The law of water: Historical record

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INTRODUCTION

A river is always a physical and hydrological unit which creates socio-political realities. Some rivers lie entirely within the territory of a state. In this case, exploitation of fluvial waters cannot provoke repercussions in other states. These national rivers are owned by the state in question. On the other hand, there are rivers which run through the territory of two or more states, or which constitute the boundary between them. These international rivers and their waters can be used in a great many ways: as watercourses for navigation, for fisheries, irrigation, sports, water supply for the population, cooling, generation of electrical energy, industrial uses, etc. Certain uses of a river can produce alterations in its natural regime which can affect its course, its flow-rate, the volume of its waters or their quality.

Up to the end of the eighteenth century, navigation was the principal problem with regard to international rivers.

1. NAVIGABLE AND NON-NAVIGABLE RIVERS

1 1 - There are two types of rivers, navigable and non-navigable rivers. Up to the eighteenth century, states through which territories international rivers passed, commonly considered that part of the navigable rivers within their boundaries as their own property, imposed taxes and restrictions on the ships and trade at their will, and claimed the right to prevent any other states, even the riparian states, from using that part for navigation.

1.2 - After the French Revolution, France with its more liberal ideas was the first to promote the theory that an international river is a common asset of the countries through which it flows. But the principle of free navigation to all nations and on all European rivers was only established in the Vienna conference held in 1815. In 1856 the Paris Conference applied the principle of free navigation to the Danube river, and created an international commission to supervise its application.

1.3 - Brazil and Argentine, in South America, opened in 1866 the Amazon and Plata rivers to international navigation. In Africa, the general Act of the Congo Conference held in Berlin in 1884 - 1885 provided for free navigation on the Congo and Niger. This was later confirmed in the St. Germain Treaty in 1919. After the first World War, reference in the peace Treaty was made to the need for making an international agreement for the organisation of navigation in all rivers. As a result, the Barcelona Convention of 1921 was mainly concerned with navigation problems.

2. THE NON-NAVIGATIONAL USES OF INTERNATIONAL RIVERS

2.1 - The uses of international rivers and their waters other than navigation pose complicated questions. The uses of the water of international rivers become very important with the increasing demand for water for irrigation, the demand for hydro-electric power and the progress of industry. From the legal point of view, the fundamental problem is in determining whether a state can use the waters of an international river in any way it pleases, or whether certain legal norms exist to protect the interests of other riparian states. The problems of the uses of international rivers have been a topic of interest among international jurists. Different and opposing theories were argued.

2.2 - The theory of absolute territorial sovereignty:

According to the theory of absolute territorial sovereignty, the state may use the river water which lies within its borders, as necessary without regard for any other riparian state. The theory of absolute territorial sovereignty is mostly asserted by upper riparian states. In 1895 the U.S. Attorney General Harmon stated, in his opinion, on the dispute between the U.S. and Mexico over the Rio Grande River, that "the rules, principles and precedents of international law impose no liability or obligation on the United States to let parts of the waters which diverted upstream by the United States flow to Mexico.

The great majority of international jurists reject the Harmon Doctrine on the principle of *sic utere tuo ut alienum non laedas* (use your own so as not to cause an injury to another). States practice has also repudiated the Harmon doctrine. The United States did not invoke the Harmon doctrine during its dispute with Canada over the Columbia River. In the Lake Lanoux case, the arbitral tribunal ruled that "according to the rules of good faith, the upstream state is under the obligation to take into consideration the various interests involved, to seek to give them every satisfaction compatible with the pursuit of its own interests, and to show that in this regard it is genuinely concerned to reconcile the interests of the other riparian state with its own". It has been pointed out that upper riparians "have never persisted in the claim of absolute territorial sovereignty when the dispute was truly over water". Today, it can be asserted that the principle which presumes to grant to a state the absolute freedom to use waters flowing through its territory is contrary to general international law.

2.3 - The theory of absolute integrity of the river

According to this theory, also called the theory of absolute territorial integrity, the lower riparians have an absolute right to have the uninterrupted flow of the river from the territory of the upper riparian. Hence a riparian state may not harness a section of an international river if it will not harm another riparian state. A state may not use an international river in a way which alters its course, its flow rate, the volume of its waters, their quality, in the territory of another state. That is to say, the state must conduct itself within the limits of its territory in such a way as not to alter the natural regime of the river when it runs through the territory of another state. This theory has been applied to settle disputes between the member states of a federal state.

