information and data not covered by the provisions of article 16 pertaining to the *watercourse* system concerned, the other system State shall upon the receipt of such a request use its best efforts to comply expeditiously with the request. The requesting State shall refund the other State the reasonable costs of collecting, processing and transmitting such information and data, unless otherwise agreed."

⁵⁸ See footnote 18 above.

Article 18 as presented in the first report read as follows:

"Article 18. Special obligations in regard to information about emergencies

"A system State should by the most rapid means available inform the other system State or States concerned of emergency situations or incidents of which it has gained knowledge and which have arisen in regard to a shared *watercourse* system—whether inside or outside its territory—which could result in serious danger of loss of human life or of property or other calamity in the other system States or States."

Article 18. Special obligations in regard to information about emergencies

A *watercourse* State should by the most rapid means available inform the other *watercourse* State or States concerned of emergency situations or incidents of which it has gained knowledge and which have arisen in regard to *the watercourse concerned*—whether inside or outside its territory— which could result in serious danger of loss of human life or of property or other calamity in the other *watercourse* State or States.

80. *Article 19*, dealing with restricted information, should be retained. The following drafting changes⁵⁹ are suggested:

⁵⁹ See footnote 18 above.

Article 19 as presented in the first report read as follows:

“Article 19. Restricted information

“1. Information and data the safeguard of which a system State considers vital for reasons of national security or otherwise need not be disseminated to other system States, organizations or agencies. A sys-

Article 19. Restricted information

1. Information and data the safeguard of which a *watercourse* State considers vital for reasons of national security or otherwise need not be disseminated to other *watercourse* States, organizations or agencies. A *watercourse* State withholding such information or data shall co-operate in good faith with other *watercourse* States in furnishing essential information and data, to the extent practicable, on the issues concerned.

2. Where a *watercourse* State for other reasons considers that the dissemination of information or data should be treated as confidential or restricted, other *watercourse* States shall comply with such a request in good faith and in accordance with good-neighbourly relations.

tem State withholding such information or data shall co-operate in good faith with other system States in furnishing essential information and data to the extent practicable on the issues concerned.

“2. Where a system State for other reasons considers that the dissemination of information or data should be treated as confidential or restricted, other system States shall comply with such a request in good faith and in accordance with good-neighbourly relations.”

CHAPTER V

Environmental protection, pollution, health hazards, natural hazards, safety and national and regional sites

[Chapter IV of the draft]

81. The various issues relating to environmental problems are dealt with in chapter IV of the draft convention.

ARTICLE 20. General provisions on the protection of the environment; and

ARTICLE 21. Purposes of environmental protection

82. Articles 20 and 21 deal with the broader aspects of the protection of the environment. The discussions in 1983, especially in the Sixth Committee, would seem to indicate that *article 20* was broadly acceptable. The Special Rapporteur does not propose amendments to the substance but only certain minor drafting changes along the lines of those made in preceding articles. Consequently, the following amended text⁶⁰ is suggested:

⁶⁰ See footnote 18 above.

Article 20 as presented in the first report read as follows:

“CHAPTER IV

“ENVIRONMENTAL PROTECTION, POLLUTION, HEALTH HAZARDS, NATURAL HAZARDS, REGULATION AND SAFETY, USE PREFERENCES, NATIONAL OR REGIONAL SITES

“Article 20. General provisions on the protection of the environment

“1. System States—individually and in co-operation—shall to the extent possible take the necessary measures to protect the environment

CHAPTER IV

ENVIRONMENTAL PROTECTION, POLLUTION, HEALTH HAZARDS, NATURAL HAZARDS, SAFETY AND NATIONAL AND REGIONAL SITES

Article 20. General provisions on the protection of the environment

1. *Watercourse* States—individually and in co-operation—shall, to the extent possible, take the necessary measures to protect the environment of *the international*

of a *watercourse* system from unreasonable impairment, degradation or destruction or serious danger of such impairment, degradation or destruction by reason of causes or activities under their control and jurisdiction or from natural causes that are abatable within reason.

“2. System States shall—individually and through co-ordinated efforts—adopt the necessary measures and régimes for the management and equitable utilization of a joint *watercourse* system and surrounding areas so as to protect the aquatic environment, including the ecology of surrounding areas, from changes or alterations that may cause appreciable harm to such environment or to related interests of system States.

“3. System States shall—individually and through co-ordinated efforts—take the necessary measures in accordance with the provisions of the present Convention and other relevant principles of international law, including those derived from the United Nations Convention on the Law of the Sea of 10 December 1982, to protect the environment of the sea as far as possible from appreciable degradation or harm caused by means of the international *watercourse* system.”

watercourse concerned from unreasonable impairment, degradation or destruction or serious danger of such impairment, degradation or destruction by reason of causes or activities under their control and jurisdiction or from natural causes that are abatable within reason.

2. *Watercourse States* shall—individually and through co-ordinated efforts—adopt the necessary measures and régimes for the management and equitable utilization of an *international watercourse* and surrounding areas so as to protect the aquatic environment, including the ecology of surrounding areas, from changes or alterations that may cause appreciable harm to such environment or to related interests of *watercourse States*.

3. *Watercourse States* shall—individually and through co-ordinated efforts—take the necessary measures in accordance with the provisions of the present Convention and other relevant principles of international law, including those derived from the United Nations Convention on the Law of the Sea of 10 December 1982, to protect the environment of the sea as far as possible from appreciable degradation or harm caused by means of the *international watercourse concerned*.

83. The Special Rapporteur proposes the following drafting amendments⁶¹ to *article 21*.

Article 21. Purposes of environmental protection

The measures and régimes established under article 20 shall, *inter alia*, be designed to the extent possible:

- (a) to safeguard public health;
- (b) to maintain the quality and quantity of the waters of the *international watercourse concerned* at the level necessary for the use thereof for potable and other domestic purposes;
- (c) to permit the use of the waters for irrigation purposes and industrial purposes;
- (d) to safeguard the conservation and development of aquatic resources, including fauna and flora;
- (e) to permit, to the extent possible, the use of the *inter-*

⁶¹ See footnote 18 above.

