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Summary record of the 1791st meeting

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

Extract from the Yearbook of the International Law Commission:-
1983, vol. I

completely at variance with the principle of territorial sovereignty. But modern international law was increasingly disinclined to allow any unreasonable exercise of territorial sovereignty that was detrimental to other States and the exercise of their national sovereignty: one example was to be found in the law governing the right of transit of land-locked countries to and from the sea.

43. The principle that a State must not cause harm to another State was in no way contrary to the classical tenets of international law, even though it was generally confined to specific conduct that caused specific harm and was treated as an internationally wrongful act. The same principle had been extended to acts not prohibited by international law and to the injurious consequences of such acts. Draft article 9 was based on that principle as it applied to the chain of causation forged, as it were, by the natural flow of water across frontiers. That article seemed to be—or could be made—independent of the definition of the international watercourse system and of that system as a shared resource. But, as he saw it, the notion that underlay draft article 9 was half-way between the classical concepts of territorial sovereignty and State responsibility, on the one hand, and the international watercourse system as a shared resource, on the other. That was because conduct within the territory of a State which related to water must affect actual or potential conduct within another State relating to that water, if the location, quantity or quality of the water was affected by the said conduct on the part of either State. It was necessary to consider only the adverse effects or harm, since beneficial effects would give rise to no complaint and hence to no legal problem. Inevitably, however, the relative advantages and disadvantages would be compared and evaluated with a view to assessing the extent to which the conduct of the one State and the actual or potential conduct of the other State were reasonable and equitable. It was only a matter of a different approach to the basic question of the distribution of benefits and costs.

44. The duty to refrain from, or to prevent, conduct causing "appreciable harm" to another State could be applied to various kinds of human interference with water and, most easily, to interferences with its natural flow. It could, however, also be applied in cases relating to the quantity of water, where a choice had to be made between competing users. For example, uses such as irrigation and navigation could conflict, and it might be noted that the Mannheim Convention[11] provided for navigation on the River Rhine to take precedence over irrigation.

45. The duty not to cause "appreciable harm" could be adopted even in the case of conservation, when it was primarily a matter of the quality of the water and when the potential or future user was concerned. It had to be recognized, however, that to do so was to stretch the principle to its limit, since no direct harm was involved, although there was a very close connection with the "shared resource" approach.

46. The "shared resource" approach also underlay draft article 8, which despite its length did not, in his view, provide much guidance for solving problems relating to the distribution of the shared resource. The factors listed in subparagraphs (*f*), (*g*), (*h*) and (*j*) of paragraph 1, for instance, seemed to refer to the relevance of the general behaviour of the State and could be regarded as subjective. Other factors were more objective, such as those in paragraph 1 (*c*)—although it was difficult to see what a State could contribute in terms of water—and in paragraph 1 (*i*), in connection with which the Commission would note the somewhat broader concept of alternatives laid down in paragraph 2 (*g*) and (*h*) of article V of the Helsinki Rules.[12] The relative weight of such subjective and objective factors was far from clear.

47. Both the principle of not causing "appreciable harm" and the "shared resource" approach were closely linked to the power elements of the problem. System States would almost inevitably disagree on questions of appreciable harm or equitable distribution, but the articles could lay down an obligation to negotiate a system agreement that would supply the necessary details. With the Commission's permission, he would enlarge on that point at the following meeting.

The meeting rose at 6 p.m.

[11] Revised Convention for the Navigation of the Rhine, signed at Mannheim in 1868 (Council of Europe, *European Yearbook, 1956* (The Hague), vol. II, p. 258).

[12] See 1785th meeting, footnote 13.

1791st MEETING

Tuesday, 28 June 1983, at 10 a.m.

Chairman: Mr. Alexander YANKOV
later: Mr. Laurel B. FRANCIS

Present: Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Flitan, Mr. Jagota, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov.

The law of the non-navigational uses of international watercourses (*continued*) (A/CN.4/348,[1] A/CN.4/367,[2]

[1] Reproduced in *Yearbook . . . 1982*, vol. II (Part One).