The Harmon Doctrine and the theory of absolute territorial integrity constitute two extreme positions. Between them, there are other concepts which are more pragmatic and which take into account the great importance of irrigation works and the generation of electricity for economic development.

2.4 - The theory of limited territorial integrity

According to this theory, every state is free to use its territorial water, provided that it in no way prejudices the rights and uses of the other states. The right to the use of water reflects the need of the various riparian states. In other words, this theory maintains that a state may use the waters of international rivers, but that this use is subject to some restrictions in favour of the other riparian states. To describe this restriction on territorial sovereignty, scholars refer to private law institutions, such as, for example, servitudes, abuse of rights, condominium or vicinity. These concepts take into consideration the negative aspect of state activities. In the Lake Lanoux arbitration between France and Spain, the arbitral tribunal stated "the sovereignty in its own territory of a state desirous of carrying out hydro-electric developments". On the other hand the tribunal acknowledged "the correlative duty not to injure the interests of a neighbouring state". The theory of limited territorial integrity is widely favoured by international jurists and state practice.

2.5 - The theory of community of interests

This theory represents the most progressive of the water rights theories. National boundaries are ignored and the entire basin is regarded as one economic and geographic unit. Due to the scientific developments over the last decades, the hydrological regime of rivers and the physical factors which govern them have become known with great precision. Legal norms have been based upon them. International rivers are considered by the natural sciences to be part of a natural unity which is the hydrographical basin.

Recent doctrine tends to systematise the norms governing the use and exploitation of international rivers and lake waters on the basis of the notion of the basin. The treaties on the Basin of Lake Chad of May 22, 1964, on the Basin of the Niger of November 25, 1964, and on the Basin of the River Senegal of December 17, 1975, are some examples in this sense. This theory was also followed in the Lake Lanoux Arbitration of November 16, 1957.

2.6 - International Law Association (Helsinki rules)

The International Law Association discussed the international river problems, in its 47th and 48th conferences held in Dubrovnic in 1956 and in New York in 1958 in an attempt to lay down rules to be applied in this connection. At its meeting of August 1966 in Helsinki, a set of rules has been adopted. These rules known as Helsinki rules founded a new concept of co-operation and understanding between riparian states.

Article 2 defines an international drainage basin by stating that "an international drainage basin is a geographical area extending over two or more states determined by the watershed limits of the system of waters, including surface and underground waters, flowing into a common terminus".

Article 3 defines a basin state to be a state the territory of which includes a portion of an international drainage basin.

Article 4 states that "each basin state is entitled to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin". According to the International Law Association, this Article reflects the key principle of international law in this area, that every basin state in an international drainage basin has the right to a reasonable use of the waters of the drainage basin.

Article 5 laid down the criteria of a reasonable and equitable utilisation of the waters of an international drainage basin by stating that ":

1) What is a reasonable and equitable share within the meaning of article 4 is to be determined in the light of all the relevant factors in each particular case.

2) Relevant factors which are to be considered include, but are not limited to :

   a) the geography of the basin, including in particular the extent of the drainage area in the territory of each basin state ;

   b) the hydrology of the basin, including in particular the contribution of water by each basin state ;

   c) the climate affecting the basin;

   d) the past utilisation of the waters of the basin, including in particular exiting utilisation ;

   e) the economic and social needs of each basin state ;

   f) the population dependent on the waters of the basin in each basin state ;

   g) the comparative costs of alternative means of satisfying the economic and social needs of each basin state ;

   h) the availability of other resources ;

   i) the avoidance of unnecessary waste in the utilisation of waters in the basin ;

   j) the practicability of compensation to one or more of the co-basin states as a means of adjusting conflicts among uses; and

   k) the degree to which the needs of a basin state may be satisfied, without causing substantial injury to a co-basin state.

3) The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determin-

ing what is a reasonable and equitable share, all relevant factors are to be considered together and a conclusion reached on the basis of the whole."

