

CHAPTER X

DUTIES OF A REFUGEE

1. Provision in regard to duties of a refugee in the Bangkok Principles

Article VII of the "Principles concerning Treatment of Refugees", adopted by the Committee at its Eighth (Bangkok, 1966) Session, provides—

"A refugee shall not engage in subversive activities endangering security of the country of refuge, or in activities inconsistent with or against the principles and purposes of the United Nations."

2. Comments on the aforesaid provision

In regard to the above provision, Dr. E. Jahn has pointed out that "Article VII corresponds to the clause in the U.N. Declaration on Territorial Asylum concerning prohibition of activities contrary to the purposes and principles of the United Nations", but mentions in addition "activities endangering the national security of the country of refuge. This article was particularly supported by the African delegations which felt that specific mention should be made of these activities".¹

3. Prohibition of subversive activities against any country

It may be noted that Article III of the OAU Convention provides that every refugee shall "abstain from any subversive

1. In his article on "The Work of the Asian-African Legal Consultative Committee on the Legal Status of Refugees", published in *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht*, Vol. 27, Nos. 1-2, July, 1967.

activities against any Member State of the OAU". The African Conference on Legal, Economic and Social Aspects of African Refugee Problem of 1967, has recommended that every refugee shall "abstain from any subversive activities against any African country, except for countries under colonial or racist minority domination".²

Dr. Kwasi Gyeke-Dako has pointed out that since "the major cause of refugee situations in Africa stems from political unrest, most of the refugees, at least the politically-conscious ones, may be tempted to seek ways and means of ousting the regimes from which they had fled. These regimes may include independent African States".³

4. Prohibition of activities inconsistent with or against the principles and purposes of the United Nations

It may be noted that the U.N. Declaration on Territorial Asylum of 1967, in Article 4, provides for the obligation of the State of asylum, and not that of the refugee. It provides—

"States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations."

The OAU Convention and the 1951 U.N. Refugee Convention do not contain any provision in this regard, in reference to duties of a refugee.

5. Duty to conform to the laws and regulations of the State of asylum

Article 2 of the 1951 U.N. Refugee Convention provides—

"Every refugee has duties to the country in which he finds himself, which require in particular that he conform

2. In Recommendation III, CF. AFR/REF/CONF --1967/NO. 3.

3. In his article on "Some Legal and Social Aspects of African Refugee Problems". See Brief of Documents on the subject prepared by the Committee's Secretariat for the Tenth (Karachi, 1969) Session at pp. 352 and 353.

to its laws and regulations as well as measures taken for the maintenance of public order.”⁴

Article III of the OAU Convention on Refugees also makes a similar provision. The African Conference on Legal, Economic and Social Aspects of African Refugee Problem of 1967 also recommended that every “refugee owes a duty to the country of asylum, which requires in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order”.⁴

The Committee may consider including in Article III of Bangkok Principles a provision along the lines of Article 2 of the 1951 U.N. Refugee Convention.

4. In Recommendation III, CF. AFR/REF/CONF. 1967/No. 3.

III. SUMMARY RECORD OF DISCUSSIONS HELD AT THE ELEVENTH SESSION, ACCRA

The subject “Right of Refugees” was discussed by the Committee at its Eleventh Session in Accra (Ghana) during the second, fifth, sixth and seventh meetings of that Session held on the 20th, 23rd, 26th and 27th of January, 1970.

The basic issues which were before the Committee at this Session were : (i) a reappraisal of the principles concerning treatment of refugees as adopted by the Committee at its Eighth Session held in Bangkok (Bangkok Principles) in the light of recent developments in the field of international refugee law; and (ii) the question of giving appropriate expression to the general principles governing the right to return, the restoration of property and compensation to Palestinian Arab Refugees and other displaced persons and to formulate the same as a set of principles.

