

**WATER RESOURCES IN THE
MIDDLE EAST**

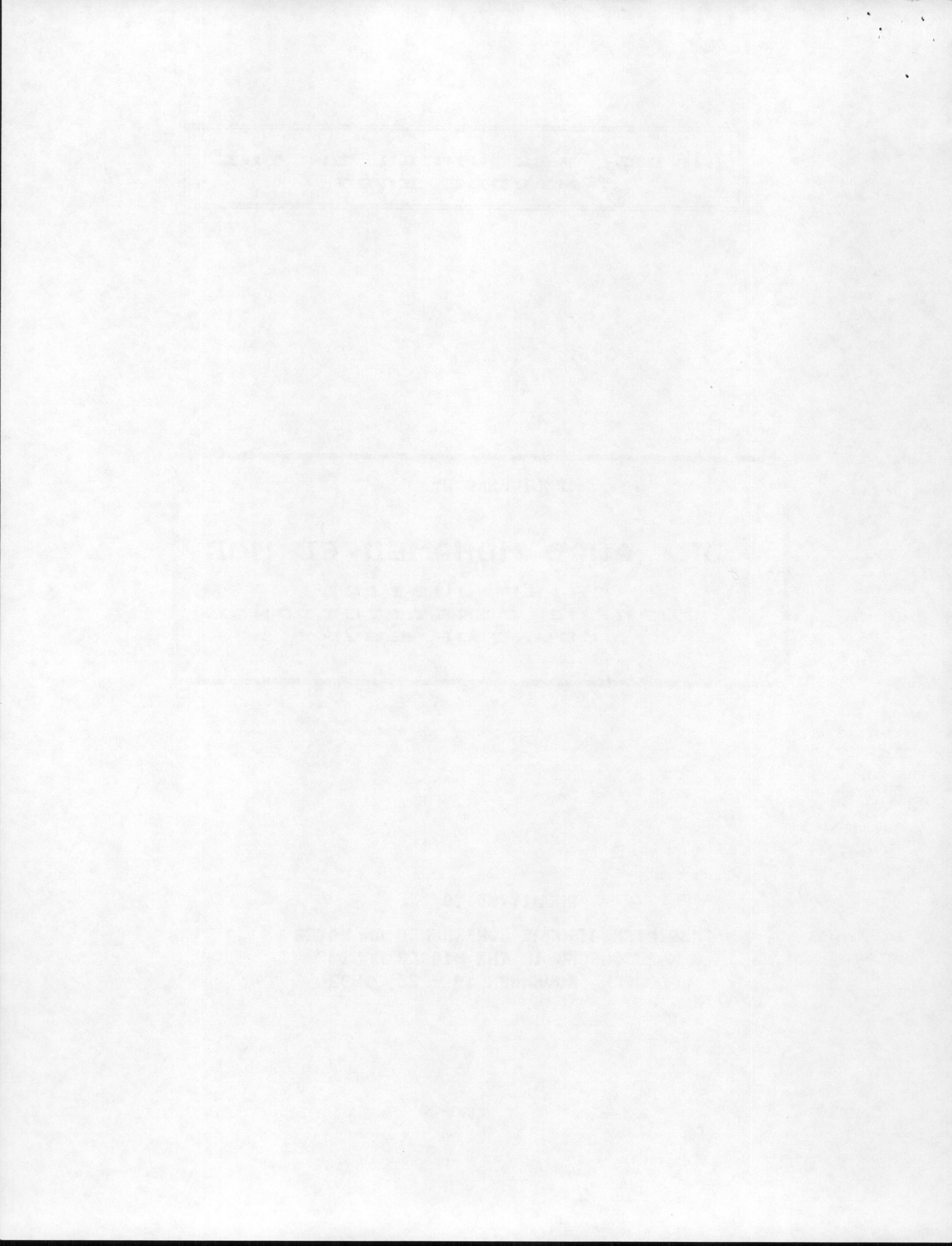
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WATER RESOURCES IN THE MIDDLE EAST