3. THE INTERNATIONAL LAW COMMISSION DRAFT ARTICLES ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

The International Law Commission was established in 1947, to contribute to the progressive development of international law and its codification. The Commission included the topic "the law of the non-navigational uses of international watercourses" in its programme of work at its twenty-third session (1971), in response to the recommendation of the U.N. General Assembly in resolution 2669 (XXV) of December 8, 1970. After more than twenty years of work, the Commission adopted the final text of a set of thirty-three draft articles on the law of the non-navigational uses of international watercourses and a resolution on confined transboundary ground water. The Commission decided to recommend the draft articles on the law of the non-navigational uses of international watercourses and the resolution on confined ground water to the General Assembly. It recommends the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles.

The draft articles are now a subject of discussion and consideration by the General Assembly and its sixth committee.

3.1 - Scope of the draft articles

Article 1 of the draft articles states that :

- "the present articles apply to uses of international watercourses and of their waters for purposes other than navigation, and to measures of conversation and management related to the uses of those watercourses and their waters ;

- the use of international watercourses for navigation is not within the scope of the present articles except in so far as other uses affect navigation or are affected by navigation."

3.2 - Use of terms

Article 2 defines certain terms that are used throughout the draft articles. Other terms that are used only in one article are defined in the article in which they are employed. Article 2 stipulates that "for the purpose of the present article :

a) *international watercourses* means a watercourse, parts of which are situated in different states ;

b) *watercourse* means a system of surface waters and ground waters constituting by virtue of their physical relationship a unitary whole, and normally flowing into a common terminus ;

c) *watercourse state* means a state in whose territory part of an international watercourse is situated."

3.3 - Watercourses agreements

The diversity characterising individual watercourses and the consequent difficulty in drafting general principles that will apply universally to various watercourses throughout the world have been recognised by the commission from the early stages of its consideration of the topic. During the course of its work, the commission has developed a promising solution to the problem of the diversity of international watercourses and the human needs they serve, that of a framework agreement, which will provide for the states parties the general principles and rules governing the non-navigational uses of international watercourses, in the absence of specific agreement among the states concerned, and provide guidelines for the negotiation of future agreements. This approach recognises that optimal utilisation, protection and development of a specific international watercourse are best achieved through an agreement tailored to the characteristics of that watercourse and to the needs of the states concerned. It also takes into account the difficulty, as revealed by the historical record, of reaching such agreements relating to individual watercourses without the benefit of general legal principles concerning the uses of such watercourses. It contemplates that these principles will be set forth in the framework agreement. This approach has been broadly endorsed both in the commission and in the sixth committee of the General Assembly.

3.4 - Equitable and reasonable utilisation and participation

Article 5 sets out the fundamental rights and duties of states with regard to the utilisation of international watercourses for purposes other than navigation. One of the most basic of these is the well-

established rule of equitable utilisation, which is laid down and elaborated upon in paragraph 1. The principle of equitable participation, which complements the rule of equitable utilisation, is set out in paragraph 2. This article states :

"1. Watercourse states shall in their respective territories utilise an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse states with a view to attaining optimal utilisation thereof and benefits therefrom consistent with adequate protection of the watercourse.

2. Watercourse states shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilise the watercourse and the duty to co-operate in the protection and development thereof, as provided in the present articles."

The purpose of article 6 of the draft article is to set out factors relevant of equitable and reasonable utilisation. Article 6 stipulates :

"1. Utilisation of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

a) geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character ;

b) the social and economic needs of the watercourse states concerned ;

c) the population dependent on the watercourse in each watercourse state ;

d) the effects of the use or uses of the watercourse in one watercourse state on other watercourse states;

e) existing and potential uses of the watercourse;

f) conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect ;

g) the availability of alternatives, of corresponding value, to a particular planned or existing use.

2. In the application of article 5 or paragraph 1 of this article, watercourse states concerned shall, when the need arises, enter into consultations in a spirit of co-operation."

3.5 - Obligation not to cause significant harm

Article 7 of the draft article set out an obligation on every watercourse state, not to cause significant harm to another watercourse state, by stating that :

"1. Watercourse state shall exercise due diligence to utilise an international watercourse in such a way as not to cause significant harm to other watercourse state..