[2] Reproduced in *Yearbook . . . 1983*, vol. II (Part One).

A/CN.4/L.352, sect. F.1, A/CN.4/L.353, ILC(XXXV)/ Conf. Room Doc.8)

[Agenda item 5]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR[3] (*continued*)

1. Mr. RIPHAGEN, continuing the statement which he had begun at the previous meeting, said that the negotiation of system agreements, though important as a first step, was not a legal obligation the breach of which could be deemed to give rise to State responsibility. The draft articles contained in the Special Rapporteur's first report (A/CN.4/367) therefore went a step further and provided under articles 11–14 that, even in the absence of a system agreement, there was a duty to negotiate in respect of new conduct concerning the object, in other words in respect of concrete cases. Again, however, that could hardly be said to constitute a legal obligation, although complete disregard of the requirement to notify, consult and negotiate did at least give rise to the legal consequences provided for under article 14. The compulsory procedure laid down in articles 11 *et seq.*, if it were in fact adopted, would not necessarily lead to an agreed solution, since in such a case the draft articles only recommended resort to a third-party dispute-settlement procedure. That was a fatal lacuna, since it divested the draft of any practical value or real meaning. The least that could be expected of a framework treaty was that it would provide for compulsory third-party conciliation, including impartial fact-finding. Even then there was no guarantee of a final solution accepted by all the system States concerned, but the possibility of arriving at such a solution would be greatly enhanced.

2. Whereas dispute settlement was based essentially on the concept of appreciable harm, the notion of a shared resource evoked the idea of some form of joint management of the resource. Such management was obviously not confined to the control of new conduct in respect of the resource. Since a combination of the broadest description of the object and international management would constitute a large measure of extraterritoriality such joint management could hardly be made compulsory under a framework agreement, even if it was sometimes the ideal solution. In that case, however, it was pointless to create the illusion of compulsion, as did draft article 15, by using the mandatory word "shall", only to qualify that term by such phrases as "where it is deemed advisable" or "where expedient". In conclusion, he emphasized the need for a draft that had practical value in terms of specific legal obligations.

3. Mr. FLITAN warmly congratulated the Special Rapporteur, who in one year had prepared not only a report (A/CN.4/367), but also 39 draft articles, which provided a comprehensive view of the topic and represented substantial progress in the study of a complex subject. It was clear from the report (*ibid.*, paras. 59–60) that he had followed the instructions of the Sixth Committee of the General Assembly by making the scope of the draft articles as broad as possible.

4. He disagreed with those members of the Commission who had questioned the need for chapter V of the draft, on procedures for the peaceful settlement of disputes, and who had suggested that it should be left to the discretion of system States to conclude specific agreements on that question. It might be necessary to recast chapter V, but it should be retained, especially since such procedures did not have to be adapted specifically to the nature of the dispute to be settled and since, at its thirty-seventh session, the General Assembly had adopted the Manila Declaration, providing in section I, paragraph 9, that States

> . . . should also include in bilateral agreements and multilateral conventions to be concluded, as appropriate, effective provisions for the peaceful settlement of disputes arising from the interpretation or application thereof.[4]

States were virtually under an obligation to take account of that declaration, which had been adopted unanimously.

5. The draft articles should include a provision referring to international watercourses that formed the border between two or more States. Although it had been stated that the Special Rapporteur had implicitly dealt with that question in his draft, it would, in his own opinion, be advisable to refer expressly to the consequences of situations of that kind. The statement made by the Special Rapporteur in his commentary to draft article 10 (*ibid.*, para. 107) that "every watercourse system in many respects constitutes an 'indivisible unity'" went much too far. As an example of what might happen in the case of a watercourse forming a border, he referred to the construction on the Danube of the Iron Gate hydroelectric power station, during which it had been necessary to adjust the border between Romania and Yugoslavia according to the thalweg.

