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A/CN.4/SR.1407

Summary record of the 1407th meeting

Topic:
<multiple topics>

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

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.

2. Before trying to determine what rules of international law were applicable to the non-navigational uses of international watercourses, it was important to consider certain social situations from which those rules derived. The subject under study was international watercourses, and more particularly fresh water, as one of the natural resources of mankind and of the States through whose territory the watercourses passed. Seen as a natural resource of mankind with a social role, water went beyond the bounds of the topic under study. It was a subject which included the use of both international and national watercourses, and raised the fundamental problem of humanity's natural resources. Moreover, it should be noted that an international watercourse was primarily a national watercourse, since it was necessarily connected with the territories of a certain number of States. That situation raised the question of the use by a State of the territory under its sovereignty. According to general international law, a State was free to use its territory as it pleased, so long as it did no harm to other States or to mankind as a whole.

3. The topic under study was confined to international watercourses. First of all he wished to draw attention to the distinction made in French between *fleuves*, which flowed into the sea, and *rivières*, which did not. Soviet international legal doctrine drew a distinction between international *fleuves* and multinational *rivières*. International *fleuves* were watercourses which flowed into the sea; their international character derived from the fact that States other than riparian States used them for navigation. Multinational *rivières* were watercourses which passed through the territory of several States without reaching the sea, so that only riparian States were interested in navigating on them. That Soviet conception took account both of the geographical and of the legal aspect of the situation, for the distinction between international *fleuves* and multinational *rivières* was based both on physical characteristics and on the interest of States in using the watercourses in question.

4. In principle, the régime applicable to international *fleuves* and, *a fortiori*, that applicable to multinational *rivières* was established by the co-riparian States. It was incumbent on them to conclude international agreements for that purpose. Consequently, the only rules of international law applicable in the matter were completely general rules and principles which the co-riparian States must take into account when concluding such agreements. That being so, the Commission's task would be relatively simple. It would have to determine those general principles, and establish them by codification or progressive development of international law. It would be vain to try to formulate detailed rules of international law valid for all the régimes applicable to international watercourses. The existing situations were so varied that the riparian States must establish the detailed rules, basing them on the broad principles of international law applicable.

5. He believed that the Commission should confine its study to international watercourses proper, without considering drainage basins or ground-water; but it need not settle that question at once.

6. Mr. RAMANGASOAVINA, after congratulating the Special Rapporteur on his report, said that the topic it dealt with was a new one, but the problem of the use of water was as old as the world, since water was a vital element for all mankind. The answers (A/CN.4/294 and Add.1) to the questionnaire (*ibid.*, para. 6) sent to Member States, a questionnaire which had been most judiciously drafted, already gave some idea of the direction the study would take.

7. One of the questions asked was whether the geographical concept of an international drainage basin was the appropriate basis for a study of the legal aspects of the pollution of international watercourses (*ibid.*). In his report, the Special Rapporteur attached some importance to the notion of an "international drainage basin", which was taken from the Helsinki Rules on the Uses of the Waters of International Rivers (Helsinki Rules).[1] It was mainly that aspect of the non-navigational uses of international waterways that had to be considered in Europe. The river Danube was a case in point, for it bounded or crossed several European countries and had been the subject of international agreements. For other countries, the problems of pollution were of primary importance. That made it necessary to consider the drainage basin, because the pollution of a watercourse was usually linked with the pollution of its tributaries.

8. The questionnaire sent to Governments dealt with a great variety of uses of fresh water: in the agricultural sphere, in the economic and commercial sphere and in the domestic and social sphere. For many countries the question of the uses of water was of prime importance. African countries had no sources of energy apart from their hydro-electric power potential. Furthermore, they could intensify their utilization of water, not only for agricultural purposes, but also in order to improve the quality of family life, for example through fish-breeding, which would provide new sources of food. As Mr. Ushakov had pointed out, the uses of water often had a regional aspect and should be regulated at the regional level, but taking certain general principles of international law into account.

9. In the report under consideration, much attention was devoted to flood control and the prevention of erosion. Those matters were very important in continents like Asia and Africa where methods of cultivation still included the rotation of crops, burn-beating and brush fires. Clearing and deforestation led to the running off of water, and then erosion. That in turn caused silting or sedimentation, and river mouths could be blocked by deposits which might cause flooding. The use of the waters of rivers such as the Nile, the Congo, the Senegal and the Niger was so important for the existence of the riparian States that they had held consultations with a view to drawing up regulations. Silting could cause certain run-off waters to change course, thereby causing serious damage in countries downstream. The example of the Yangtze Kiang, which had caused considerable changes in the life of Chinese farmers, was well known.