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1. More than anyother region in the world, the Middle East presents itself as an area of contradictory values, and the core of continuous conflicts and antagonism. Water in that region is the most problematic issue due to the scarcity of water resources, and the necessity to administer their uses to satisfy health, energy, science, industry and transportation interests. Current patterns of the consumptive uses of water, are likely to add further strains on security requirements.
2. The scope of this study centers on the so-called international rivers which run through several states and belong to their respective territories, which term does not only refer to the main stream of the river, but includes all waters that form a part of the unity of its flow. Apart from navigational purposes, the question of the utilisation of the flow of international rivers has acquired considerable importance; a question which shall never arise in connection with a national river which lie wholly from its sources to its mouth within the boundries of the one and the same state.
3. No rigid international rule, especially in a region already plagued with constant tension and unjustified ambitious, can be equally applied to all riparians. Only by reliance on concrete situations and with due account to all relevant factors and special circumstances, can solutions to drastic problems bearing on acceptable uses of water resources,

be found. Geographically and economically, international rivers in the middle east, affect the vital interests of more than one state, and in that region, irrigation, the generation of hydroelectric power and other industrial uses are more prominent and acquire far-reaching importance than navigation and fishing in international basins.

4. Associated with the water problems in the middle east, and in contradiction with international practice, are two major trends: (1) countries who feel that their military might supercedes that of their neighbors, are likely to focibly or implidely obtain the consent of other riparians in connection with unilateral actions which they adovocate irrespective of their significant harmful effects on others including the introduction of a drastic change in the natural conditions of the river basin. This is coupled in the case of Israel with its complete control over Arab water resources in occupied territories, the limitations its imposes on water allocated to Palestinians for their personal consumption, and its use of underground water at excessive rates. (2) the erection of reservoirs with enormous storage capacities without a prior notice to be given to the interested states and in the absence of meaningful consultations and the exchange of information on all questions relevant to the river basin including the envisaged increase in the annual flow, the proposed scheme for their ultimate allocation and the detremintal effects on actual water supplies. Turkey which is a proponent of that trend, holds the view that as Arabs do with their oil, the full utilisation of water resources within its reach is the province of its sovereign rights and that other riparians are not in a postition to challenge the proprieties it claims in water uses. In so doing,

Turkey bases its allegations on a right unrestricted by rules of public international law which treat the river basin as one single whole, totally integrated, and entirely indivisible, and pays no attention to actual water uses desperately needed by both Syria and Iraq.

5. Trends in that line are incompatible with generally accepted norms, reflect a deviation from normal neighborhood relations, lay emphasis on force or the threat of its use, introduce new patterns of conduct likely to incite tension, provoke hostilities and deteriorate the foundation for peaceful co-existence. Basing claims on one side's point of view, negating the common needs of all riparians, rendering meaningless the obligation to effectively cooperate in matters of mutual interest and to peacefully settle disputes arising out from the implications of a particular situation is nothing more than a disregard of the fact that the maximum benefit to be derived from the river basin potentialities can only be obtained through intensive close consultations and comprehensive cooperation on the international plane and finally instigate **confrontation** instead of understanding and frustrate actual efforts directed towards the preservation of the momentum of a peaceful settlement in this region.

6. The core of water crises in the middle east is not confined to unilateral aggressive actions already mentioned, but encompasses other factors that would affect the flow of the river basin. Which factors are normally related to the conditions of climate in territories through which the river passes; shortage of the annual rainfall; expansion of cultivated areas to meet the imperative requirements which mitigate the increase in population. Added to this

are the poor underdeveloped means of irrigation not aligned with the modern techniques concerning the scientific approach for the proper use of waters; the reluctance to initiate and institute standards, programmes, facilities for research and technical assistance; the establishment of inappropriate funds to advance a common administration of the water system on regional basis; evaporation coupled with accentuated salinity of water resources; and other unreasonable risks to which the river basin may be exposed.

7. Factors having impact on the scarcity of water resources complicate problems attached to their utilisation and require more stringent measures to overcome their harmful effects. Such measures may include, regional agreements which outline policies relating to activities in the river basin, monitor harmful hazards resulting from pollution, provide scientific criteria for regulations and indicate enforcement measures. A broader approach reflecting integrated and operative schemes and comprising coordinated viable projects for a better management and coherent control of the river basin's waters is mandated. In line with the resolutions of the Salzburg conference of the institute of international law held in September 1961 which recognised the complete transformation by modern techniques of the economic use of waters extending to the territories of several states, it has become necessary to regulate such uses on a juridical plane that would develop the mutual interests for the maximum utilisation of the available natural resources.
8. Conferences on water problems, have been held either on the regional or subregional levels, and were designed to explore adequate means and objective standards and criterias

that would ensure rationalisation in water uses; enhance the effectiveness of conservation measures; and materialise appropriate commissions and organisations in order to arrive at solutions guaranteeing the greatest advantage to all the interested states. Impliedly, these conferences warned against the prospects of a universal water "famine" at the end of this century unless the respective countries actively respond by resorting to workable measures appropriate to the case under consideration.

