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A/CN.4/SR.1406

Summary record of the 1406th meeting

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

Extract from the Yearbook of the International Law Commission:-
1976, vol. I

1406th MEETING

Wednesday, 14 July 1976, at 10.15 a.m.

Chairman: Mr. Abdullah EL-ERIAN
later: Mr. Juan José CALLE Y CALLE

Members present: Mr. Bilge, Mr. Hambro, Mr. Kearney, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

The law of the non-navigational uses of international watercourses (A/CN.4/294 and Add.1, A/CN.4/295, A/CN.4/L.241)

[Item 6 of the agenda]

1. The CHAIRMAN invited Mr. Kearney, the Special Rapporteur, to introduce his first report on the law of the non-navigational uses of international watercourses (A/CN.4/295).

2. Mr. KEARNEY (Special Rapporteur) said that his report dealt mainly with the issue of what should be the scope of the Commission's work. It had seemed inadvisable to go too deeply into the topic, or, in particular, to attempt to reach any conclusions on the principles which should govern the uses of international watercourses, because the Commission was going to appoint a new Special Rapporteur, who would have to formulate his own approach; a delimitation of the scope of the work, however, would provide the new Special Rapporteur with a basis on which to proceed and save a loss of time of up to two years. The desirability of proceeding with the work as expeditiously as possible had been emphasized by many representatives in the Sixth Committee at the thirtieth session of the General Assembly, and by the Economic and Social Council in its resolution 1955 (LIX), entitled "International river basin development", which appealed to the International Law Commission to give priority to the study of the law of the non-navigational uses of international watercourses and to submit a progress report to the United Nations Water Conference, which was to take place in 1977. It might be expected that the General Assembly, at its thirty-first session, would take similar action.

3. In addition to what might be termed political considerations, the mounting pressures on the available supply of fresh water made it essential for the Commission to take a position which would enable the new Special Rapporteur to move ahead with his work. A recent study by the secretariat of the Economic Commission for Europe on Europe's water supply problems [1] showed that water resources no longer covered needs in five European countries—Cyprus, the German Democratic Republic, Hungary, Malta and the Ukrainian SSR—and that seven other countries—Belgium, Bulgaria, Luxembourg, Poland, Portugal, Romania and Turkey—did not expect to be able to meet the growing demand for water from their own resources by the year 2000. The situation in Europe was matched throughout the rest of the world, and a general shortage of fresh water could be expected by the end of the twentieth century.

4. That situation had three basic causes. First, the world's population was growing at an ever-increasing rate: whereas it had taken 100,000 years to reach the 1 billion mark, it had taken only another 250 years to reach a second billion, and a further 30 to 40 years to reach a third billion. The population was expected to exceed 4 billion well before the year 2000. The second cause of the water shortage was widespread industrialization. In the majority of countries, demand for water for industrial purposes exceeded demand for domestic and agricultural purposes, and industrial demand was steadily increasing as a result of the introduction and application of new technologies: for instance, the use of atomic power in place of fossil fuels or other sources of energy. Thirdly, there were the pressures of urbanization. Urban settlements, in which over half of the world's population was likely to be concentrated by the end of the 1980s, made far greater demands on water supplies than did rural communities. In view of that situation, it was essential to make the best possible use of available water, and that in turn, as numerous expert studies had emphasized, required that legal rules should be formulated.

5. While demand for water was growing, its supply —barring a drastic change in meteorological conditions— would remain constant. Even though the population drawing its water from a particular river might increase from 1 million to 10 million, the quantity of water in the river would remain the same. Of course, it might be possible to divert water from other sources, but that was very much a short-term solution which did not affect the total amount of water available. Again, it might be possible to utilize existing supplies more efficiently, but there were obviously limits to the improvements that could be made in that direction.