6. It might also be advisable to refer to the lawfulness of the diversion of a watercourse, if such a diversion to the territory of another State did not entail harmful consequences for the system as a whole.

7. It seemed to him that the rights of downstream States had been taken more fully into account than those of upstream States. The 39 draft articles and, in particular, article 1, paragraph 2, gave the impression that States were being treated unequally depending on their geographical location, and the Special Rapporteur should give further consideration to that point. He should also give more prominence to the principle of good-neighbourliness, an item which was on the General Assembly's agenda.

[3] For the texts, see 1785th meeting, para. 5. The texts of articles 1 to 5 and X and the commentaries thereto, adopted provisionally by the Commission at its thirty-second session, appear in *Yearbook . . . 1980*, vol. II (Part Two), pp. 110 *et seq.*

[4] Manila Declaration on the Peaceful Settlement of International Disputes (General Assembly resolution 37/10 of 15 November 1982, annex).

8. Commenting on the text of the draft articles, he said he had noted that the draft began with a tautological definition of the term "international watercourse system", which was used ambiguously. Further consideration should be given to that definition, in which the word "system" should not be used twice. In draft article 2, paragraph 1, the words "of international watercourse systems and of their waters" were unsatisfactory. In that connection, he noted that the previous Special Rapporteur had seen no point in making a distinction between the use of a watercourse and the use of its waters and that the present Special Rapporteur also considered that distinction to be unnecessary (*ibid.*, para. 19). Draft article 2, paragraph 2, might also give rise to problems because it was not clear which situations it covered. In draft article 3, it would be necessary to explain what was meant by the word "components"; glaciers, ground water and lakes could contribute, albeit minimally, to the formation of the components in question and should be taken into consideration. It was, for example, open to debate how much water a glacier had to contribute to a watercourse system for the glacier to form part of that system. In his view, the words in brackets in draft article 6, paragraph 1, should be retained.

9. Regarding chapter II of the draft, he had great difficulty in agreeing to the proposed concept of a shared natural resource. The fact that that concept had, as pointed out by some members of the Commission, been used in a number of United Nations documents issued well before the formulation of the present draft articles was not a convincing argument. "Sharing" was not the best term to use in order to reflect the idea of co-operation. As Mr. Jagota had suggested (1790th meeting), it might be better to refer to the reasonable and equitable use of the water of a watercourse by system States. In that connection, he noted that the Helsinki Rules[5] did not refer to the concept of a shared natural resource. The Special Rapporteur should therefore reconsider the part of his commentary to article 6 (A/CN.4/367, para. 85) in which he had, in a way, compared the idea of sovereignty and that of co-operation and equality among States. In actual fact, States could not really co-operate unless they were fully sovereign.

10. The wording of draft article 8 should perhaps be reviewed by the Drafting Committee. He noted that paragraph 1 (*b*) did not refer to shared natural resources and did not make it clear whether preference should be given to developing or to developed countries.

11. Draft article 9 and other draft provisions referred to "appreciable harm". The meaning of that term was not clear and it could probably be replaced by a more appropriate one. He had listened with great interest to the comments made by Mr. Riphagen, whom he had expected to refer to State responsibility in cases of failure to comply with the provisions of draft articles 11–13. The Special Rapporteur and Mr. Riphagen might try to find a solution to the problem of the responsibility of States which did not submit the notifications provided for in draft article 14.

12. With regard to draft article 10, he drew attention to the "consultations" referred to in the commentary to that article (*ibid.*, para. 109) and invited members of the Commission to reread the Manila Declaration and, in particular, section I, paragraph 10, to which greater attention should be paid in the draft articles. Lastly, he said that the Special Rapporteur had been right to refer in draft article 12 to a period of six months, which was preferable to the vague criterion of a "reasonable period of time".