Article 21 as presented in the first report read as follows:

"Article 21. Purposes of environmental protection

"The measures and régimes established under article 20 shall, *inter alia*, be designed to the extent possible:

- "(a) to safeguard public health;
- "(b) to maintain the quality and quantity of the waters of the *international watercourse system* at the level necessary for the use thereof for potable and other domestic purposes;
- "(c) to permit the use of the waters for irrigation purposes and industrial purposes;
- "(d) to safeguard the conservation and development of aquatic resources, including fauna and flora;
- "(e) to permit to the extent possible the use of the *watercourse system* for recreational amenities, with special regard to public health and aesthetic considerations;
- "(f) to permit to the extent possible the use of the waters by domestic animals and wildlife."

national watercourse for recreational amenities, with special regard to public health and aesthetic considerations;

(f) to permit, to the extent possible, the use of the waters by domestic animals and wildlife.

ARTICLE 22. Definition of pollution;

ARTICLE 23. Obligation to prevent pollution;

ARTICLE 24. Co-operation between *watercourse States* for protection against pollution. Abatement and reduction of pollution; and

ARTICLE 25. Emergency situations regarding pollution

84. Articles 22 to 25 of the draft convention deal with the special issues of pollution. The definition of pollution contained in *article 22* seemed to be generally acceptable. The only changes proposed are slight changes in drafting,⁶² as follows:

Article 22. Definition of pollution

For the purposes of the present Convention, "pollution" means any physical, chemical or biological alteration in the composition or quality of the waters of an *international watercourse* through the introduction by man, directly or indirectly, of substances, species or energy which results in effects detrimental to human health, safety or well-being or detrimental to the use of the waters for any beneficial purpose or to the conservation and protection of the environment, including the safeguarding of the fauna, the flora and other natural resources of the *watercourse* and surrounding areas.

85. In *article 23*, the Special Rapporteur proposes certain minor drafting changes.

86. Besides those drafting changes, he proposes a minor substantive amendment to paragraph 3, by the addition of a phrase at the end of the first sentence of the original text of that paragraph. Article 23 as amended⁶³ reads as follows:

⁶² See footnote 18 above.

Article 22 as presented in the first report read as follows:

"Article 22. Definition of pollution

"For the purposes of the present Convention, "pollution" means any physical, chemical or biological alteration in the composition or quality of the waters of an *international watercourse system* through the introduction by man, directly or indirectly, of substances, species or energy which results in effects detrimental to human health, safety or well-being or detrimental to the use of the waters for any beneficial purpose or to the conservation and protection of the environment, including the safeguarding of the fauna, the flora and other natural resources of the *watercourse system* and surrounding areas."

⁶³ See footnote 18 above.

Article 23 as presented in the first report read as follows:

"Article 23. Obligation to prevent pollution

"1. No system State may pollute or permit the pollution of the waters of an *international watercourse system* which causes or may cause appreciable harm to the rights or interests of other system States in regard to their equitable use of such shared water resources or to other harmful effects within their territories.

"2. In cases where pollution emanating in a system State causes

(Continued on next page)

Article 23. Obligation to prevent pollution

1. No *watercourse* State may pollute or permit the pollution of the waters of an international *watercourse* which causes or may cause appreciable harm to the rights or interests of other *watercourse* States in regard to their equitable use of such *waters* or to other harmful effects within their territories.

2. In cases where pollution emanating in a *watercourse* State causes harm or inconveniences in other *watercourse* States of a less serious nature than those dealt with in paragraph 1 of this article, the *watercourse* State where such pollution originates shall take reasonable measures to abate or minimize the pollution. The *watercourse* States concerned shall consult with a view to reaching agreement with regard to the necessary steps to be taken and to the defrayment of the reasonable costs for abatement or reduction of such pollution.

3. A *watercourse* State shall be under no obligation to abate pollution emanating from another *watercourse* State in order to prevent such pollution from causing appreciable harm to another *watercourse* State or other *watercourse* States, unless otherwise agreed in the relevant *watercourse* agreement or other agreement or arrangement. *Watercourse* States shall—as far as possible—expeditiously draw the attention of the pollutant State and of the States threatened by such pollution to the situation, its causes and effects.

87. In *article 24*, the Special Rapporteur proposes some minor drafting changes, along the lines of those made in preceding articles. In addition, in paragraph 2, he proposes some substantive amendments.

88. The proposed new paragraph 4 is virtually identical (with minor changes) with the second sentence of paragraph 2 of *article 24* as initially proposed. *Article 24*, as amended,⁶⁴ reads as follows:

(Footnote 63 continued)

harm or inconveniences in other system States of a less serious nature than those dealt with in paragraph 1 of this article, the system State where such pollution originates shall take reasonable measures to abate or minimize the pollution. The system State concerned shall consult with a view to reaching agreement with regard to the necessary steps to be taken and to the defrayment of the reasonable costs for abatement or reduction of such pollution.

“3. A system State shall be under no obligation to abate pollution emanating from another system State in order to prevent such pollution from causing appreciable harm to a third system State. System States shall—as far as possible—expeditiously draw the attention of the pollutant State and of the States threatened by such pollution to the situation, its causes and effects.”

⁶⁴ See footnote 18 above.

Article 24 as presented in the first report read as follows:

“*Article 24. Co-operation between system States for protection against pollution. Abatement and reduction of pollution*

“1. System States of an international *watercourse* system shall co-operate through regular consultations and meetings or through their joint regional or international commissions or agencies with a view to exchanging on a regular basis relevant information and data on questions of pollution of the *watercourse* system in question and with a view to the adoption of the measures and régimes necessary in order to provide adequate control and protection of the *watercourse* system and its environment against pollution.