2. Where, despite the exercise of due diligence, significant harm is caused to another watercourse state, the state whose use causes the harm shall, in the absence of agreement to such use, consult with the state suffering such harm over :

a) the extent to which such use is equitable and reasonable taking into account the factors listed in article 6 ;

b) the question of ad hoc adjustments to its utilisation, designed to eliminate or mitigate any such harm caused and where appropriate, the question of compensation."

The commission in this article is setting forth a process aimed at avoiding significant harm as far as possible while reaching an equitable result in each concrete case. Optimal use of finite water resources of an international watercourse is considered in light of the interests of each watercourse state concerned. This is in accord with the emphasis throughout the articles generally and in part III in particular on consultations and negotiations concerning planned measures.

The approach of the commission was based on three conclusions :

⇨ first, that article 5 alone did not provide sufficient guidance for states in cases where harm was a factor ;

- second, that states must exercise due diligence to utilise a watercourse in such a way as not to cause significant harm ;

- third, that the fact that an activity involves significant harm would not of itself necessarily constitute a basis for barring it. In certain circumstances, "equitable and reasonable utilisation" of an international watercourse may still involve significant harm to another watercourse state. Generally, in such instances, the principle of equitable and reasonable utilisation remains the guiding criterion in balancing the interests at stake.

3.6 - General obligation to co-operate

Article 8 lays down the general obligation of watercourse states to co-operate with each other in order to fulfil the obligations and attain the objectives set forth in the draft articles. Co-operation between watercourse states with regard to their utilisation of an international watercourse is an important basis for the attainment and maintenance of an equitable allocation of the uses and benefits of the watercourse and for the smooth functioning of the procedural rules contained in part III of the draft.

Article 8 indicates both the basis and the objectives of co-operation. With regard to the basis of co-operation, the article refers to the most fundamental principles upon which co-operation between watercourse states is founded. Other relevant principles include those of good faith and good-neighbourliness. As to the objectives of co-operation, the commission considered whether these should be set forth in some detail. It came to the conclusion that a general formulation would be more appropriate, especially in view of the wide diversity of international watercourses and the uses thereof, and the needs of watercourse state.

Article 8 stipulates: "Watercourse states shall co-operate on the basis of sovereign equality, territorial integrity and mutual benefit in order to attain optimal utilisation and adequate protection of an international watercourse."

3.7 - Regular exchange of data and information

With regard to the exchange of data and information between the watercourse states, article 9 of the draft articles states:

"1. Pursuant to article 8, watercourse states shall on regular basis exchange readily available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature, as well as related forecasts.

2. If a watercourse state is requested by another watercourse state to provide data or information that is not readily available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting state of the reasonable costs of collecting and, where appropriate, processing such data or information.

3. Watercourse states shall employ their best efforts to collect and, where appropriate, to process data and information in a manner which facilitates its utilisation by the other watercourse states to which it is communicated."

In fact, article 9 sets forth the general minimum requirements for the exchange between watercourse states of the data and information necessary to ensure the equitable and reasonable utilisation of an international watercourse. Watercourse states require data and information concerning the condition of the watercourse in order to apply article 6, which calls for watercourse states to take into account "all relevant factors and circumstances" in implementing the obligation of equitable utilisation laid down in article 5. The rules contained in article 9 are, of course, residual : they apply in the absence of particularised regulation of the subject in an agreement of the kind envisaged in article 3, i.e. relating to a specific international watercourse. Indeed, the need is clear for watercourse states to conclude such agreements among themselves in order to provide, *inter alia*, for the collection and exchange of data and information in the light of the characteristics of the international watercourse involved, as well as of their special requirements and circumstances. The smooth and effective functioning of the regime envisaged in article 9 is dependent upon co-operation between watercourse states. The rules in this article thus constitute a specific application of the general obligation to co-operate laid down in article 8.

3.8 - Relationship between different kinds of uses

According to article 10 of the draft articles :

"1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses.

2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to the principles and factors set out in articles 5 to 7, with special regard being given to the requirements of vital human needs."

Article 10 sets forth the general principle that no use of an international watercourse enjoys inherent priority over other uses. The article also addresses the situation in which there is a conflict between different uses of an international watercourse.

3.9 - Planned measures

Article 11 introduces the articles of part III of the draft and provides a bridge between part II, which includes article 9 on the regular exchange of data and information, and part III, which deals with the provision of information concerning planned measures.