13. Sir Ian SINCLAIR, after congratulating the Special Rapporteur on his report (A/CN.4/367) and joining in the tribute paid to Judge Schwebel on his third report (A/CN.4/348), said that reference had rightly been made to the impact of modern technology on the use of international watercourses. The world was in the throes of a veritable revolution in the many and varied uses of water in watercourses. The upsurge in the world's population had put pressure on freshwater resources required for irrigation, hydroelectric power and sewerage. Demands for further industrialization had led to greatly increased use of freshwater resources for industrial purposes, with resultant pollution, and there were the opposing demands of the environmentalists, who were concerned at the damage being caused by excessive and conflicting uses of watercourse systems. That was doubly true of international watercourse systems situated in two or more States, since to the conflict of interests represented by potential agricultural, industrial and other uses was added the extra dimension of potential conflict between the interests of upstream and downstream States. That point served to underline the delicacy of the topic and the consequent need to bear in mind the many uses of international watercourses referred to in the Special Rapporteur's report (A/CN.4/367, paras. 53–58). However, the problems confronting the world, though magnified by technological development, were not entirely new, as Kaeckenbeeck had illustrated as far back as 1918 in his monograph *International Rivers*, from which he quoted an extract.[6]

14. The Special Rapporteur had sought guidance on a number of key issues and, in that connection, had first asked whether the proposed outline of the draft was acceptable. His own answer to that question was in the affirmative, in the sense that the various chapters of the draft covered all the main elements, although the Commission might subsequently wish to simplify certain provisions or even add new ones. In principle, the outline was satisfactory and could serve as the basis for any adjustments to be made in the light of the views expressed. He would, however, hesitate to include any provisions to cover the use of rivers or lakes as natural

[5] See 1785th meeting, footnote 13.

[6] G. Kaeckenbeeck, *International Rivers*,, Grotius Society Publications, No. 1 (London, Sweet and Maxwell, 1918), preface, p. viii.

boundaries. In his view, such a use, though non-navigational, was not one which the General Assembly had intended the Commission to deal with. It would give rise to a number of controversial technical problems as to where the dividing line should run, which would only add to the complexity of the Commission's task.

15. A second question put by the Special Rapporteur was whether the general principles were acceptable, to which his own answer would be somewhat more qualified. First, with regard to the term "international watercourse system", he did not agree that, as defined in draft article 1, paragraph 1, it was virtually synonymous with the concept of the drainage basin, his own position in the matter being more akin to that of Mr. Barboza (1789th meeting). He could understand the concern voiced at using the drainage basin as the criterion for determining what constituted an international watercourse, since the drainage basin concept, though useful for geographical and other scientific studies, was too wide and imprecise for the purposes of the draft. The proposed definition was much narrower in that it concentrated on freshwater components of the watercourse and on the watercourse itself, any land areas within the watershed falling outside its scope. To that extent there was a clear difference between the two concepts. That did not mean that what happened on land could be ignored entirely, since the industrial uses of land areas would more often than not be a source of the pollution that might affect international watercourses; but for the purposes of the draft, the notion of the international watercourse comprising the fresh water of the watercourse and the watercourse itself could be taken as the basis for further work.

16. He wished to mention another preliminary question, namely whether the Commission should base its approach on the notion of an international watercourse system—the emphasis being on the word "system", which had attracted some adverse comment from Mr. Ushakov (1788th meeting). For his part, he was convinced that the system approach was essential to signify that the waters in question must be treated as a unitary whole, at least in relation to certain uses, where what was done in one State could affect the uses of the waters in another State. There could of course be circumstances in which no such problem arose, but that eventuality was adequately covered by draft article 1, paragraph 2. He did not believe that the system approach would create any unduly rigid conceptual framework. As pointed out by Mr. Barboza, there could be, in relation to one and the same watercourse, several systems and several different groups of system States, depending upon the particular use of the waters.