6. Because of its self-renewing supply cycle, water could be said to be the one natural resource over which States exercised truly permanent sovereignty. Other natural resources usually associated with that concept—for instance, minerals and oil—were finite. A State could decide whether to mine, say, coal immediately or at a later stage, but once the coal was extracted the State's permanent sovereignty over it effectively ended. Water was a unique resource in many ways. Physically, it was essential to life. It was interesting to note that one of the major purposes of the current United States Viking space probe investigating Mars was to determine whether there was or ever had been water on that planet, and on that basis to assess the probability that there was or had been life there.

7. Another of the outstanding physical characteristics of water was its mobility. Rain would fall on a hillside, run off into a stream, flow into a river and subsequently into the sea, and then be drawn up into the clouds and deposited on the land once more in a new form. The pro-

[1] "Preparatory work for the United Nations Water Conference: draft report on policy options in water use and development in the ECE region" (WATER/GE.1/R.21).

cess could be described as a perfect example of perpetual motion. The question therefore arose whether a State could truly exercise permanent sovereignty over water in the sense of being able to decide exactly when to use it. Generally speaking, water not used today would not be available tomorrow. While man could impose exceptions on that pattern by building reservoirs and artificial lakes, the resources stored in that manner were insignificant compared with the total quantity of water in motion.

8. Nothwithstanding the transitory nature of water, however, it seemed to him that, if the doctrine of permanent sovereignty over natural resources had any fundamental validity, to deny any possibility of applying it to the most vital of all natural resources would be a very sweeping and grave decision. That decision would ignore another fundamental physical characteristic of water, namely, its cohesiveness and unity and its tendency to form into larger and larger units, ranging from brooks and streams to rivers and the sea. There was cohesiveness throughout the area covered by a particular river system, and all water formed one natural unit as part of a vast cycle of continual renewal. If a particular river system lay entirely within one State, the doctrine of permanent sovereignty over natural resources could clearly be applied to it, although somewhat differently from the way it applied to any other natural resource. In the case of a river system situated in two or more States, the doctrine could also be applied—clearly not in the sense of permanent sovereignty over a particular quantity of water moving through national territory, but as permanent sovereignty over a portion of the renewable and unitary resource contained in the river basin that lay within the territorial jurisdiction of the State. By nature, the process of water renewal was always confined within a certain geographical area, the boundaries of which were determined by watershed limits, rainfall patterns and so forth. The fact that all river basin areas were delimited solely by physical phenomena was another element that needed to be taken into account in dealing with the question of the uses of water and formulating the necessary legal rules. The Commission's task would be to propose how sovereignty in a particular river basin should be exercised over a natural resource which, because of its physical qualities, was common to several States. The concepts of ownership generally considered to be applicable to natural resources had not been designed for a resource with those characteristics, and the Commission needed to formulate rules which took them into account.

9. In their replies (A/CN.4/294 and Add.1) to the questionnaire prepared by the Commission (*ibid.*, para. 6) and contained in a note by the Secretary-General dated 21 January 1975 a number of Governments had stated that it would be desirable to retain, as a basis for the Commission's work, the definition of an international watercourse adopted in article 108 of the Final Act of the Congress of Vienna of 1815[2] which he had quoted in paragraph 21 of his report. Because of the physical characteristics of water which he had mentioned, such an approach would, in his view, be less than satisfactory. It seemed to him that it was in no way possible to reduce the scope of any definition of the Commission's future work to less than the river system itself, that was to say, the river, its tributaries and all the smaller watercourses flowing into the river and its tributaries. The definition adopted by the Congress of Vienna had been devised for purpose of navigation; in the case of the non-navigational uses of watercourses different factors were clearly involved: for instance, pollutants discharged into the tiniest of streams, where no vessels could pass, might eventually find their way into a major river, with disastrous consequences for the riparian States. The Commission must take such considerations into account if it was to produce a rational set of rules meeting man's great need to improve the quantity and quality of fresh water available.

10. The CHAIRMAN thanked the Special Rapporteur for his introduction of the report, which had demonstrated his scholarship and the breadth of his culture.