Opening the discussion on the subject in the second meeting the Delegate of JORDAN said that the Principles adopted by the Committee at its Bangkok Session concerned the case of what may be called political refugees, i.e. people who leave their countries of origin of their own accord. The U.N. Convention on Refugees of 1951, according to him, also contemplated such a category of persons and the definition adopted in the OAU Convention spoke of a refugee as a displaced person seeking refuge in another place outside his country of origin or nationality. He held the view that the definition given in the Bangkok Principles, in the U.N. Convention and in the OAU Convention did not take care of the category of displaced persons who were compelled on account

of warlike operations and other difficulties to leave their habitual place of residence but were desirous to go back and were being prevented from doing so by the Government or the military authorities in control of such place of habitual residence. He affirmed that such displaced persons formed a category of refugees and hoped that no one would dispute the humanitarian necessity of providing certain rules for the treatment of these displaced persons. He then referred to the proposed *Addendum* to the Bangkok Principles which he had submitted at the Karachi Session and stated that on further consideration he would like to add to the text of the *Addendum* the following two paragraphs :

- "4. Where such a person does not desire to return, he shall be entitled to adequate compensation by the Government or military authorities in control of the place of habitual residence as determined by an international body.
5. If the status of such a person is disputed by the Government or military authority in control of the place of habitual residence, the issue shall likewise be determined by an international body."

He proposed that the *Addendum* suggested by him at the Karachi Session as modified by the addition of the above two paragraphs be considered by the Committee.

The Associate Member of the REPUBLIC OF KOREA in supporting the proposal made by the Delegate of JORDAN stated that the problem of refugees was not merely a humanitarian or social problem. He said that when several millions of refugees were being uprooted and forcibly moved about, solution of the problem acquired an international character which concerned not only one State but several States and should appropriately be dealt with by a regime of international order. He said that the phenomenon of displaced persons had arisen particularly since the Second World War and he thought

it necessary to bring this category of people separately under the regime of international law. He referred to the experience in his own country on the specific issue of the right of return. Commenting on the proposal of the Delegate of Jordan he stated that the compensation payable should be prompt and adequate. He also said that the principle embodied in the Jordan draft should be applicable in relation to a larger category of authorities whether such authorities were recognised as lawful government or not. The Delegate of PAKISTAN stated that his Delegation had moved for the amendment of the definition clause by way of a specific amendment in Article I and consequential amendments in Articles IV and V of the Bangkok Principles, and the two categories of persons which his Delegation had proposed at the Karachi Session to be covered by appropriate definition of refugees were as follows :

- "(i) Firstly, persons who have been displaced from a country the sovereignty over which or the international status of which is in dispute, ought to be clearly covered by the definition;
- (ii) Secondly, persons who have been displaced from their country as a result of foreign occupation or aggression ought to be also covered by the definition and classified as international refugees."

With regard to the second category, he said, that consultation with various other Delegations revealed that it might be appropriate to state the right of return and the right to the restitution of properties of persons displaced as a result of external aggression or occupation in the form of an *Addendum* to the Bangkok Principles. He stated the Delegate of Jordan, acting on what appeared to be the consensus of opinion of the Delegates, has submitted a draft *Addendum* to the Bangkok Principles at the Karachi Session, and in his view, the logical point to start the discussion in respect of the amendment to the definition of refugees was to consider the last Jordanian proposal which largely covered the second category

of persons contemplated in the joint proposal of Pakistan and Jordan. He stated that all proposals made at the Tenth Session had been deferred for consideration at the Eleventh Session and he would appreciate consideration of the first proposal of Pakistan regarding amendment to the definition so as to include persons who had been displaced from a country the sovereignty or the international status of which was in dispute. He stated that persons who through fear of persecution or otherwise were displaced from their countries ought to be regarded as refugees. This, according to him, was implicit in Article I of the Bangkok Principles and only needed further clarification. He recalled that at the Karachi Session a resolution was unanimously adopted recognising and declaring the right in international law of the Palestinian Arab refugees and that the first step having been achieved, he hoped that the legal basis for adoption of that resolution would be reflected in a formulation in the form of an *Addendum* to the Bangkok Principles.