9. It has been contended that the Jordan's river system holds the greatest potential for conflict, and that the unresolved fate of the Palistinians in the West Bank impedes the eventuality of an acceptable formula in an area where Israel draws upward at least forty percent of her water requirements. In consequence of Israel's continuous and ever growing needs of water, its emminent control over the resources thereof, has acquired primacy as a strategic factor in her regional policies. The non-readiness by Israel to completely withdraw from occupied Arab territories in order to retain their water resources added to its invasion of parts of Lebanon to command additional ones, might be one of its cards in process of the exchange of land for peace. However, the perpetuity of such stance, if ever happens, will serve no legitimate cause and tantamounts to a breach of the generally accepted norms regarding the equitable distribution of shares in the international basin.

10. The content and scope of these norms in their application to international basins stems from the legal premise that such basins whether or not under a colonial rule or any other form of imment domination are not "Res Nullius" and therefore can not be monopolised or subjected to the supremacy of one riparian or considerad as one of its vital

domains or claimed as a border line for security purposes. As from the nineteenth century, no riparian can have the last word as to the uses of the river basin, or unilaterally act without due regard to the interests of other riparians or otherwise disintegrate the indivisibility of the unified totality of the water course. Concepts of absolute sovereignty adhered to in the past, are nowadays obsolete even with respect to that part of the international basin which exclusively lie within the territories of one riparian. Qualified sovereign rights have gained general acceptance in recognition of the emerging notions of interdependence and international intercourse which shape the structure of the community of nations and define the interests acknowledged on the international level. Accordingly, the common interests of all riparians form their common legal right in the absence of an established privilege or a historic right. In addition, the substitution of qualified rights for unrestricted ones, unequivocally meant that the attributes of sovereignty are not the equivalent of "arbitrary" uses. Nor can the right of each riparian to an "equitable share" be determined within a mathematical formula, but simply denotes the idea that all interests at stake are to be harmonised and mitigated.

11. In the determination of an "equitable share" all factors relevant to the situation under consideration must be taken into account, including-inter-alia- the physical and climate conditions of the river basin; pre-existent uses of water resources; the dependency as to each riparian state of its population upon these waters; the extent to which water resources other than those of the river basin can be obtained. The appropriateness of compensating all riparians as a relief for coordinating the different aspects of contradictory uses; the extent to which the needs of a riparian can be met without substantial damage to others;

and the comparative economic and social gains occurring to each and to the entire river community, also fall within the relevant factors.

12. Obviously, the consideration of the above factors clearly demonstrate that rules of public international law place the riparians on basis of mutuality with respect to the use of waters of an international river, and that the dependence of each of them upon the river and its resources, creates a regime of reciprocal obligations as regards an equitable apportionment of the waters. In other words, the above rule reaffirms the right of every state to utilise the waters which cross or border its territory, subject to the limitations imposed by international law.⁽¹⁾

13. The Dubrovcic International Conference held by the International Law Association in 1956, considered the "pre-existent appropriation of water by one state" as a relevant factor in the determination of principles governing the conclusion of international agreements on water resources. Bearing this in mind, there can be no denial of former uses founded on the so-called acquired rights which derive from situations in respect of which a use has been sanctioned by the lapse of immemorial time with the acquiescence of other riparians. Egypt's agricultural security largely depends on the recognition of such rights. In 1928 Great Britain accepted the principle that Egypt had a prior right to the maintenance of her supplies and to an equitable proportion to any additional supplies which engineering works might render available in the future. The same recognition of this principle has been expressed by the Sudan, since its independence, regarding the

(1) Colombos, International law of the sea, 6th ed.p.229;
O'Connell, International law, p. 617.

continuance of the Nile supplies from the Sudan into Egypt.⁽¹⁾

14. Against the recognition of acquired rights, opponents of that concept strongly argue that its application as part of rules of international law, can not be honored because it implies denial of rights pertinent to newly created states; stands even against desperately needed uses, negates the full application of the principle of equitable share in the river basin, and lays emphasis on past events and long standing usage which by inference means disregard of the emerging situations. However, the above arguments were flatly refuted by proponents of the principle of acquired rights who rightfully state that their acknowledgment is deeply rooted in international law, being a particular application of the concept of "special circumstances" founded on historic considerations as is the case with respect to historic bays and archipelagic waters, the regime of which can not be altered without the consent of the respective state.