11. Mr. SETTE CÂMARA congratulated the Special Rapporteur on his report and on his masterly introduction. The Special Rapporteur was to be commended for the prudent approach which had led him to state, in paragraph 4, that he would discuss the decisions which should be made by the Commission in order to provide a basis for commencing the substantive work on international watercourses. In other words, the report was a preliminary study, intended only to complete the initial attempt to prospect the ground, undertaken by the Commission in its questionnaire on the topic.

12. It was not perhaps altogether accurate to describe the replies of Governments to that questionnaire as "scanty", as the Special Rapporteur had done in paragraph 2 of his report. Considering the difficulties of the topic, the general practice of the United Nations in similar situations and the average number of replies to questionnaires sent out by the Secretary-General, the questionnaire of 21 January 1975 could be said to have evoked a substantial response. For instance, only five Governments had submitted observations in response to General Assembly resolution 1401 (XIV) and only nine in response to General Assembly resolution 2669 (XXV). By contrast, more than 20 Governments had replied to the 1975 questionnaire, and their answers provided important information concerning prevailing trends of thought on the main points of the Commission's enquiry.

13. For the purpose of the Commission's future work, it was of particular interest to examine government replies to question A: "What would be the appropriate scope of the definition of an international watercourse, in a study of the legal aspects of fresh water uses on the one hand and of fresh water pollution on the other hand?" and question B: "Is the geographical concept of an international drainage basin the appropriate basis for a study of the legal aspects of non-navigational uses of international watercourses?". The Special Rapporteur's conclusion, in paragraph 6 of his report, that "A small majority of replies... supported the view that it would be desirable to begin the work on the basis of a less

[2] For the text of the Final Act, see A. Oakes and R. B. Mowat, eds., *The Great European Treaties of the Nineteenth Century* (Oxford, Clarendon Press, 1918), p. 37.

general term than 'international drainage basin'" seemed something of an understatement in view of the emphatic content of some of the replies. For instance, the French Government, in its reply to questions A, B and C, had stated that "As far as the use of the watercourse is concerned, it would be almost unthinkable to adopt any concept of a waterway other than that of an international watercourse" (A/CN.4/294 and Add.1, section II, question A).

14. He was glad to note that the Special Rapporteur appeared to have discarded the concept of the "drainage basin" as a basis for the Commission's future studies. However, he demurred at the statement in paragraph 13 of the report that "the work on international watercourses should not be held up by disputes over definitions. This approach is, of course, in line with the customary practice of the Commission in deferring the adoption of definitions, or at the most adopting them on a provisional basis, pending the development of substantive provisions regarding the legal subject under review". Questions A and B of the questionnaire were designed to elicit more than mere definitions of terms; they were intended to establish a preliminary delimitation of the Commission's field of work, without which it would be very difficult to proceed.

15. To his mind, the Commission's mandate was very clear: it was to formulate rules regarding the non-navigational uses of international watercourses—a traditional concept of customary international law embodied in hundreds of treaties and conventions—and not to deal with the river basin, which was a purely territorial concept covering part of the territory of a particular country or countries. What were to be considered as international, according to the customary rules of international law embodied in articles I (Future regulations) and II (Free navigation) of the Regulation of 24 March 1815 [3] concerning the free navigation of rivers, and articles 108 and 109 of the Final Act of the Congress of Vienna of 1815, were the international watercourses which separated or cut across the territory of two or more States, not the physical portion of land contained within the *divortium acquarum* of an international river. The fact that such a portion of the territory of a State was bathed by an international watercourse did not confer on it a status different from that of any other part of national territory. River basins varied from river to river, from place to place and from region to region. They might encompass very limited or very large portions of the territory of a State, or might cover parts of the territory of different States. The Amazon basin covered an area of 4,787,000 square kilometres and the River Plate basin an area of 2.4 million square kilometres. It could not seriously be contended that the Commission had the authority to formulate rules that would be valid for the whole of such huge areas, imposing a kind of dual or multiple sovereignty. The Commission's mandate was to deal with international watercourses and international watercourses alone.