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

In the United States of America the Tennessee Valley Authority had been set up to promote navigation, irrigation and electric power production. In both those cases much more difficult problems of regulation would have arisen if the watercourses had been international.

10. The drainage system very often depended on the conformation of mountain ranges, so that a sudden change due to a cataclysm could alter it. Often, a crest marked a frontier between two States, but if it collapsed, the drainage system on both sides could undergo considerable changes. It was not surprising, therefore, that in various parts of the world the States using the great international rivers had concluded agreements and set up special commissions.

11. The Special Rapporteur's report provided a useful starting-point for the study of the topic entrusted to him. In addition to Governments, he had consulted a dozen United Nations agencies and bodies, but he could also have consulted other organizations such as FAO, UNESCO and WHO, which was interested in the propagation of bilharziasis through irrigation canals. Some lakes, such as Lake Victoria, were already heavily polluted.

12. He thought the report under consideration augured well for the future of the Commission's study. The non-navigational uses of international watercourses should, it was true, be regulated at the regional level, but in accordance with general principles of international law which the Commission must endeavour to define.

13. Mr. USTOR congratulated the Special Rapporteur on his very interesting report and introductory statement. The subject before the Commission was really extremely topical because, as the Special Rapporteur had said, the world was facing a water shortage. Water would become more and more scarce, so the international community needed to plan ahead and take measures to prevent possible disasters. Planning, which had first been introduced by socialist Governments, had now been adopted in all countries and had become necessary in international life, for countries were bound to plan ahead at a time when human society was developing at such a rapid rate. Planning required a legal basis, and the Commission's task was to determine what role it could play in the codification and progressive development of the law of the non-navigational uses of international watercourses.

14. With regard to methods, he observed that the Commission's traditional method was inductive: it took stock of situations and tried to evolve rules on the basis of those situations. In dealing with the non-navigational uses of international watercourses, however, the Commission could also apply the deductive method, because there was a generally recognized rule of international co-operation, which was based on Article 56 of the United Nations Charter and embodied in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.[2]

15. Thus, what the Commission had to try to do was to determine, on the basis of the principle of international co-operation, what more specific principles could be applied to the non-navigationl uses of international watercourses. That would, of course, be a difficult task; but if the Commission could affirm that the old maxim "*sic utere tuo ut alienum non laedas*" applied to the law of the non-navigational uses of international watercourses, it would be able to give valuable guidance. For although States had a duty to co-operate with one another, they were sometimes reluctant to agree on the principles of such co-operation because, in many disputes, they were not sure how far such co-operation should go and to what extent they had to share their water resources. Of course, many problems could be solved on a bilateral basis, but the solution to others required the wider participation of many States. All those factors should be taken into account when the next Special Rapporteur took up the study of the topic.

16. He fully agreed with the present Special Rapporteur that the question of definitions should not be allowed to delay the Commission's work on such an urgent matter.

17. The Commission also had to decide whether to deal with water pollution. He would not be opposed to consideration of that problem, but thought the Commission should bear in mind that it was closely connected with water distribution. When a State polluted water, it reduced the amount of useful water available, and the problems which then arose were almost the same as those arising when a State used too much water. The Special Rapporteur should therefore deal with the question of water pollution and disputes arising therefrom, in conjunction with the related problem of water distribution.

18. Sir Francis VALLAT thanked the Special Rapporteur for his excellent report and introductory statement on the non-navigational uses of international watercourses. It was encouraging that that topic was now before the Commission, because water problems were important and pressing and should be governed by basic legal principles, which it was the duty of the Commission to formulate. It was obvious that the scope of the problems to be dealt with was very broad and that those problems affected all countries. In that connexion, he fully agreed with Mr. Hambro that the Commission should remember that international law applied to States. However great the problems to be dealt with or the areas affected, the Commission should not hesitate to examine the rules and principles which should be applicable.