He then referred to Article IV of the Bangkok Principles dealing with the Right of Return and stated that his Delegation regarded this right as one of the most important rights of refugees, and stressed the need for setting up of international tribunals or commissions for determining differences that may arise between States regarding implementation of this right.

Referring to Article V of the Bangkok Principles which deals with the Right to Compensation, he said that provisions were not adequate and suggested that improvement should be made.

Referring to Article VI of the Bangkok Principles which deals with the question of minimum standard of treatment, he said that the Pakistan Delegation had earlier taken the view that refugees, for humanitarian reasons, should be granted the standard of treatment applicable to the nationals of the country of asylum, but he realised that in certain circumstances

it might be difficult for the receiving State to carry this out in actual practice.

As for the provision of travel documents and other papers for refugees, he said that the issue of such documents would greatly facilitate and secure the rights of refugees as defined in the Bangkok Principles. Alternatively or in addition to issue of travel documents, the Committee might, he suggested, consider the distinction between protection of convenience and genuine protection by the receiving State.

The Delegate of JAPAN thought that the refugee problem was one of the most important problems of the world, but it was essentially humanitarian in character and should be examined as such, as only by so doing it could be solved. Legal aspects of the problem, in his view, constituted only a minor element. He felt that the solution of the refugee problem should first consist in the return of refugees to their homeland, and therefore the importance of the right of return and the obligation of the State to receive its nationals was paramount. The question of assimilation or integration of refugees was a matter of policy for each receiving State. The Bangkok Principles adopted by the Committee at its Eighth Session were sound and acceptable to him. However, in view of the adoption by the UN General Assembly of the Declaration on Territorial Asylum and the adoption by the O.A.U. of the draft Convention of September 1969 it became necessary, in his view, to re-examine the Bangkok Principles in order to ascertain whether it needed to be supplemented or modified in the light of these international instruments. That was the reason why at the Karachi Session the Japanese Delegation had supported the idea of a review of the Bangkok Principles. He said that in view of the adoption of the O.A.U. draft Convention, the Committee should follow the example of African States in adopting the definition of refugee which is contained in Article 1 of that Convention.

As regards those who were displaced from one part of the country to another, he was of the opinion that they should be treated separately assuring them of the right to return to their home place. The United Nations Convention of 1951 did not, in his opinion, legally constitute the minimum standard of treatment. He said that the Committee should adopt the principle of minimum international standard for aliens in the country, for national standard of treatment was not sufficient for aliens lawfully living in a foreign country. He agreed that displaced persons had the right to return to their place of residence, and where need be they had the right to be compensated.

The Delegate of CEYLON stated that the main question for consideration was whether a displaced person fell within the category of refugees, and as the matter had to be looked upon primarily from a humanitarian point of view, the question should be clarified if there was any doubt. He said that there were three ways in which this could be achieved: by amending the definition of refugee in the Bangkok Principles, by adopting an *Addendum* as proposed by the Delegate of Jordan, and thirdly, by adopting an entirely new set of principles applicable to displaced persons as suggested by the Delegate of Japan. He was in favour of the proposal made by the Delegate of Jordan, i.e. for the adoption of an *Addendum* to the Bangkok Principles. He also agreed that the compensation payable should be prompt and adequate and pointed out that of the five clauses of the *Addendum*, clauses (4) and (5) which were introduced at the Eleventh Session were the most important. He, however, felt that the expression 'international body' was too vague and something more concrete should be spelt out.

The Associate Member for the REPUBLIC OF KOREA commenting upon the preceding discussion stated that the international body ought to be a quasi-judicial one. He also suggested that the compensation contemplated for refugees

should be effective. He felt that the case of displaced persons deserved a separate and full treatment and not as part of the refugee problem which should be confined to the refugees in the traditional sense. As regards the standard of treatment, he felt that in view of the very trying circumstances under which a person becomes a refugee, he should deserve better treatment than aliens and the treatment that should be accorded to him should approach the international standard, and in any case he should be granted human rights.