“2. The system States concerned shall, when necessary, conduct consultations and negotiations with a view to adopting a compre-

Article 24. Co-operation between watercourse States for protection against pollution. Abatement and reduction of pollution

1. International *watercourse* States shall, when necessary, co-operate through regular consultations and meetings or through their joint regional or international commissions or agencies with a view to exchanging on a regular basis relevant information and data on questions of pollution of the international *watercourse* concerned and with a view to the adoption of the measures and régimes necessary in order to provide adequate control and protection of the international *watercourse* and its environment against pollution.

2. *Watercourse* States shall, when necessary, co-operate with a view to establishing a comprehensive list of dangerous or persistent pollutants or other pollutants, the introduction of which into the waters of an international *watercourse* shall be prohibited, controlled or monitored.

3. *Watercourse* States shall, to the extent necessary, establish programmes for adequate measures and with timetables for the protection against pollution and abatement or mitigation of pollution of the international *watercourse* concerned.

4. *Watercourse* States shall, where expedient, establish the procedures and machinery necessary for the effective implementation of measures provided for in this article.

89. From the discussions that took place in 1983 it would appear that *article 25* was largely acceptable. The Special Rapporteur therefore proposes only some drafting changes,⁶⁵ as follows:

Article 25. Emergency situations regarding pollution

1. If an emergency situation arises from pollution or from similar hazards to an international *watercourse* or its environment, the *watercourse* State or States within whose

hensive list of pollutants, the introduction of which into the waters of the international *watercourse* system shall be prohibited, restricted or monitored. They shall, where expedient, establish the procedures and machinery necessary for the effective implementation of these measures.

“3. System States shall to the extent necessary establish programmes with the necessary measures and timetables for the protection against pollution and abatement or mitigation of pollution of the international *watercourse* system concerned.”

⁶⁵ See footnote 18 above.

Article 25 as presented in the first report read as follows:

“*Article 25. Emergency situations regarding pollution*

“1. If an emergency situation arises from pollution or from similar hazards to an international *watercourse* system or its environment, the system State or States within whose jurisdiction the emergency has occurred shall make the emergency situation known by the most rapid means available to all system States that may be affected by the emergency together with all relevant information and data which may be of relevance in the situation.

“2. The State or States within whose jurisdiction the emergency has occurred shall immediately take the necessary measures to prevent, neutralize or mitigate danger or damage caused by the emergency situation. Other system States should to a reasonable extent assist in preventing, neutralizing or mitigating the dangers and effects caused by the emergency and should be refunded the reasonable costs for such measures by the State or States where the emergency arose.”

jurisdiction the emergency has occurred shall make the emergency situation known by the most rapid means available to all *watercourse* States that may be affected by the emergency together with all relevant information and data which may be of relevance in the situation.

2. The *watercourse* State or States within whose jurisdiction the emergency has occurred shall immediately take the necessary measures to prevent, neutralize or mitigate danger or damage caused by the emergency situation. Other *watercourse* States should to a reasonable extent assist in preventing, neutralizing or mitigating the dangers and effects caused by the emergency and should be refunded the reasonable costs for such measures by the *watercourse* State or States where the emergency arose.

ARTICLE 26. Control and prevention of water-related hazards

90. Article 26 presented in the first report seemed largely acceptable. The Special Rapporteur proposes only some drafting changes,⁶⁶ as follows:

Article 26. Control and prevention of water-related hazards

1. *Watercourse* States shall co-operate in accordance with the provisions of the present Convention with a view to the prevention and mitigation of water-related hazardous conditions and occurrences, as the special circumstances warrant. Such co-operation should, *inter alia*, entail the establishment of joint measures and régimes, including structural or non-structural measures, and the effective monitoring in the international *watercourse* concerned of conditions susceptible of bringing about hazardous conditions and occurrences such as floods, ice accumulation and other obstructions, sedimentation, avulsion, erosion, deficient drainage, drought and salt-water intrusion.

2. *Watercourse* States shall establish an effective and timely exchange of information and data and early warning systems that would contribute to the prevention or mitigation of emergencies with respect to water-related hazardous conditions and occurrences relating to an international *watercourse*.

⁶⁶ See footnote 18 above.

Article 26 as presented in the first report read as follows:

"Article 26. Control and prevention of water-related hazards

"1. System States shall co-operate in accordance with the provisions of the present Convention with a view to the prevention and mitigation of water-related hazardous conditions and occurrences, as the special circumstances warrant. Such co-operation should, *inter alia*, entail the establishment of joint measures and régimes, including structural or non-structural measures, and the effective monitoring in the international *watercourse* system concerned of conditions susceptible of bringing about hazardous conditions and occurrences such as floods, ice accumulation and other obstructions, sedimentation, avulsion, erosion, deficient drainage, drought and salt-water intrusion.

"2. System States shall establish an effective and timely exchange of information and data and early warning systems that would contribute to the prevention or mitigation of emergencies with respect to water-related hazardous conditions and occurrences relating to an international *watercourse* system."

ARTICLE 27 [new article 15 bis]. Regulation of international watercourses

91. Article 27 presented in the first report seemed to be broadly acceptable. However, the suggestion was made that the article belonged in chapter III, dealing with co-operation and management in regard to international watercourses, rather than in chapter IV, on environmental protection, health hazards, etc.

92. The Special Rapporteur is inclined to share that view. He would propose that article 27 should be moved back and become a new article 15 *bis*, in which case the articles would have to be renumbered accordingly, article 15 *bis* becoming article 16, and so on.