16. Of course, the concept of a hydrological basin, or even a drainage basin, could be extremely useful in economic and geographical studies, development projects or plans for the exploration of resources; but it could hardly be thought of as a basis for establishing rules of law grounded in customary or conventional international law. To revert to his former example, the River Plate basin covered the whole of the territory of Paraguay, two thirds of the territory of Uruguay, practically all of northern Argentina, substantial parts of Bolivia, and almost all of Brazil south of the Amazon basin. To apply the theory of the integrity or unity of the river basin advanced by the Helsinki Rules on the Uses of the Waters of International Rivers (the so-called) "Helsinki Rules") [4] an approach which the Special Rapporteur seemed to favour—would entail submitting that vast area to a régime of dual or multiple sovereignty, at least for certain specific purposes. It was highly questionable whether countries which were legitimately interested in developing their natural resources and enjoyed full sovereignty over them, would accept limitations of that kind. Moreover, there seemed to be no basis for concluding that there existed customary rules of international law which would cover all the multifarious aspects of the utilization of the river basin as a sort of international condominium.

17. In the *Lanoux Lake* case, the arbitral tribunal, while recognizing the reality of the unity of the river basin from the point of view of physical geography, had found that "The unity of a basin is supported at the legal level only to the extent that it conforms to the realities of life" [5] and that "the rule that States may use the hydraulic power of international waterways only if a preliminary agreement between the States concerned has been concluded cannot be established as a customary rule or, still less, as a general principle of law".[6]

18. Attempts to depart from the traditional concept of international river law and substitute the law of "international drainage basins" had also been criticized by Professor Edwin Glaser, who maintained that the aim pursued was to justify participation by great Powers in the elaboration of international rules on the utilization of certain international rivers and in the international river commissions concerned, although those Powers were not riparian States.

19. The difficulty lay not only in the sweeping nature of the "drainage basin" concept, but in avoiding a departure from the traditional rules embodied in hundreds of treaties based on the concept of international river law. The important point was to ensure that the utilization of international watercourses was always subject to the principle of legal responsibility, and that could be done without resorting to the "drainage basin" concept. If, for instance, an upstream State caused a considerable reduction in the flow of an international river by drawing

[3] G. F. de Martens, ed. *Nouveau recueil de traités*, vol. II, *1814-1815* (Göttingen, Dieterich, 1887), p. 434.

[4] *Yearbook... 1974*, vol. II (Part Two), p. 357, document A/CN.4/274, part four, sect. C, 1.

[5] *Ibid.*, pp. 195-196, document A/5409, part three, chap. II, sect. 6, para. 1064.

[6] *Ibid.*, p. 197, para. 1066.

off water for irrigation purposes, or if its industry discharged pollutants causing damage to a downstream riparian State, the effects of the upstream State's actions would be immediately perceptible and could form the subject of a claim for reparations. Thus the concept of the "unity" of the international river, as far as the principle of responsibility for appreciable damage was concerned, would be preserved.

20. The Niger, Senegal and Chad Basin treaties[7] endorsed the concept of the river basin in its managerial, geographical and economic sense and not as a basis for formulating legal rules. Article 2 of the Act of 1963 regarding navigation and economic co-operation between the States of the Niger basin—the expression "navigation and economic co-operation" was itself instructive—contained the following provision: "The utilization of the River Niger, its tributaries and sub-tributaries, is open to each riparian State in respect of the portion of the River Niger basin lying in its territory and without prejudice to its sovereign rights...".[8] No mention was made of the principle of the unity of the river basin or of the idea of the primacy of the common interests of all riparian States over the sovereign rights of each. The treaties dealing with the Senegal River basin and the Chad basin were drafted in the same spirit. In fact, there was not a single treaty that provided any evidence of a departure from the classical concept of international watercourses or its corollary, the distinction between the treatment of successive rivers and that of contiguous rivers, which had recently been embodied in the Declaration of Asunción on the use of international rivers.[9]