19. The question of the definition of the term "international watercourse" had been raised, but he thought the Commission should concentrate on the basically different question of the uses of international watercourses. He shared the view of other members of the Commission, who had stated that it was not the time to try to formulate a definition of an international watercourse, because that endeavour would only hamper the Commission's work unnecessarily. Perhaps after hearing the Commission's discussion, the Special Rapporteur would also be able to agree that the problem of definitions should be left aside for the time being, while the Commission considered the main principles to be applied internationally.

[2] General Assembly resolution 2625 (XXV), annex.

20. He also agreed with the members of the Commission who had said that water problems had to be solved on the basis of the great variety of situations which could arise, and that it was not possible to formulate detailed rules to deal with every conceivable situation. The Commission should content itself with formulating general principles to guide States. For example, it might agree on the general principle that the upper riparian State should not pollute the waters of a river in such a way that the pollution would result in serious injury to the population of the lower riparian State.

21. In that connexion, he noted that the question had also been raised whether the Commission should deal with pollution problems at all. He agreed with Mr. Ustor that pollution problems were an important aspect of the topic, but he had some doubts as to whether these problems should be given priority, since the technical development of water uses was so rapid that the question of the distribution or diversion of water was at least of equal urgency. He therefore believed that the Commission should not decide on priorities at the present stage. It should merely inform the next Special Rapporteur that his first task should be to review the various aspects of the topic, including water pollution and distribution, and then to suggest priorities to be adopted by the Commission.

22. Lastly, he reminded the Commission that there was a risk that on moving from one topic to another basic attitudes might charge and that each member might tend to view the topic under consideration from the point of view of problems which arose in his own country. He therefore appealed to the members of the Commission to bear in mind the humanitarian aspects of the topic, as it had done in dealing with other matters.

23. Mr. YASSEEN said that the Special Rapporteur's report, although only twenty pages long, was undoubtedly the fruit of a very thorough study, which must have required a great deal of time and effort on the part of its author. He hoped that the Special Rapporteur would continue his work on the question. The importance of water for mankind could not be better emphasized than it was in the verse from the Koran which said that all living things had been created from water.

24. With regard to the scope of the study, it did not involve the question of the definition of an international watercourse. To extend that notion to cover drainage basins would be to change the nature of the topic. The General Assembly, in its resolution 2669 (XXV), had asked the Commission to study the question of the non-navigational uses, not of international drainage basins or hydrographic basins, but of international watercourses. That being so, the best definition of an international watercourse was that derived from the Final Act of the Congress of Vienna of 1815.[3] International watercourses should accordingly be taken to mean international rivers which formed a frontier or crossed one or more frontiers. That definition would provide a good starting point; but there was nothing to prevent the Commission from drawing certain inferences from geographical concepts such as a drainage basin.

25. During a General Assembly debate on the international regulation of the uses of international watercourses, some representatives had observed that each international river had its own character, and that that question lent itself less to codification than to individual arrangements. He himself had pointed out that there were certain international rules established by custom and that they could be considered as general principles of international law. It was precisely those principles which the Commission was called upon to clarify and confirm. A State could not, for example, invoke a false concept of sovereignty to do as it pleased with an international watercourse. It must remember that it had legal obligations to other riparian States, and must also not neglect the humanitarian aspect of the question, as Sir Francis Vallat had said. Furthermore, every State must respect the historic rights of the other States participating in the use of the waters of an international watercourse. There were other general principles of international law which the Commission should try to formulate, but it should only go into the details when that was really necessary, for example, in order to clarify a principle or ensure its application.

26. The Special Rapporteur had approached the study of the topic by distinguishing three main categories of use. The Commission should be careful, however, not to give the impression that that list of uses was exhaustive, for scientific and technical progress could produce new uses. Moreover, it would be necessary not only to enumerate possible uses, but to combat bad uses, which caused floods, erosion or silting. The Commission ought also to concern itself with pollution, which could deprive an international watercourse of all its usefulness. However it should not give priority to that question, although it took an acute form in some cases; other questions were equally important and might be equally urgent. An overall view of all those questions was necessary in order to take a decision as to priorities.

27. Mr. TAMMES, after congratulating the Special Rapporteur on his report and introductory statement, said that in most cases it was wise to proceed from the particular to the general, considering concrete needs in practical situations before laying down abstract rules for general application. It was questionable, however, whether that approach was the best for a subject bristling with so many technical problems as the law of the non-navigational uses of international watercourses. To go into matters such as those dealt with in questions D, F and H of the 1975 questionnaire would plunge the Commission into areas where it did not feel at home and where it would be dependent upon expert advice, with the result that its work might lose momentum. It seemed to him that there were other questions on which the Commission was expert in its own right and to which it could more usefully direct its attention.