93. The Special Rapporteur proposes only drafting amendments⁶⁷ to this article, as follows:

Article 27 [new article 15 bis]. Regulation of international watercourses

1. For the purposes of the present Convention, "regulation" means continuing measures for controlling, increasing, moderating or otherwise modifying the flow of the waters in an international *watercourse*. Such measures may include, *inter alia*, the storing, releasing and diverting of water by means of dams, reservoirs, barrages, canals, locks, pumping systems or other hydraulic works.

2. *Watercourse* States shall co-operate in a spirit of good faith and good-neighbourly relations in assessing the needs and possibilities for *watercourse* regulations with a view to obtaining the optimum and equitable utilization of *the waters of the international watercourse concerned*. They shall co-operate in preparing the appropriate plans for such regulations and negotiate with a view to reaching agreement on the establishment and maintenance—individually or jointly—of the appropriate regulations, works and measures and on the defrayal of the costs for such *watercourse* regulations.

ARTICLE 28. Safety of international watercourses, installations and constructions, etc.; and

ARTICLE 28 *bis*. Status of international watercourses, their waters and constructions, etc. in armed conflicts

94. In the light of the discussions that took place in 1983

⁶⁷ See footnote 18 above.

Article 27 as presented in the first report read as follows:

"Article 27. Regulation of international watercourse systems

"1. For the purposes of the present Convention, "regulation" means continuing measures for controlling, increasing, moderating or otherwise modifying the flow of the waters in an international *watercourse* system. Such measures may include, *inter alia*, the storing, releasing and diverting of water by means of dams, reservoirs, barrages, canals, locks, pumping systems or other hydraulic works.

"2. System States shall co-operate in a spirit of good faith and good-neighbourly relations in assessing the needs and possibilities for *water* system regulations with a view to obtaining the optimum and equitable utilization of shared *watercourse* resources. They shall co-operate in preparing the appropriate plans for such regulations and negotiate with a view to reaching agreement on the establishment and maintenance—individually or jointly—of the appropriate regulations, works and measures and on the defrayal of the costs for such *watercourse* regulations."

on *article 28*, the Special Rapporteur proposes, in addition to some drafting changes, a number of substantive amendments, in particular to paragraph 2 (b) of the article. Article 28 as amended⁶⁸ reads as follows:

Article 28. Safety of international watercourses, installations and constructions, etc.

1. *Watercourse States* shall employ their best efforts to maintain and protect the international watercourse or watercourses and the installations, constructions and works pertaining thereto.

2. To this end, the watercourse States concerned shall co-operate, consult and negotiate with a view to concluding agreements or arrangements concerning:

(a) relevant general conditions and specifications for the establishment, operation and maintenance of sites, installations, constructions and works of the international watercourse or watercourses concerned;

(b) the establishment of adequate safety standards and security measures, to the extent practicable, for the protection of the international watercourse or watercourses concerned and the waters thereof, including relevant sites, installations, constructions and works, from hazards and dangers due to the forces of nature, wilful or negligent acts or hazards and dangers created by faulty construction, insufficient maintenance or other causes.

3. The watercourse States concerned shall, as far as reasonable, exchange information and data concerning the safety and security issues dealt with in this article.

95. In his first report,⁶⁹ the Special Rapporteur took up the question of special protection for international watercourses, their waters, installations and constructions, etc., in cases of armed conflict, but he had hesitated to draft proposals on that issue. In the light of the discussions that took place on article 28 in the Commission and in the Sixth Committee of the General Assembly in 1983, the Special Rapporteur ventures to propose a new *article 28 bis*. He did

not deem it advisable to refer in the article to the two Geneva Protocols of 8 June 1977.⁷⁰

96. The new article 28 *bis* reads⁷¹ as follows:

Article 28 bis. Status of international watercourses, their waters and constructions, etc. in armed conflicts

International watercourses and their waters, including relevant sites, installations, constructions and works, shall be used exclusively for peaceful purposes consonant with the principles embodied in the United Nations Charter and shall enjoy status of inviolability in international as well as in internal armed conflicts.

97. A question that will not be dealt with in this context is whether national watercourses should enjoy the same inviolability as international watercourses, the Special Rapporteur deeming this question as outside his present task.

ARTICLE 29 [new article 15 *ter*]. Use preferences

98. In view of the discussions that took place in the Commission and in the Sixth Committee of the General Assembly in 1983, especially with regard to article 13, paragraph 3 (see paragraph 72 above), the Special Rapporteur deems it appropriate to suggest certain amendments to article 29, and to transfer the article from chapter IV to chapter III (Co-operation and management in regard to international watercourses), so that it would come immediately after the new article 15 *bis* (formerly article 27). The amended text⁷² reads as follows:

Article 29 [new article 15 *ter*]. Use preferences

1. In establishing régimes, rules and recommendations for equitable participation in the utilization and benefits of

⁶⁸ See footnote 18 above.

Article 28 as presented in the first report read as follows:

"Article 28. Safety of international watercourse systems, installations and constructions"

"1. System States shall employ their best efforts to maintain and protect international watercourse systems and the installations and constructions pertaining thereto.

"2. To this end, system States shall co-operate and consult with a view to concluding agreements concerning:

"(a) relevant general and special conditions and specifications for the establishment, operation and maintenance of sites, installations, constructions and works of international watercourse systems;

"(b) the establishment of adequate safety standards and security measures for the protection of the watercourse system, its shared resources and the relevant sites, installations, constructions and works from hazards and dangers due to the forces of nature, wilful or negligent acts or hazards and dangers created by faulty construction, insufficient maintenance or other causes.

"3. System States shall as far as reasonable exchange information and data concerning the safety and security issues dealt with in this article."

⁶⁹ Document A/CN.4/367 (see footnote 1 above), paras. 45, 46 and 186.

⁷⁰ Protocols to the Geneva Conventions of 12 August 1949: Protocol I relating to the protection of victims of international armed conflicts; Protocol II relating to the protection of victims of non-international armed conflicts (United Nations, *Juridical Yearbook 1977* (Sales No. E.79.V.1), pp. 95 *et seq.*).