21. While he agreed with the Special Rapporteur that "If a substantial number of States balk at the idea of using the drainage basin concept as the starting point for constructing a set of rules on the non-navigational uses of international watercourses because it is too sweeping a concept, then this is a dubious starting place",[10] and that "the work on international watercourses should not be held up by disputes over definitions",[11] he disagreed with the recommendation that the Commission should "adopt the principle that its task is to formulate legal principles and rules concerning the non-navigational uses of international river basins".[12] In their replies to the Commission's questionnaire, Austria, Brazil, Canada, Colombia, Ecuador, the Federal Republic of Germany, France, Nicaragua, Poland, Spain and Venezuela had recommended that the Commission should confine itself strictly to formulating rules for international watercourses and should not concern itself with the management of river basins. If the Commission took any decision at the present session on the scope of its work on the topic—and in his view the shortage of time available for discussion and the sharp differences of opinion in government replies to the questionnaire made it advisable to postpone that step—its decision should not exceed the terms of reference laid down, *inter alia*, in paragraph 4 of General Assembly resolution 3071 (XXVIII).

22. As to the other matters dealt with in the questionnaire, questions D and E would clearly be the subject of long discussions in the future. Questions F, G and H should, he thought, be answered in the affirmative. On question I, the Commission should preserve its freedom to seek technical advice wherever necessary, without resorting to cumbersome procedures such as the establishment of a Committee of Experts or accepting too hastily the expertise of existing bodies which lacked the legal background to study the problems involved. Following the Special Rapporteur's example, however, he would refrain from going into those matters in detail at the present stage.

Mr. Calle y Calle (Second Vice-Chairman) took the Chair.

23. Mr. TABIBI congratulated the Special Rapporteur on his excellent and concise report on a topic whose complexity had been reflected in the views and comments of the Governments which had replied to the Commission's questionnaire. Unfortunately, those replies would not enable the Commission to draw conclusions to be used as a basis for its study of the topic. Moreover, the associations and organizations which had also studied the topic had dealt with it in accordance with their regional and geographical needs, and the fact that each one had approached the topic in a different way showed that there were no clear and universal principles of international law relating to the non-navigational uses of international watercourses.

24. Many writers had also concluded that there were no generally recognized rules of international law concerning the economic uses of international rivers. Moreover, it appeared that no international tribunals had rendered judgements on that topic. In the judgment rendered in 1937 by the Permanent Court of International Justice on the *diversion of water from the Meuse*,[13] the only case brought before it concerning the use of international waters, the Permanent Court had restricted itself to the provisions of the particular treaty in question and had refused to consider the general rules of international law concerning international waters. As Professor H. A. Smith had stated, the set of rules proposed by the Institute of International Law in 1911 and the various drafts adopted by the International Law Association since 1959 had been nothing more than "a premature attempt at codification". Some writers maintained that the decisions of the Supreme Court of the United States of America had made a contribution to the case law governing the rights and duties of riparian States. It should not be forgotten, however, that the disputes brought before that Court involved States belonging to a federation and that none of its judgments had referred to any particular rule of international law which was applicable to the use of watercourses. He therefore considered that the law of the non-navigational uses of international water-

[7] See document A/CN.4/295, paras. 31-35.

[8] *Ibid.*, para. 31.

[9] *Ibid.*, paras. 37-40.

[10] *Ibid.*, para. 42.

[11] *Ibid.*, para. 13.

[12] *Ibid.*, para. 49.

[13] *P.C.I.J.*, series A/B, No. 70, p. 4.

courses had not yet been fully developed and that the Commission should be very cautious in formulating rules on that topic, particularly since each river had separate historical, social, geographical and hydrological characteristics.

25. The view that international rivers were not subject to any binding rules of international law had found clear expression in the "Harmon doctrine", which had been advanced in 1895 by the United States Attorney-General, as a result of a dispute between the United States and Mexico over the waters of the Rio Grande.[14] Harmon had held that international law imposed no obligation upon the United States to share its water with Mexico, since the United States had sovereignty over the Rio Grande in its own territory. If the United States no longer defended the Harmon doctrine, it was mainly because it now attached greater importance to its interests as a down-stream, rather than an up-stream, riparian State. Although some writers now considered the Harmon doctrine to be a dead letter, others still invoked the argument of sovereignty, which was an indirect revival of the Harmon doctrine. He considered that the ineffectiveness of that doctrine could be attributed to the increasing socialization of international law or to the rise of "involuntary" obligations in international law.