Article 11 lays down a general obligation of watercourse states to provide each other with information concerning the possible effects upon the condition of the international watercourse of measures they might plan to undertake. The article also requires that watercourse states consult with each other on the effects of such measures.

Articles II states :

Watercourse states shall exchange information and consult each other on the possible effects of planned measures on the condition of an international watercourse.

3.10 - Protection, preservation and management

According to article 20 of draft articles :

Article 20 introduces part IV of the draft articles by laying down a general obligation to protect and preserve the ecosystems of international watercourses. Like article 192 of the 1982 United Nations Convention on the Law of the Sea, article 20 contains obligations of both protection and preservation. These obligations relate to the "ecosystems of international watercourses", an expression utilised by the commission because it is more precise than the concept of the "environment" of a watercourse. The latter term could be interpreted quite broadly, to apply to areas "surrounding" the watercourses that have minimal bearing on the protection and preservation of the watercourse itself. Furthermore, the term "environment" of a watercourse might be construed to refer only to areas outside the watercourse, which is of course not the intention of the commission. For these reasons, the commission referred to utilise the term "ecosystem" which is believed to have a more precise scientific and legal meaning with regard to prevention, reduction and control of pollution.

Article 21 of the draft articles lays down an obligation to act, individually or jointly to prevent, reduce and control pollution of an international watercourse, by stipulating that :

"1. For the purposes of this article, "pollution of an international watercourse" means any detrimental alteration in the composition or quality of the waters of an international watercourse which results directly or indirectly from human conduct.

2. Watercourse states shall, individually or jointly, prevent, reduce and control pollution of an international watercourse that may cause significant harm to other watercourse states or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse. Watercourse states shall take steps to harmonise their policies in this connection.

3. Watercourse states shall, at the request of any of them, consult with a view to establishing lists of substances, the introduction of which into the waters of an international watercourse is to be prohibited, limited, investigated or monitored."

Article 23 of the draft articles addresses the serious problem of pollution that is transported into the marine environment by international watercourses.

Article 23 states :

"Watercourse states shall, individually or jointly, take all measures with respect to an international watercourse that are necessary to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards."

Article 24 of the draft article recognises the importance of co-operation by watercourse states in managing international watercourses with a view to ensuring their protection while maximising benefits for all watercourse states of modalities of management that are appropriate to the individual states and watercourses in question.

Article 24 stipulates that :

"1. Watercourse states shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism.

2. For the purposes of this article, "management" refers, in particular, to :

a) planning the sustainable development of an international watercourse and providing for the implementation of any plans adopted; and

b) otherwise promoting rational and optimal utilisation, protection and control of the watercourse."

3.11 - Harmful conditions and emergency situation

Article 27 deals with a wide variety of "conditions" related to international watercourses that may be harmful to watercourses states. While it may be debated whether the harm results from the condition itself or from the effects thereof, there is no doubt that such problems as floods, ice flows drought and water-borne diseases, to mention only a few, are of serious consequence for watercourse states. The present article is concerned with the prevention and mitigation of such conditions while article 28 deals with the obligation of watercourse states in responding to actual emergency situations.

Article 27 states :

"Watercourse states shall, individually or jointly, take all appropriate measures to prevent or mitigate conditions that may be harmful to other watercourse states, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltations, erosion, salt-water intrusion, drought or desertification.

Article 28 deals with the obligations of watercourse states in responding to actual emergency situations that are related to international watercourses. It is to be contrasted with article 27 which concerns the prevention and mitigation of conditions that may be harmful to watercourse states. Article 28 stipulates that:

"1. For the purposes of this article, "emergency" means a situation that causes, or poses an imminent threat of causing, serious harm to watercourse states or other states and that results suddenly from natural causes, such as floods, the breaking up of ice, landslides or earthquakes, or from human conduct, such as industrial accidents.

2. A watercourse state shall, without delay and by the most expeditious means available, notify other potentially affected states and competent international organisations of any emergency originating.

3. A watercourse state within whose territory an emergency originates shall, in co-operation with potentially affected states and, where appropriate, competent international organisations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of the emergency.