⁷¹ See footnote 18 above.

⁷² See footnote 18 above.

Article 29 as presented in the first report read as follows:

"Article 29. Use preferences"

"1. In establishing systems or régimes for equitable participation in the utilization of an international watercourse system and its resources by all system States, no specific use or uses shall enjoy automatic preference over other equitable uses except as provided for in system agreements, other agreements or other legal principles and customs applicable to the watercourse system in question.

"2. In settling questions relating to conflicting uses, the requirements for and the effects of various uses shall be weighed against the requirements for and effects of other pertinent uses with a view to obtaining the optimum utilization of shared watercourse resources and the reasonable and equitable distribution thereof between the system States, taking into account all considerations relevant to the particular watercourse system.

an international *watercourse and its waters by the relevant watercourse States*, no specific use or uses shall enjoy automatic preference over other equitable uses except as provided for in *relevant watercourse agreements, or other agreements or arrangements, including relevant rules, principles or practices established for the international watercourse concerned*.

2. In settling questions relating to conflicting uses, the requirements for and the effects of *certain pertinent uses* shall be weighed against the requirements for and effects of *the other pertinent uses* with a view to obtaining the optimum utilization of *the waters of the international watercourse concerned, taking into consideration all pertinent uses for the purpose of providing the reasonable and equitable distribution thereof between the watercourse States and taking into account all considerations relevant to the particular international watercourse*.

3. Installations and constructions shall be established and operated in such a manner as not to cause appreciable harm to other equitable uses of the *watercourse*.

4. When an *issue* has arisen with regard to conflicting uses or use preferences in an international *watercourse, watercourse States* shall, in conformity with the principles of good faith and friendly neighbourly relations, *to the extent practicable, refrain from taking measures pertaining to the relevant conflicting uses which might aggravate the difficulty of resolving the questions at issue*.

“3. Installations and constructions shall be established and operated in such a manner as not to cause appreciable harm to other equitable uses of the watercourse system.

“4. When a question has arisen with regard to conflicting uses or use preferences in an international watercourse system, system States shall, in conformity with the principles of good faith and friendly neighbourly relations, refrain from commencing works on installations, constructions or other watercourse projects or measures pertaining to the relevant conflicting uses which might aggravate the difficulty of resolving the questions at issue.”

CHAPTER VI

Peaceful settlement of disputes

[Chapter V of the draft]

101. The issue of peaceful settlement of disputes has been dealt with in chapter V of the draft convention. The Special Rapporteur, in proposing articles 31 to 38, has drawn, *inter alia*, on the experiences gained in the Third United Nations Conference on the Law of the Sea and the United Nations Convention on the Law of the Sea of 10 December 1982.⁷⁵

102. It was stated by the members of the Commission as well as by representatives in the Sixth Committee of the General Assembly that compulsory settlement procedures should be provided for in the draft convention. The Special Rapporteur has tried to accommodate that concern to the extent that he has deemed it expedient to formulate prin-

⁷⁵ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.5), p. 151, document A/CONF.62/122.

99. The commentary to article 29 contained in the first report⁷³ remains unchanged.

ARTICLE 30. Establishment of international watercourses or parts thereof as protected national or regional sites

100. The provisions of article 30 of the draft convention seemed to command broad acceptance. The Special Rapporteur has therefore confined himself to making minor drafting changes,⁷⁴ as follows:

Article 30. Establishment of international watercourses or parts thereof as protected national or regional sites

1. A *watercourse State or watercourse States* may—for environmental, ecological, historic, scenic or other reasons—proclaim an *international watercourse or part or parts thereof a protected national or regional site*.

2. Other *watercourse States* and regional and international organizations or agencies should in a spirit of good faith and friendly neighbourly relations co-operate and assist such *watercourse State or States* in preserving, protecting and maintaining such protected site or sites in their natural state.

⁷³ Document A/CN.4/367 (see footnote 1 above), paras. 191-198.

⁷⁴ See footnote 18 above.

Article 30 as presented in the first report read as follows:

“Article 30. Establishment of international watercourse systems or parts thereof as protected national or regional sites

“1. A system State or system States may—for environmental, ecological, historic, scenic or other reasons—proclaim a watercourse system or part or parts thereof a protected national or regional site.

“2. Other system States and regional and international organizations or agencies should in a spirit of good faith and friendly neighbourly relations co-operate and assist such system State or States in preserving, protecting and maintaining such protected site or sites in their natural state.”

ciples to this effect that would command broad acceptance by the international community.

ARTICLE 31. Obligation to settle disputes by peaceful means

103. In article 31 of the draft convention the general principle is provided for that States shall settle their disputes by peaceful means in accordance with the Charter of the United Nations. The provisions proposed in article 31, paragraphs 1 and 2, are basically identical with those found in articles 279 and 280 of the 1982 United Nations Convention on the Law of the Sea.⁷⁶ Some minor drafting

⁷⁶ *Ibid.*, p. 198.

changes⁷⁷ have been made in article 31, which reads as follows:

CHAPTER V

PEACEFUL SETTLEMENT OF DISPUTES

Article 31. Obligation to settle disputes by peaceful means

1. *Watercourse States* as well as other States Parties shall settle disputes between them concerning the interpretation or application of the present Convention by peaceful means in accordance with Article 2 of the Charter of the United Nations and, to this end, shall seek solutions by the means indicated in Article 33, paragraph 1, of the Charter.

2. Nothing in this chapter shall impair the right of *watercourse States and other States Parties* to agree at any time to settle a dispute between them concerning the interpretation or application of the present Convention by any peaceful means of their own choice.