15. Apart from acquired rights and other special circumstances relevant to a particular situation, there shall be no discrimination between riparians as to each one's right to an equitable share to be proportioned to the entirety of the competitive needs. To be noted that equitable principles have been referred to by the International Court of Justice in the delimitation of the continental shelf between adjacent states and that the idea behind the application of such principles rest on fundamental fairness in the furtherance of all relevant factors taken together and dealt with collectively.

(1) Colombus, International law of the sea, 6th edition, p.232

16. Associated with equitable shares, is the prohibition against the involvement by a riparian in acts that would have the effect of diverting, stopping the flow of the river basin, lowering the level of its waters or changing their qualities. Among the most condemnable acts in this field is the construction of works that would arrest the flow of waters into the territories of other riparians or modify the date of its arrival thereto, and therefore endangers their livelihood and strategic security. The same rule applies when a state chooses to refrain from using the best practical means at its disposal to ensure that activities under its jurisdiction or control are so conducted as not to cause damage to other riparians and their environment especially when such activities result in incidents spreading pollution beyond areas subject to its sovereign rights or transfer directly or indirectly damage or hazards from one area to another or change one type of pollution into another. The above-mentioned rule stems from the legal premise that no state is entitled under rules of public international law to alter the conditions of its own territory so as to render obsolete or burdensome the benefits which downstream countries normally obtain from the flow of the river in their respective territories. However, some writers still doubt the recognition by international law of any servitude corresponding to that existing in the civil and common law in the form of a right to the uninterrupted flow of streams and rivers. The contention they submit is that such restrictions as have been recognised have been in every case the result of treaty stipulations and that states in possession of the upper part of the river, being conscious of the possession of the traditional rights of sovereignty, have not recognised any general obligation to refrain from diverting the waters of the river basin

and therefore denying to the states in possession of the lower waters, the benefits of its full flow.⁽¹⁾ Against this argument which is based on absolute sovereign rights upheld by upstream countries, lies the premise that unhindered control by a state of an international watercourse contradicts all established norms of law which institutionalise the application of all relevant geographic and socio-economic factors bearing on competing uses of water. If conflict in an area dominated by rigid national claims is to be avoided, legal means rather than coercive measures must have the last word.

17. In cases where a state alters the natural conditions of its own territory to the detriment of the legitimate interests of one of its neighbours, her duty to provide the adequate compensation for the resulting damage, falls short from being a proper remedy to its invasion of the limitations imposed by rules of international law on the equitable use of water resources. The share by all riparians in the use and benefits of a system of international waters on a just and reasonable basis, is a mere reiteration of principles generally recognised by civilized nations as being the outcome of a balance that has been struck between the prospectives of the sustained damage and the benefits obtained. In such a situation, an act by a riparian which ends in its effective control on the flow of water resources has first to be rectified "in rem" to restore the natural conditions of the international basin.

18. The above mentioned rules should not be overlooked in the forth coming negotiations between Israel and Arab countries on water resources regional arrangements. In line with these rules, attention has to be paid to the divergent interests at stake and not exclusively to the

(1) Charles Fenwick, International law, p. 464.

massive amounts of water Israel needs in its capacity as a developed industrial country. The fact that its continuous occupation of Arab territories provides her with a substantial part of its water requirements for expansive irrigation and industrial uses, ought not to set aside its obligations under rules of public international law. Nor does it impede constructive efforts for conciliatory measures that would end an era of mutual mistrust and expand effective cooperation envisaged by a lasting peace.