17. Some members of the Commission took the position that a State was free to do what it liked on its own territory with the waters of an international watercourse system, so long as it did not significantly interfere with the quality or quantity of water flowing into a neighbouring State. The emphasis was thus placed on the negative rule of not causing appreciable harm, which was embodied in article 9. However, he himself believed that that negative rule was insufficient to solve the many problems posed by the conflicting uses of a scarce natural resource such as the waters of an international watercourse system. Quite apart from the intrinsic difficulty of formulating a sufficiently precise rule based on the "no appreciable harm" concept, it was essential, in the case of international watercourses, to formulate a positive rule calling for co-operation among the States concerned in accordance with Article 1, paragraph 3, of the Charter of the United Nations, which listed as one of the "Purposes of the United Nations": "To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character . . ." Article 55 of the Charter required the United Nations to promote "solutions of international economic, social, health, and related problems" and, under Article 56, all Member States pledged themselves to take action in co-operation with the Organization for the achievement of the purposes set forth in Article 55. States therefore had a legal duty to co-operate in the solution of problems resulting from uses of the waters of international watercourses.

18. Those remarks brought him to draft article 6 and the comments made during the discussion with regard to the idea that the waters of an international watercourse constituted a "shared natural resource". The exact significance of a generalized concept of that nature was not clear. Such concepts, moreover, tended to acquire overtones which gave rise to hesitation among States and sometimes even degenerated into slogans. It was true that article 5, already provisionally adopted by the Commission, made use of the term "shared natural resource", but there was an important difference in that article 5 designated as such the waters of an international watercourse system and not the system itself, as had been done in draft article 6. For his part, he had a strong preference for the approach taken in article 5: it was the waters that constituted the natural resource and it was in the beneficial uses of the waters that each riparian State was entitled to a reasonable and equitable share.

19. In view of the difference of opinion as to whether the concept of water as a shared natural resource should be included in the text, he wished to stress that he had no major difficulty in acknowledging that the waters of an international watercourse should be treated, for the purposes of the present articles, as a shared natural resource. Leaving aside the semantic argument, the more important question was that there should be general acceptance of the corollaries which flowed from the concept, mainly those stated in draft articles 7, 8 and 16. If the practical consequences of the basic concept were agreed upon, the Commission would be in a better position to reach a precise formulation for the Special Rapporteur's proposal in draft article 6.

20. For reasons beyond its control, the Commission had fallen behind in its consideration of the present item and the General Assembly was impatient for results. He therefore agreed with Mr. Barboza that articles 1 to 5 and X and the note describing the tentative understanding of the term "international watercourse system" should be regarded for the time being as *acquis*, to use Mr. Reuter's

appropriate expression. Any attempt to alter those texts would involve the risk of unravelling all that had been achieved to date. They could be considered when the Commission came at a later stage to convert its working hypothesis on the definition of the term "international watercourse system" into a draft article. At its next session, the Commission could accordingly embark on a detailed discussion of draft articles 7–9 and possibly draft articles 10–19, all of which might be reviewed by the Special Rapporteur in the light of the discussion at the current session, with a view to referring them to the Drafting Committee.

21. Turning to another of the questions on which the Special Rapporteur had sought guidance from the Commission, he had considerable doubts about accepting "good-neighbourliness" (as appearing in articles 7, 13, 27, 29 and 30) as being a legal principle, to be put on a par with that of good faith. In his view, nothing concrete would be added to the notion of good faith by invoking good-neighbourly relations as a supplementary guide. If relations between neighbouring States were bad, they were not likely to be swayed by a requirement to act on the basis of good-neighbourliness.

22. The Commission should give careful consideration to the Special Rapporteur's proposals concerning notifications, as contained in draft articles 11–14. While he did not entirely accept the criticism that the notification provisions were one-sided because in practice they would apply only to an upstream State, he felt that some of the points made by Mr. Calero Rodrigues (1787th meeting), Mr. Jagota (1790th meeting) and Mr. Riphagen on the articles in question deserved serious consideration. It was necessary to balance equitably the interests of the States concerned, for instance one State wishing to proceed with a development which might be of substantial benefit to its population and the other concerned with the harm thereby caused to its rights or interests.