ARTICLE 31 bis. Obligations under general, regional or bilateral agreements or arrangements

104. In view of the discussions that took place in 1983, which to some extent focused on the possibility for providing for settlement procedures entailing binding decisions, provisions could be included in chapter V drawing attention to the obligation States parties may have under other general, regional or bilateral agreements to submit their disputes to binding adjudication or other binding settlement procedure. Article 282 of the 1982 United Nations Convention on the Law of the Sea⁷⁸ may afford a possible paradigm for such provisions. Accordingly, the Special Rapporteur ventures to propose the following new article 31 bis:⁷⁹

Article 31 bis. Obligations under general, regional or bilateral agreements or arrangements

If watercourse States or other States Parties which are parties to a dispute concerning the interpretation or appli-

⁷⁷ See footnote 18 above.

Article 31 as presented in the first report read as follows:

"CHAPTER V. SETTLEMENT OF DISPUTES

"Article 31. Obligation to settle disputes by peaceful means

"1. System States as well as other States Parties shall settle disputes between them concerning the interpretation or application of the present Convention by peaceful means in accordance with Article 2 of the Charter of the United Nations and, to this end, shall seek solutions by the means indicated in Article 33, paragraph 1, of the Charter.

"2. Nothing in this chapter impairs the right of States Parties (system States) to agree at any time to settle a dispute between them concerning the interpretation or application of the present Convention by any peaceful means of their own choice."

⁷⁸ *Official Records of the Third United Nations Conference on the Law of the Sea* . . . (see footnote 75 above), p. 198.

⁷⁹ See footnote 18 above.

cation of the present Convention have agreed through a general, regional or bilateral agreement or arrangement or otherwise that such dispute shall, at the request of a party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in articles 33 to 38 of this chapter, unless the parties to the dispute agree otherwise.

ARTICLE 32. Settlement of disputes by consultations and negotiations;
and

ARTICLE 33. Inquiry and mediation

105. Article 32 of the draft convention provides for settlement of disputes by consultations and negotiations as the obvious starting-point for procedures for peaceful settlement. From the discussions that took place in 1983 it would appear that the text of this article was generally acceptable. The Special Rapporteur therefore proposes only drafting changes,⁸⁰ as follows:

Article 32. Settlement of disputes by consultations and negotiations

1. When a dispute arises between *watercourse States* or other States Parties concerning the interpretation or application of the present Convention, the parties to the dispute shall proceed expeditiously with consultations and negotiations with a view to arriving at a fair and equitable solution to the dispute.

2. Such consultations and negotiations may be conducted directly between the parties to the dispute or through a *joint commission* or joint commissions established for the administration and management of the international *watercourse* concerned or through other regional or international organs or agencies agreed upon between the parties.

3. If the parties have not been able to arrive at a solution of the dispute within a reasonable period of time, they shall resort to the other procedures for peaceful settlement provided for in this chapter.

106. Inquiry and mediation were provided for in article 33 of the draft convention presented in the first report. During the discussions in 1983, it was proposed that the concept of "other fact-finding bodies" should be intro-

⁸⁰ See footnote 18 above.

Article 32 as presented in the first report read as follows:

"Article 32. Settlement of disputes by consultations and negotiations

"1. When a dispute arises between system States or other States Parties concerning the interpretation or application of the present Convention, the parties to the dispute shall proceed expeditiously with consultations and negotiations with a view to arriving at a fair and equitable solution to the dispute.

"2. Such consultations and negotiations may be conducted directly between the parties to the dispute or through joint commissions established for the administration and management of the international watercourse system concerned or through other regional or international organs or agencies agreed upon between the parties.

"3. If the parties have not been able to arrive at a solution of the dispute within a reasonable period of time, they shall resort to the other procedures for peaceful settlement provided for in this chapter."

duced in article 33, paragraph 1. The Special Rapporteur finds this a useful proposal, and has therefore amended⁸¹ the article as follows:

Article 33. Inquiry and mediation

1. In connection with the consultations and negotiations provided for in article 32, the *States* parties to a dispute concerning the interpretation or application of the present Convention may, by agreement, establish a Board of Inquiry or other fact-finding body of qualified persons or experts for the purpose of establishing the relevant facts pertaining to the dispute in order to facilitate the consultations and negotiations between the parties. The parties must agree to the composition of the Board of Inquiry or fact-finding body, the task to be entrusted to it, the time-limits for the accomplishment of its findings and other relevant guidelines for its work. The Board or fact-finding body shall decide on its procedure unless otherwise determined by the parties. The findings of the Board of Inquiry or fact-finding body are not binding on the parties unless otherwise agreed upon by them.

2. The parties to a dispute concerning the interpretation or application of the present Convention may by agreement request mediation by a third State, an organization or one or more mediators with the necessary qualifications and reputation to assist them with impartial advice in such consultations and negotiations as provided for in article 32. Advice given by such mediation is not binding upon the parties.

ARTICLE 34. Conciliation;

ARTICLE 35. Functions and tasks of the Conciliation Commission; and

ARTICLE 36. Effects of the report of the Conciliation Commission. Sharing of costs

107. Articles 34 to 37 of the draft convention provided for conciliation as the main procedure for peaceful settlement. The provisions proposed here correspond in their main aspects to the system provided for in annex V (Con-

⁸¹ See footnote 18 above.

Article 33 as presented in the first report read as follows:

"Article 33. Inquiry and mediation

"1. In connection with the consultations and negotiations provided for in article 32, the parties to a dispute concerning the interpretation or application of the present Convention may, by agreement, establish a Board of Inquiry of qualified experts for the purpose of establishing the relevant facts pertaining to the dispute in order to facilitate the consultations and negotiations between the parties. The parties must agree to the composition of the Board, the tasks entrusted to it, the time-limits for the accomplishment of its findings and other relevant guidelines for its work. The Board of Inquiry shall decide on its procedure unless otherwise determined by the parties. The findings of the Board of Inquiry are not binding on the parties unless otherwise agreed upon by them.