26. In that connexion, he noted that Professor H. A. Smith took the view that premature attempts to force agreement on specific rules were more likely to do harm than good, and that nations must negotiate to find solutions to their particular problems concerning international rivers. Such negotiations were the best possible way of settling disputes about international rivers, because each river basin was different and required different treatment. He agreed with the view of Professor Smith that the topic was not ripe for codification, because experience was rapidly accumulating and scientific progress was opening many doors, with the result that it was impossible to predict new developments in areas such as irrigation and the proper economic uses of water.

27. Although experience did indicate that there were certain principles which were applicable to all States, it was difficult and dangerous to make generalizations when trying to formulate principles of international law. The Commission should therefore take account of the principle of the sovereignty of States over their natural resources and of the principle that every State must behave in such a way as not to damage the interests of other States. The Commission should also consider the principle of equitable apportionment, provided for by custom or in treaties or other instruments binding upon the parties to them. In that connexion, he noted that it might be instructive for the Commission to study the litigation involving various rivers in the United States, which showed that the principle of equitable apportionment had superseded both the "natural flow" doctrine and the "prior appropriation" doctrine. Moreover, the Commission might consider the view of the late Professor Eagleton, who had said that international lawyers should be cautious about stating principles of substantive international law, but should lead the way in suggesting procedures that would be likely to produce voluntary agreements and voluntary settlement of disputes.

28. Referring to the Special Rapporteur's report, he said that the Commission could deal with the question of definitions at a later stage. The term "international watercourse" should, however, be defined as an international "river", in accordance with article 108 of the Final Act of the Congress of Vienna. An international river could, of course, be successive or contiguous when it separated, or served as a boundary between, States. If the river was successive, it was under national jurisdiction, but if it was contiguous, sovereignty over it was shared and prior agreement was required for the use of its water. In view of the vagueness of the term "drainage basin" and of new scientific developments, the Commission's study should use the traditional terms "watercourses" or "international rivers" or "waters". The concept of a drainage basin was too broad and should be used only for engineering and technical studies, not for a study of the legal aspects of the uses of fresh water or of the pollution of international watercourses.

29. The Commission's study should also cover flood control and erosion problems, whether caused by nature or by man. The question of pollution was important and the example the Special Rapporteur had given in paragraph 19 of his report warranted serious consideration. The Commission should, however, ask itself whether the problem of pollution should be dealt with globally or regionally, subregionally or bilaterally. It might seek the assistance of technical and expert bodies which were already studying that problem. The Commission should not deal with the questions of the quality and quantity of water in the same way, because if quantity was reduced up-stream, it might be useful for the lower riparian State, whereas if quality was endangered, that would be an entirely different matter.

30. He believed that before the Commission began serious consideration of the topic of the law of the non-navigational uses of international watercourses, it should again request Member States, particularly those with the most experience in dealing with international rivers, to transmit their views and comments. The Commission should also seek the assistance of experts in the early stages of its work, because the topic was of a very technical nature.

31. The CHAIRMAN,* speaking as a member of the Commission, said that he wished to pay tribute to the Special Rapporteur, whose excellent report had provided a basis for a set of rules to be applied to the complex topic of the law of the non-navigational uses of international watercourses.

32. The uses of rivers were as old as the rivers themselves, although modern technology had found new uses for them and had discovered new applications for old uses. The history of the uses of rivers and the rules governing those uses was extremely varied and could be

[14] See *Yearbook... 1974*, vol. II (Part Two), p. 78, document A/5409, part two, chap. III, paras. 201-205 and foot-note 175.