19. Whilst the essential features of a possible solution of water crises in a region is shaped in the form of an equitable apportionment in the full uses of the integrated course of the river, problems associated with the application of that rule are primarily related to the following:-

I) The need for the enforcement of conservation measures which aim at the preservation of the qualities of water in the river basin and thus provide the adequate means for the welfare of all riparians. In this regard, riparians have to take individually or jointly as appropriate all steps that are necessary for the prevention, reduction and control of pollution from any source, especially by dumping. In addition, riparians shall cooperate, on a regional basis, directly or through international organisations, in order to formulate standards and recommend practices and procedures for the protection and the preservation of the river system environment.

II) The availability of positive combined efforts to suppress or attenuate creeping ambitious, rigid positions and extreme demands tending either to enable Israel to effectively control the Litani river and other water resources in the occupied territories, or to provide Turkey with massive

amounts of water for the irrigation of arid areas in its southeastern boundaries through the erection of giant dams as well as power generated by developed hydro-electric schemes.

III) The lack of a viable machinery to ensure the absolute integrity of the waterway in order to preserve intact the common welfare of all riparians and not to allow a state either individually or in cooperation with others to claim unfettered rights to do whatever it deems fit with the water within its territory. Due regard has to be paid to solutions ensuring the greatest advantage to all members of the river basin.

IV) The desirability to introduce new scientific methods for planning, policy making and management in order to provide with a degree of certainty and within the framework of a reliable data and not questionable assumptions, practical solutions having immediate impact on actual and conceived water use problems especially as regards the extent to which trained manpower can be mobilised to outline and implement comprehensive scientific plans that would avoid in particular the depletion of vital water resources. Also attention to be drawn to the challenge concerning consumptive uses especially in countries contaminated with extremely arid land coupled with the dimensions of the problem of desertification, which problems have not been faced in Arab countries with policies concerning water management levelled to the standard of carefully planned schemes, adequately financed and vigorously enforced.

V. The possibility of having control over the physical and climate conditions of the river basin. This could be exemplified in the case of the Nile whereby the enormous influence of such conditions has led to a diversity in the

interests and concerns of all riparians, whilst Egypt and Sudan are merely interested in irrigation, Eithiopa and Uganda concentrate on the development of hyro-electric power. However, other factors like the demographic element are not to be set aside. Nor can be dispensed with special factors including the historical, political and technical aspects of the river which render inappropriate the strict application of principles adopted elsewhere and calls for the recognition of Egypt's vested rights which reflect priority of appropriation and ascertain the superiority of its water requirements already sanctioned by the long standing usage. From an analytical approach, existing agreements between Egypt and Sudan simply codify one of the applications of the concept of "special circumstances" already admitted in other spheres including the drawing of straight baselines to accomodate the special configuration of a coast. Even the increase of water allocated to Sudan has been agreed to in such quantity as does not infringe Egypt's "natural and historic rights" and "its requirements of agricultural extension".

VI) The extent to which cooperation can be furthered and strengthened with respect to the need to reshape existing uses and to develop alternative water resources and power ~~pot~~entials. A considerable expenditure of money, under the auspices of the International Bank of Construction or by other seperate sources, should be directed towards the elaboration of shemes and the carryingout of specific engineering measures that would substantially increase the flow of waters beyond the already obtained supplies. However, cooperation between riparians in this field requires in our region the removal of all barriers of whatever form that would foreclose confidence, discourage the will to

negotiate and bar plans for proper utilisation of water resources. Egypt which entered into a treaty of peace with the State of Israel firmly believes that all issues are interrelated and that the problems of water resources in the region cannot be tackled independently from other issues relating to the scope of the rule of self-determination in the West Bank and the withdrawal from the Golan Heights. What really worries Arab countries is that parts of their respective territories had been captured and still dominated by Israel. Only through advancement in this areas, can mutual concessions be made and progress be achieved with respect to a solution to water resources problems. What we should lay emphasis on is to foster the will to negotiate a compromise, to alleviate fears, to dispense with anxieties and to actively respond to legitimate demands. The search for a comprehensive and wide range cooperation is a challenge that demands insight and necessitates an overall settlement securing fair shares in water resources as one of its aspects. Hopefully, the day for that settlement will not be far away and the outcome of the existing negotiations will materialise a coherent region not torn by greed and struggle and in respect of which all inhabitants shall freely move and settle and equally enjoy their basic human rights. In all countries of the region, unrestricted freedom must prevail, and to all citizens therein integrated common rights should replace political boundaries lines.