"2. The parties to a dispute concerning the interpretation or application of the present Convention may by agreement request mediation by a third State, an organization or one or more mediators with the necessary qualifications and reputation to assist them with impartial advice in such consultations and negotiations as provided for in article 32. Advice given by such mediation is not binding upon the parties."

ciliation) of the 1982 United Nations Convention on the Law of the Sea;⁸² in the "Model rules for the constitution of the Conciliation Commission" annexed to the 1966 Helsinki Rules;⁸³ in the 1957 European Convention for the Peaceful Settlement of Disputes;⁸⁴ and in the 1928 General Act for the Pacific Settlement of International Disputes⁸⁵ and the Revised General Act of 1949.⁸⁶ As stated in the first report,⁸⁷ "the establishment of conciliation commissions has in practice proved to be useful in the search for peaceful solutions to international disputes".

108. In the discussions in the Sixth Committee in 1983, the question was raised whether, unless the parties agreed otherwise, conciliation should be made compulsory if the parties had not agreed to submit the dispute in question to procedures that entailed a binding decision. A precedent for compulsory conciliation in such cases will be found in the 1982 United Nations Convention on the Law of the Sea, article 297, paragraph 3 (b).⁸⁸ If this line of procedure seems advisable, the following provision might replace the first subparagraph of paragraph 1 of article 34:

"If watercourse States or other States or other States Parties to the present Convention have not been able to resolve a dispute concerning the interpretation or application of the present Convention by the other procedures for peaceful settlement provided for in articles 31, 32 and 33, they shall submit the dispute to conciliation in accordance with articles 34 to 36 unless they agree otherwise."

It should be noted that article 31 *bis* is not referred to in this provision.

109. The Special Rapporteur is inclined to recommend such compulsory conciliation procedures. If this proposal seems unacceptable, he would suggest some minor drafting changes⁸⁹ to paragraph 1. Two alternatives for paragraph 1 are indicated in the following text of article 34.

⁸² *Official Records of the Third United Nations Conference on the Law of the Sea . . .* (see footnote 75 above), pp. 214-215.

⁸³ ILA, *op. cit.* (footnote 32 above), pp. 531-532.

⁸⁴ United Nations, *Treaty Series*, vol. 320, p. 243.

⁸⁵ League of Nations, *Treaty Series*, vol. XCIII, p. 343.

⁸⁶ United Nations, *Treaty Series*, vol. 71, p. 101.

⁸⁷ Document A/CN.347 (see footnote 1 above), para. 214.

⁸⁸ *Official Records of the Third United Nations Conference on the Law of the Sea . . .* (see footnote 75 above), pp. 200-201.

⁸⁹ See footnote 18 above.

Article 34 as presented in the first report read as follows:

"Article 34. Conciliation

"1. If a system agreement or other regional or international agreement or arrangement so provides, or if the parties agree thereto with regard to a specific dispute concerning the interpretation or application of the present Convention, the parties shall submit such dispute to conciliation in accordance with the provisions of this article or with the provisions of such system agreement or regional or international agreement or arrangement.

"Any party to the dispute may institute such proceedings by written notification to the other party or parties, unless otherwise agreed upon.

"2. Unless otherwise agreed, the Conciliation Commission shall consist of five members. The party instituting the proceedings shall appoint two conciliators, one of whom may be its national. It

(Continued on next page.)

Article 34. Conciliation

PARAGRAPH 1—ALTERNATIVE A

1. *If watercourse States or other States or other States Parties to the present Convention have not been able to resolve a dispute concerning the interpretation or application of the present Convention by the other procedures for peaceful settlement provided for in articles 31, 32 and 33, they shall submit the dispute to conciliation in accordance with articles 34 to 36, unless they agree otherwise.*

PARAGRAPH 1—ALTERNATIVE B

1. *If a watercourse agreement or other regional or international agreement or arrangement so provides, or if the parties agree thereto with regard to a specific dispute concerning the interpretation or application of the present Convention, the parties shall submit such dispute to conciliation in accordance with the provisions of this article or with the provisions of such watercourse agreement or regional or international agreement or arrangement.*

Any party to the dispute may institute such proceedings by written notification to the other party or parties, unless otherwise agreed upon.

2. *Unless otherwise agreed, the Conciliation Commission shall consist of five members. The party instituting the proceedings shall appoint two conciliators, one of whom may be its national. It shall inform the other party of its appointments in the written notification.*

The other party shall likewise appoint two conciliators, one of whom may be its national. Such appointment shall be made within thirty days from the receipt of the notification mentioned in paragraph 1 of this article.

3. *If either party to the dispute fails to appoint its conciliators as provided for in paragraphs 1 or 2 of this article, the other party may request the Secretary-General of the United Nations to make the necessary appointment or appointments, unless otherwise agreed upon between the parties. The Secretary-General of the United Nations shall*

(Footnote 89 continued.)

shall inform the other party of its appointments in the written notification.

“The other party shall likewise appoint two conciliators, one of whom may be its national. Such appointment shall be made within thirty days from the receipt of the notification mentioned in paragraph 1.

“3. If either party to the dispute fails to appoint its conciliators as provided for in paragraphs 1 or 2 of this article, the other party may request the Secretary-General of the United Nations to make the necessary appointment or appointments unless otherwise agreed upon between the parties. The Secretary-General of the United Nations shall make such appointment or appointments within thirty days from the receipt of the request.

“4. Within thirty days after all four conciliators have been appointed the parties shall choose by agreement the fifth member of the Commission from among the nationals of a third State. He shall act as the president of the Conciliation Commission. If the parties have not been able to agree within that period, either party may within fourteen days from the expiration of that period request the Secretary-General of the United Nations to make the appointment. The Secretary-General of the United Nations shall make such appointment within thirty days from the receipt of the request.”

make such appointment or appointments within thirty days from the receipt of the request.