* Mr. Calle y Calle.

said to have begun with Ovid, whom the Special Rapporteur had quoted at the beginning of his report, and to have continued with the famous Harmon doctrine of absolute territorial sovereignty. The history of the uses of rivers now included the ideas of the Special Rapporteur, who had suggested that the Commission should adopt a broad approach to the topic so that it might formulate the necessary legal rules. In formulating those rules, the Commission must take account of State practice and custom, which were reflected in existing legal cases; moreover, it must deal with the reality of the situation and bear in mind the fact that the use of water had advantages and disadvantages. In view of that fact, countries such as his own, which were crossed by rivers forming different basins, had concluded special agreements with their neighbours on the uses of those rivers.

33. The rules to be formulated by the Commission should not be more than basic principles which could apply to the particular aspects of every river. The Commission should not take as a basis the broad concept of a geographical basin, as Mr. Sette Câmara had suggested in referring to the Amazon basin, but a less general concept. He noted that at a meeting of the Presidents of the American States reference had been made to the development of integrated river basins; taken as a geographical unit, a river basin included all the States concerned and it was in the interests of those States to work together to develop rules for its use. Such rules should not, however, require the States concerned to promote the joint use of river basins.

34. The resolutions of the Economic and Social Council dealing with the development and use of international river basins embodied the principle of effective and sovereign control over water as a natural resource and referred to the principle of ecological good neighbourliness. The Commission should bear those principles in mind and try to formulate rules that would encourage States to use international watercourses without damaging the interests of other States which were also entitled to use them.

35. Another principle to be taken into account by the Commission was that of equity in the use of international rivers which formed frontiers. The rules to be adopted must also embody the principle that the benefits derived from the use of international watercourses did not, in all cases, have to be shared by all the riparian States concerned. Lastly, the rules to be drawn up by the Commission must be residuary rules taking duly into account the time-honoured customs of neighbouring States and the agreements they had concluded, in particular, for the joint exploitation of water resources and the integrated development of river basins on the basis of specific geographical conditions.

36. Mr. HAMBRO said he agreed with Mr. Calle y Calle that, in using the water flowing through their territories, States should behave in such a way as not to damage the interests of other States. He also agreed with Mr. Calle y Calle that the rules to be formulated by the Commission must be of a residuary nature.

37. He supported the view expressed by the Special Rapporteur in paragraph 13 of his report and in his introductory statement, that the Commission's work on international watercourses should not be held up by disputes over definitions. He also shared the Special Rapporteur's view that the Commission must not limit the scope of its task too much, because the interests of the international community required it to deal with all the aspects of the question of the use of international rivers. It would therefore be short-sighted of the Commission to do anything that might restrict the freedom of the next Special Rapporteur to deal with all the aspects of the topic.

38. He had been impressed by what Mr. Sette Câmara had said about the vast size of various river basins. The fact that a basin was vast should not, however, prevent the Commission from dealing with it. Such vastness made it all the more necessary to formulate rules to guide States in the non-navigational uses of international watercourses. If the Commission adopted broad definitions, it could always restrict them if the Sixth Committee or governments so wished; it would be much more difficult to enlarge the scope of narrow definitions.

39. The ghost of sovereignty had once again appeared in connexion with the topic under consideration. He was convinced that sovereignty was not the right basis for dealing with the uses of international watercourses; the Commission must realize that there was another principle of international law to which it should attach greater importance, namely, the principle of the development of a social law dealing with the delimitation of competence and sovereignty, and with the interest of the international community as a whole in the use of natural resources for the benefit of all mankind.

The meeting rose at 1 p.m.

1407th MEETING

Thursday, 15 July 1976, at 10.15 a.m.

Chairman: Mr. Abdullah EL-ERIAN

Members present: Mr. Bilge, Mr. Calle y Calle, Mr. Hambro, Mr. Kearney, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

The law of the non-navigational uses of international watercourses (*continued*) (A/CN.4/294 and Add.1, A/CN.4/295, A/CN.4/L.241)

[Item 6 of the agenda]

1. Mr. USHAKOV congratulated the Special Rapporteur on his first report on the law of the non-navigational uses of international watercourses (A/CN.4/295) and on his excellent oral introduction at the 1406th meeting; he had rightly adopted a general approach to the subject entrusted to him.