4. When necessary, watercourse state shall jointly develop contingency plans for responding to emergencies, in co-operation, where appropriate, with other potentially affected states competent international organisations.

3.12 - Settlement of disputes

Article 33 provides a basic rule for the settlement of watercourse disputes. The rule is residual in nature and applies where the watercourse states concerned do not have an applicable agreement for the settlement of such disputes. Article 33 states :

"In the absence of an applicable agreement between the watercourse states concerned, any watercourse dispute concerning a question of fact or the interpretation or application of the present articles shall be settled in accordance with the following provisions :

a) If such a dispute arises, the states concerned shall expeditiously enter into consultations and negotiations with a view to arriving at equitable solutions of the dispute, making use, as appropriate, of any joint watercourse institutions that may have been established by them.

b) If the states concerned have not arrived at a settlement of the disputes through consultations and negotiations, at any time after six months from the date of the request for consultations and negotiations, they shall at the request of any of them have recourse to impartial fact-finding or, if agreed upon by the states concerned, mediation or conciliation.

i. Unless otherwise agreed, a fact-finding commission shall be established, composed of one member nominated by each state concerned and in addition a member not having the nationality of any of the state concerned chosen by the nominated members who shall serve as chairman.

ii. If the members nominated by states are unable to agree on a chairman within four months of the request for the establishment of the commission, any state concerned may request the Secretary General of the United Nations to appoint the chairman. If one of the states fails to nominate a member within four months of the initial request pursuant to paragraph (b), any other state concerned may request the Secretary General of the United Nations to appoint a person who shall not have the nationality of any of the states concerned, who shall constitute a single member commission.

iii. The commission shall determine its own procedure.

iv. The states concerned have the obligation to provide the commission with such information as it may require and, on request, to permit the commission to have access to their respective territory and to inspect any facilities, plant, equipment, construction or natural feature relevant for the purpose of its inquiry.

v. The commission shall adopt its report by a majority vote, unless it is a single member commission, and shall submit that report to the states concerned setting forth its findings and the reasons therefore and such recommendations as it deems appropriate.

vi. The expenses of the commission shall be borne equally by the states concerned.

c) If, after twelve months from the initial request for fact-finding, mediation or conciliation or, if a fact-finding, mediation or conciliation commission has been established, six months after receipt of a report from the commission, whichever is the later, the states concerned have been unable to settle the dispute, they may by agreement submit the dispute to arbitration or judicial settlement.

3.13 - Confined transboundary ground water

The draft resolution concerning ground water adopted by the commission lays down guidelines and general principles regarding the transboundary confined ground water. The text of the draft resolution is as follows :

The International Law Commission

Having completed its consideration of the topic "The law of the non-navigational uses of international watercourses".

Having considered in that context ground water which is related to an international watercourse,

Recognising that confined ground water, that is ground water not related to an international watercourse, is also a natural resource of vital importance for sustaining life, health and the integrity of ecosystems,

Recognising also the need for continuing efforts to elaborate rules pertaining to confined transboundary ground water,

Considering its view that the principles contained in its draft articles on the law of non-navigational uses of international watercourses may be applied to transboundary confined ground water,

1) *Commends* states to be guided by the principles contained in the draft articles on the law of non-navigational uses of international watercourses, where appropriate, in regulating transboundary ground water ;

2) *Recommends* states to consider entering into agreements with the other state or states in which the confined transboundary ground water is located ;

3) *Recommends* also that, in the event of any dispute involving transboundary confined ground water, the states concerned should consider resolving such dispute in accordance with the provisions contained in article 33 of the draft articles, or in such other manner as may be agreed upon.

CONCLUSION

The utilisation of the waters of international rivers have become an international concern since the eighteen century. It started with navigational aspects, but with the progress of industry and the development of technology, several usages of river waters have emerged. Perhaps the most important of these usages is the utilisation of the water for irrigation, and generation of electrical energy.

Although each basin or each international river is the subject of a specific legal regime and despite the diversity of the theories and concepts regarding the uses of the water of international rivers, there are nevertheless certain rules of general international law which are applicable to all.

Efforts have been directed towards the codification of the Law of Water. The draft articles on the law of the non-navigational uses of international watercourses, adopted by the International Law Commission, pave the way for concluding a multilateral convention in the future.