23. The Special Rapporteur had also requested guidance as to whether provisions on the protection of international watercourse systems in times of armed conflict should be included in the draft articles. He agreed with the majority of members that it would be unwise to do so, because many States were considering ratification of the two 1977 Additional Protocols to the 1949 Geneva Conventions[7] and it would be unfortunate if the Commission were to endorse proposals which might be taken to involve amendments to those Protocols. The Commission would not wish to be thought indifferent to the problem of safety of installations. Consideration should therefore be given to the possibility of extracting from article 13 as proposed in the previous Special Rapporteur's third report (A/CN.4/348, para. 415), those elements which were applicable in peacetime, without touching upon provisions applicable only in time of war or armed conflict.

24. With regard to chapter V, on the settlement of disputes, allowance should be made for the enormous range of issues on which differences could arise between system States, or indeed between system States and other States, regarding the application of the draft articles. Some of those issues might not amount to disputes but might be wholly technical in nature, calling for assessment by a neutral expert. However, there was still a need for some residual machinery for the peaceful settlement of disputes in the event that a system agreement made insufficient provision for the matter. In that respect, he shared the views of other speakers regarding the weaknesses of the Special Rapporteur's proposals on the subject. At the very least, a State whose interests (for example, in navigation) were affected by a proposed development should be able to invoke unilaterally the proposed conciliation machinery.

25. Lastly, with regard to pollution, he was in general agreement with the proposals embodied in draft articles 22–24. He noted that, in the commentary to draft article 23, the Special Rapporteur took exception to the distinction between existing pollution and new pollution (A/CN.4/367, para. 171). He himself fully agreed that existing pollution could not be regarded as an acquired right, but stressed that draft article 23 was prospective in its effect. It was difficult to see how States could accept an absolute obligation to eliminate existing pollution.

26. Mr. NI recalled the important part played by the Special Rapporteur in the Third United Nations Conference on the Law of the Sea, where the Evensen group had helped to solve many thorny problems. The Special Rapporteur was now engaged in similar work on the topic of international watercourses, which was no less complicated than that of the sea-bed. A report on a topic of such magnitude and complexity, however, could not fulfil the expectations of all States concerned, whether upper riparian or lower riparian, economically developed or developing, industrial or agricultural.

27. The expansion of the world's population and technical developments in recent decades had led to an increase in demand for drinking water, water for irrigation to meet food requirements and water for industrial purposes. At the same time, water resources were being depleted by pollution and waste. Owing to climatic changes, drought and floods were prevalent in large areas of the world.

28. The regulation of water uses in order to satisfy needs and attain an optimum utilization of water resources was calling for increasing attention on the part of lawyers as well as scientists. In the realm of law, the question was a universal one and not one merely for individual States—hence the task entrusted to the Commission.

29. The Special Rapporteur favoured the drawing up of a framework agreement comprising general principles as guidelines, to be supplemented by system agreements relating to specific watercourses. In that connection, the Commission's report on its thirty-second session mentioned such principles as good-neighbourliness and *sic utere tuo ut alienum non laedas*, as well as the sovereign rights of riparian States.[8] Three further basic principles had been stated by the Special Rapporteur in introducing

[7] See 1785th meeting, footnote 14.

[8] *Yearbook . . . 1980*, vol. II (Part Two), p. 109, para. 95.

(1785th meeting) his first report (A/CN.4/367): the obligation of States to negotiate; the application of system agreements; and the concept of the international watercourse system as a shared natural resource. In addition, he had set out the following principles, described by him as legal standards which the riparian States should observe: "reasonable and equitable participation" or "fair and reasonable distribution"; "good faith and good-neighbourly relations"; "optimum utilization"; and the requirement to refrain from causing "appreciable harm".

30. It should be stressed that those principles did not constitute mere dogmas; they were derived from accumulated experience and practice. In its report on its thirty-second session, the Commission had appropriately pointed out that, before undertaking a substantive study of the topic, "all relevant materials on State practice should be compiled and analysed".[9] During the debates at that session, some members of the Commission had questioned the deductive approach. The previous Special Rapporteur had pointed out that, in some cases, there would be no difficulty in extracting from State practice certain general principles, but that the situation was more uncertain in other cases; however, the Special Rapporteur had entirely agreed that full account should be taken of State practice.