28. One such question—the concept of abuse of right—had been touched upon by Mr. Sette Câmara and Mr. Tabibi. Approaching the matter from a different angle,

[3] 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.

Mr. Ustor had referred to the principle of co-operation. The Commission's study of the topic of international watercourses provided a unique opportunity to expand the concept of "reasonable regard to the interests of other States", which had been embodied in article 2 of the 1958 Convention on the High Seas[4] and in other subsequent instruments such as the 1967 Treaty on principles governing the activities of States in the exploration and use of outer space, including the moon and other celestial bodies.[5] The Commission might base its approach on the award of 16 November 1957 in the *Lake Lanoux* case between France and Spain, in which the Arbitral Tribunal had considered that "the upper riparian State, under the rules of good faith, has an obligation to take into consideration the various interests concerned, to seek to give them every satisfaction compatible with the pursuit of its own interests and to show that it has, in this matter, a real desire to reconcile the interests of the other riparian with its own".[6] The "rules of good faith" was an example of the kind of principle to which the Commission might most fruitfully devote attention in its future work on the topic of international watercourses.

29. Mr. BILGE contratulated the Special Rapporteur on his scientific and objective work. The non-navigational uses of international watercourses was certainly an important question, which was becoming more urgent every day, but there were other more tragic questions, such as underdevelopment. Moreover, the Commission did not have sufficient material for codification of the topic: State practice was insufficient to constitute a solid foundation, and the few treaties mentioned by the Special Rapporteur in his report applied only to certain regions and had no equivalent in others. Thus the topic under consideration was more suitable for progressive development than for codification, and the Commission's task was to encourage States to co-operate, not to impose co-operation on them.

30. The question of definition raised by the Special Rapporteur was extremely important. It was not a mere question of methodology, since the scope of the study could be broadened or narrowed according to the terminology used. It was the Commission's practice not to adopt a fixed and final definition at the outset, but to start with a provisional definition. The Special Rapporteur had therefore proposed an intermediate terminology. He (Mr. Bilge) had no difficulty in accepting it provisionally, but his acceptance depended on the rules that would be formulated for riparian States.

31. The question of pollution could not be separated from the rest of the study, since it was linked with the quality of water. It should therefore be studied at the same time as the other questions.

32. It was too soon to set up a committee of experts, and for the time being the Commission would do better to rely on the assistance provided by specialized organizations.

[4] United Nations, *Treaty Series*, vol. 450, p. 82.

[5] *Ibid.*, vol. 610, p. 205.

[6] See *Yearbook... 1974*, vol. II (Part Two), p. 198, document A/5409, part three, chap. II, sect. 6, para. 1068.

Co-operation with other bodies (*concluded*) *

[Item 9 of the agenda]

Communication from the Secretary-General of the Asian-African Legal Consultative Committee

33. The CHAIRMAN announced that a letter had been received from Mr. Sen, the Secretary-General of the Asian-African Legal Consultative Committee, explaining that, owing to factors such as the dates of various meetings and pressure of work, it would unfortunately not be possible for the Committee to be represented at the Commission's present session. Mr. Sen had stressed that every effort would be made to send a representative to the next session of the Commission and had repeated the Committee's invitation to the Commission to be represented at its eighteenth session, to be held at Baghdad, early in 1977.

Statement by the observer for the European Committee on Legal Co-operation

34. The CHAIRMAN welcomed Mr. Golsong, the observer for the European Committee on Legal Co-operation, and invited him to address the Commission.

35. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation) said that he first wished to mention some problems raised by the implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms[7] (known as the European Convention on Human Rights), which might be of interest to the Commission. The judicial body established by the Convention—the European Court of Human Rights—was not only hearing a relatively large number of cases—five cases were now before it—but had also handed down four judgments since 1975, which were of particular importance for the community of States members of the Council of Europe. One of those judgments related to other international instruments: the 1969 Vienna Convention on the Law of Treaties,[8] the result of the Commission's deliberations, which was increasingly being used as a reference text for the interpretative work of the Court, and certain instruments of the ILO, which had guided the Court and would continue to do so in its interpretation of the European Convention, particularly on questions of trade-union freedoms.