4. *Within thirty days after all four conciliators have been appointed, the parties shall choose by agreement the fifth member of the Commission from among the nationals of a third State. He shall act as the president of the Conciliation Commission. If the parties have not been able to agree within that period, either party may within fourteen days from the expiration of that period request the Secretary-General of the United Nations to make the appointment. The Secretary-General of the United Nations shall make such appointment within thirty days from the receipt of the request.*

110. *Article 35 of the draft convention contains provisions concerning the functions and tasks of the Conciliation Commission. Article 36 deals with the effects of the report of the Conciliation Commission and the sharing of costs. The Special Rapporteur wishes to make no amendments to article 35⁹⁰ or to article 36.⁹¹*

ARTICLE 37. Adjudication by the International Court of Justice, another international court or a permanent or *ad hoc* arbitral tribunal; and

ARTICLE 38. Binding effect of adjudication

111. *Article 37 deals with settlement of disputes by adjudication by the International Court of Justice, another international court or a permanent or *ad hoc* arbitral tribunal, and article 38 with the binding effect of adjudication.*

⁹⁰ Article 35 as presented in the first report read as follows:

“Article 35. Functions and tasks of the Conciliation Commission

“1. Unless the parties otherwise agree, the Conciliation Commission shall determine its own procedure.

“2. The Conciliation Commission shall hear the parties, examine their claims and objections, and make proposals to the parties with a view to reaching an amicable settlement.

“3. The Conciliation Commission shall file its report with the parties within twelve months of its constitution, unless the parties otherwise agree. Its report shall record any agreement reached between the parties and, failing agreement, its recommendations to the parties. Such recommendations shall contain the Commission’s conclusions with regard to the pertinent questions of fact and law relevant to the matter in dispute and such recommendations as the Commission deems fair and appropriate for an amicable settlement of the dispute. The report with recorded agreements or, failing agreement, with the recommendations of the Commission shall be notified to the parties to the dispute by the Commission and also be deposited by the Commission with the Secretary-General of the United Nations, unless otherwise agreed by the parties.”

⁹¹ Article 36 as presented in the first report read as follows:

“Article 36. Effects of the report of the Conciliation Commission. Sharing of costs

“1. Except for agreements arrived at between the parties to the dispute through the conciliation procedure and recorded in the report in accordance with paragraphs 2 and 3 of article 35, the report of the Conciliation Commission—including its recommendations to the parties and its conclusions with regard to facts and law—is not binding upon the parties to the dispute unless the parties have agreed otherwise.

“2. The fees and costs of the Conciliation Commission shall be borne by the parties to the dispute in a fair and equitable manner.”

cation. The Special Rapporteur would propose only two minor drafting changes,⁹² both pertaining to article 37:

Article 37. Adjudication by the International Court of Justice, another international court or a permanent or ad hoc arbitral tribunal

States may submit a dispute for adjudication to the International Court of Justice, to another international court or to a permanent or *ad hoc* arbitral tribunal if they have not been able to arrive at an agreed solution of the dispute by means of articles 31 to 36, provided that:

(a) the States parties to the dispute have accepted the jurisdiction of the International Court of Justice in accordance with Article 36 of the Statute of the Court or accepted the jurisdiction of the International Court of Justice or of another international court by a *watercourse* agreement or other regional or international agreement or specifically

⁹² See footnote 18 above.

Article 37 as presented in the first report read as follows:

"Article 37. Adjudication by the International Court of Justice, another international court or a permanent or ad hoc arbitral tribunal"

"States may submit a dispute for adjudication to the International Court of Justice, to another international court or to a permanent or

have agreed to submit the dispute to the jurisdiction of the Court;

(b) the States parties to the dispute have accepted binding international arbitration by a permanent or *ad hoc* arbitral tribunal by a *watercourse* agreement or other regional or international agreement or specifically have agreed to submit the dispute to arbitration.

112. No change is proposed in *article 38*.⁹³

ad hoc arbitral tribunal if they have not been able to arrive at an agreed solution of the dispute by means of articles 31 to 36, provided that:

"(a) the States parties to the dispute have accepted the jurisdiction of the International Court of Justice in accordance with Article 36 of the Statute of the Court or accepted the jurisdiction of the International Court of Justice or of another international court by a system agreement or other regional or international agreement or specifically have agreed to submit the dispute to the jurisdiction of the Court;

"(b) the States parties to the dispute have accepted binding international arbitration by a permanent or *ad hoc* arbitral tribunal by a system agreement or other regional or international agreement or specifically have agreed to submit the dispute to arbitration."

⁹³ Article 38 as presented in the first report read as follows:

"Article 38. Binding effect of adjudication"

"A judgment or award rendered by the International Court of Justice, by another international court or by an arbitral tribunal shall be binding and final for States Parties. States Parties shall comply with it and in good faith assist in its execution."

CHAPTER VII

Final provisions

[Chapter VI of the draft]

ARTICLE 39. Relationship to other conventions and international agreements

113. With regard to article 39, the sole article included in chapter VI, on final provisions, the Special Rapporteur proposes some minor drafting amendments,⁹⁴ as follows:

⁹⁴ See footnote 18 above.

Article 39 as proposed in the first report read as follows:

"CHAPTER VI. FINAL PROVISIONS

"Article 39. Relationship to other conventions and international agreements"

"Without prejudice to article 4, paragraph 3, the provisions of the present Convention do not affect conventions or other international agreements in force relating to a particular international watercourse system or any part thereof, to international or regional watercourse systems or to a particular project, programme or use."

CHAPTER VI

FINAL PROVISIONS

Article 39. Relationship to other conventions and international agreements

The provisions of the present Convention do not affect conventions or other international agreements in force relating to a particular international watercourse or any part thereof, to international or regional watercourses or to a particular project, programme or use.

114. This article is based upon article X provisionally adopted by the Commission at its thirty-second session, in 1980.