31. For all practical purposes, it was desirable to explore the relationship between State practice and the general principles mentioned by the present Special Rapporteur, especially the obligation to negotiate and the notion of shared natural resources.

32. With regard to the obligation to negotiate set forth in draft article 4, paragraph 3, he noted the opening words "In so far as the uses of an international watercourse system may require", which set forth a condition for entering into negotiations. The exact meaning of that passage was not clear: it might be taken to signify that wherever there were such uses there should be negotiations for the conclusion of an agreement. Article 33 of the Charter of the United Nations, however, specified that the parties to any dispute must first seek a solution by negotiation and the other means stated therein. In other words, a solution by negotiation was sought in order to settle a dispute. It was difficult to imagine that an obligation to negotiate should be laid down in the abstract. Such an obligation was incurred only when a difficulty arose and not before.

33. Both the Special Rapporteur and his immediate predecessor had affirmed the concept that the waters of an international watercourse constituted a shared natural resource. In the report under discussion, reference was made (*ibid.*, paras. 34–36) to the 1977 United Nations Water Conference, which had drawn up the Mar del Plata Action Plan[10] containing recommendations on co-operation among countries concerning the use, management and development of such waters as a shared resource. However, the question arose whether the principle of permanent sovereignty over natural resources stated in article 2 of the Charter of Economic Rights and Duties of States[11] applied to a natural resource shared by two or more countries, as provided in article 3 of the same Charter. It was not clear whether article 3 of that Charter constituted an exception to article 2 and consequently whether the waters of international watercourses, as a shared natural resource, were not subject to the sovereignty of the riparian States. The question was a controversial one.

34. The Mar del Plata Action Plan, in referring to the necessity for States to co-operate in the case of shared water resources, stated in its recommendation 90 that

> . . . Such co-operation, in accordance with the Charter of the United Nations and principles of international law, must be exercised on the basis of the equality, sovereignty and territorial integrity of all States . . .

In interpreting the meaning of "shared natural resources" as applied to waters of international watercourses, the real question was not whether permanent sovereignty subsisted in a shared natural resource but the manner in which that sovereignty was to be exercised. Sovereignty did not give a State the right to do whatever it pleased. In the case of shared natural resources, the sovereign rights of all States concerned must be respected. In a spirit of good-neighbourliness, those States must accommodate the legitimate interests of co-riparian States and refrain from causing injury to other States.

35. The question of the use of the waters of international watercourses had special significance for the developing countries because of their lack of experience in concluding necessary agreements as well as the lack of available techniques for managing and developing shared natural resources. Those countries should resolve their differences, if any, in a spirit of equality and good faith.

36. Mr. USHAKOV pointed out that, unlike other sets of draft articles formulated by the Commission, the draft articles under consideration related only to bilateral relations between States. For example, the draft which had become the 1961 Vienna Convention on Diplomatic Relations governed relations between receiving States and sending States and the rules it embodied were binding on all receiving States and sending States that had become parties to it. If the present draft one day became an international convention containing binding rules and if it entered into force after being ratified by some 30 States throughout the world, it would have no legal effect. If it was to have any legal effect, it would have to be binding on all the co-riparian States of international watercourses. It would not be enough, for instance, for two co-riparian States of an international watercourse to be parties to the convention if other co-riparian States were not parties as well. The provisions relating to shared natural resources would also be meaningless if they were not binding on all the co-riparian States of an international watercourse. Accordingly, the Commission could only formulate guidelines for co-riparian States.

The meeting rose at 12.55 p.m.

[9] *Ibid.*, p. 104, para. 60.

[10] See 1787th meeting, footnote 9.

[11] General Assembly resolution 3281 (XXIX) of 12 December 1974.