36. In the sphere of general principles, the implementation of the European Convention on Human Rights raised a number of problems which had not yet been solved. First, there was the question of the effect of the Convention in relation to a separate legal order formed by the European Communities and the extent to which the rules of the Convention bound not only member States which were parties to it, but also the organs of the Communities

* Resumed from the 1389th meeting.

[7] United Nations, *Treaty Series*, vol. 213, p. 221.

[8] For the text of the Convention, see *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No.: E.70.V.5), p. 289.

as organs of an autonomous legal order. In that situation developments were taking place, which had crystallized in a relatively recent judgment of the Court of the European Communities. That judgment, delivered in October 1975, recognized that the European Convention on Human Rights, in its normative part, was also applicable within the legal order of the Communities.

37. The question also arose of the relations between the European Convention on Human Rights and a universal instrument which had just entered into force and covered the same subject-matter—the International Covenant on Civil and Political Rights.[9] That was a problem of material coexistence, which had not yet been solved for the parties to the European Convention; but it was also a problem of coexistence between two regulatory systems applying different criteria, but which might be seized of the same case at Strasbourg and New York simultaneously. Should that occur, he did not believe that article 30 of the Vienna Convention on the Law of Treaties (Application of successive treaties relative to the same subject-matter) provided a solution to the problem of coexistence, particularly with regard to the operation of supervisory bodies. The problem of the coexistence of different treaties might perhaps result from the very nature of international law which, in its present state, was relatively primitive and unsystematic. Thus it was sometimes difficult to know the scope of the international treaty obligations imposed on a single State, if that State was a contracting party to various international conventions.

38. That question arose, in particular, with regard to the implementation of the European Convention for the Protection of International Watercourses against Pollution. It was difficult to find a mode of coexistence between that Convention and three other conventions recently concluded by practically the same States—the 1974 Paris Convention for the Prevention of Marine Pollution from Land-Based Sources, the 1976 Berne draft Convention on the protection of the Rhine against chemical pollution and the 1976 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution. Those three instruments raised a problem of concordance with the European Convention though it was true that the Paris and Barcelona texts contained some provisions identical with those of the European Convention particularly in regard to the settlement of disputes.

39. The European Communities had recently laid down directions for the discharge of dangerous substances into water, and the question arose to what extent those legal rules applicable within a narrow framework could be reconciled with the broader provisions of the European Convention—which was in any case only a model convention and not absolutely inflexible. The problem was all the more serious because the community directives provided for a system of international co-operation on pollution control which was entirely different from that provided for by the European Convention. For whereas the Community directives established a system of control of the discharge of dangerous substances at the point of emission, the European Convention, like the three other conventions he had mentioned, provided for a system of monitoring the degree of admixture of dangerous substances—in other words, the degree of water pollution. Hence problems would inevitably arise if the International Law Commission prepared a universal instrument on the subject. Regional experience could help it to find a universal solution to ensure the protection of water, which was a resource essential to the survival of mankind.

40. As to the capacity of an international organization to be a party to an international treaty—a question of interest to the Commission and one with which Mr. Reuter was concerned in connexion with agenda item 5—two texts were in force concerning participation of the European Communities as such in conventions prepared by the Council of Europe. It should be noted that the European Communities were not an international organization of the traditional type: they had their own powers, which were mandatory in the territory of member States and for the nationals of those States, and which had the peculiarity of evolving with time and not being fixed once and for all.

41. The European Convention on State Immunity had entered into force on 11 June 1976. Under that Convention, a foreign State waived its immunity from jurisdiction when it was involved in an action *jure gestionis*, that was to say, an action not connected with the exercise of governmental authority. That Convention did not contain any general clauses, but set out, in a negative list, the legal situations in which a State involved in judicial proceedings could not invoke immunity from jurisdiction. The Convention also provided for the establishment, at the European level, of a real court competent to settle disputes concerning the interpretation and application of the Convention. Moreover, that was not the only initiative which had led to the establishment of a European court proper, in addition to the one operating under the European Convention on Human Rights: in another, much more technical and limited sphere, the Council of Europe would, at the end of 1976, adopt an instrument providing, in particular, for the establishment of a European authority to settle conflicts of national jurisdiction related to the specific problem of custody of children.

42. Among the activities of the European Committee on Legal Co-operation which might be of interest to the Commission, he also wished to mention two draft conventions which would shortly be adopted and which related to administrative assistance—a sphere which, apart from fiscal problems, had not yet been the subject of international codification, so far as he knew. One of those draft conventions related to the service of administrative documents abroad and the other to obtaining information and evidence abroad in administrative cases. European States were giving each other real administrative assistance, but it was usually on the basis of mere courtesy, without sufficient guarantee for the persons directly concerned with the administrative act to which the assistance related. The purpose of those two draft conventions was to make co-operation more

[9] General Assembly resolution 2200 A (XXI), annex.

"transparent", in order to protect the interests and rights of private persons.

43. With regard to co-operation in criminal cases, he wished to mention two instruments which had recently entered into force, the first of which related to the recognition and execution of foreign criminal judgements. That convention was not intended to strengthen the enforcement machinery of the State, but, on the contrary, to defend the interests of persons falling foul of the criminal law of a foreign State, who should benefit from the same humanitarian considerations as nationals of that State.

44. Lastly, under the auspices of the Council of Europe a draft convention had been adopted which broke away from an important and almost general principle of international practice concerning extradition—the principle that persons who had acted with political motives were exempt from extradition. That convention listed a certain number of concerted acts of violence which would not be considered as political offences for the purposes of extradition. Consequently, extradition would be mandatory for persons committing those acts, whatever their motives. A similar step had already been taken at The Hague in 1969, against the hijacking of aircraft, but it had not been accepted by the very broad community represented at the International Conference on Air Law held at the Hague in 1970. The draft European convention for the suppression of terrorism had been adopted in the small circle of States members of the Council of Europe, which were now invited to sign and ratify that Convention.

45. All that work might appear very specific to the European States, but it had the same purpose as the work of the International Law Commission: to consolidate and develop the rule of law in international relations. It was to that same end that the European Committee was endeavouring, to the best of its ability, to promote the work of the International Law Commission. Thus, it was shortly to undertake preparatory work for the diplomatic Conference on Succession of States in Respect of Treaties and the diplomatic conference on territorial asylum.

46. He regretted, however, that the Commission had so little time to give him as observer for the European Committee on Legal Co-operation and, especially that its members were too busy with their national and international work to attend the meetings of that Committee. He hoped that the Commission would be represented by its Chairman or by another member at the next session of the European Committee on Legal Co-operation, which was to be held in December 1976.

47. Mr. KEARNEY asked whether the draft European Convention on the service of administrative documents abroad was supplementary to the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters, or whether there was some degree of overlap between the two instruments.

48. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation) said that the system of the draft Convention on the service of administrative documents abroad was based on that of the Convention on the Service Abroad of Judicial and Extra-Judicial Documents. However, it was specifically provided that the draft Convention did not apply to judicial documents but solely to administrative documents.

49. The CHAIRMAN, speaking on behalf of the Commission as a whole, thanked the observer for the European Committee on Legal Co-operation for his instructive account of the Committee's activities. It was gratifying to note that the Committee was dealing with subjects closely related to the Commission's own work, a case in point being its activities regarding water pollution control. The Committee had also taken an active interest in the question of treaties concluded between States and international organizations or between two or more international organizations, and in the topic of succession of States in respect of treaties. He wished to assure the observer for the European Committee that the Commission greatly appreciated and would continue to follow the work of the Committee. He hoped that co-operation between the two bodies would be maintained or even strengthened in the future.

The meeting rose at 1.05 p.m.

1408th MEETING

Friday, 16 July 1976, at 10.25 a.m.

Chairman: Mr. Abdullah EL-ERIAN

Members present: 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. QUENTIN-BAXTER said that, despite its geographical isolation, New Zealand was exposed to many of the problems with which the Special Rapporteur had dealt so movingly and magnanimously in his first report on the law of the non-navigational uses of international watercourses (A/CN.4/295), particularly the problem of pollution. Although pollution was probably felt less acutely there than in almost any other part of the world, New Zealand had, for instance, been concerned over atomic explosions in the atmosphere which, although taking place thousands of miles away, had nevertheless had their effect on its air-space.

2. In weighing its approach to that matter, New Zealand had had to think deeply about the principles of law on which rights and interests were based in cases of that kind. The first such principle was the general duty of States, whether acting inside or outside their own territory, not to breach the rules of law or to commit acts