The Delegate of IRAQ referred to the violation of the rule of law as a result of the Zionist aggression against the people of Palestine and their occupation of the territory in flagrant violation of the Charter of the United Nations. He referred to the plight of the Palestinian Arabs and the various resolutions which were passed by the United Nations. He mentioned that the Israeli aggression of 1967 on Arab States had added a new category of persons as refugees and this had aggravated the problem as thousands of people had become homeless and without protection. He said that the definition to cover this new category of refugees should be adopted in order to bring these categories of persons within the protection contemplated in the Bangkok Principles. He said that the right of the people expelled from their homelands by occupying powers and the obligation of such powers towards these people were already in existence in customary as well as in conventional international law. Furthermore, the rights of the Palestinians who preferred to return to their homes had been recognized and emphasized in numerous resolutions passed by the United Nations and these, undoubtedly, formed a legal basis for the formulation of the principles on the subject. In his view, the proposal put forward by the Delegate of Jordan regarding incorporation of the *Addendum* to the Bangkok Principles was appropriate and he requested the Committee to consider it.

The Delegate of INDIA stated that in his view the Bangkok Principles were comprehensive enough to cover the

case of displaced Arabs, and in any case the plight of the Palestinian Arab Refugees to return to their homes or to receive compensation had been recognised since 1948 in some 30 resolutions passed by the U.N. General Assembly and the Security Council. He referred to the special resolution which was passed at the Karachi Session dealing with the Palestinian Arab refugees and said that the question which was to be considered at the present session was whether the principles contained in the Bangkok Report should be reconsidered or whether a fresh set of principles be adopted with reference to the category of persons known as displaced persons. He wanted the Committee to decide the basic question as to whether a new set of principles should be prepared on the question of displaced persons. He appreciated the move on the part of the Delegate of Jordan and said that he was prepared to consider the entire proposal sympathetically and carefully.

The Delegate of INDONESIA supported the proposal of the Delegate of Jordan. He said that the problem of refugees in the Middle East should be seen within the framework of the various resolutions passed by the United Nations.

The Delegate of the U.A.R. supported the proposal presented by the Delegate of Jordan. He, however, felt that the expression to be used in the *Addendum* should be 'full compensation' instead of 'adequate compensation' and that the authorities should reasonably be required to pay full compensation.

The Delegate of NIGERIA stated that the proposal of the Delegate of Jordan merited consideration and that the aspects of the problem emphasised by him should be examined in more detail. He wished it to be placed on record that he was in sympathy with the feeling in the Committee on the subject of payment of full compensation to refugees who were unable to return to their homeland.

The Delegate of GHANA said that he was generally in agreement that something should be done to provide a legal basis for the treatment of displaced persons and agreed with the Delegate of Indonesia that the matter needed careful consideration. He said that the points which needed to be considered were as follows: First, whether the objective could be best achieved by means of amendments to the definition of the refugee in the existing Conventions and agreements, or whether it would be better to have a completely new Convention or agreements applying to displaced persons alone. Another matter which, according to him, needed consideration was the nature of the international body which was contemplated for the determination of refugee status and the compensation payable to such persons. Furthermore, what required consideration was the criteria that will entitle a refugee or a displaced person to compensation.

The Representative of the UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES said that the main question which needed to be decided was whether the Bangkok Principles were applicable only to the refugees in the traditional sense or whether they should be enlarged by including displaced persons. He felt that the proposals put forward by the Delegates of Pakistan and Jordan could best be achieved by separating the two categories and by adopting a separate set of principles which will take full account of the special problem with which the group of displaced persons were faced. He then suggested certain amendments to Article III of the Bangkok Principles to bring it in line with the 1967 U.N. Declaration on Territorial Asylum. In this connection, he referred to the question of duties of refugees which required them to abstain from engaging in subversive activities. The question of travel documents, he felt, was a new topic which should be considered by the Committee in the light of recent developments. On the question of the right to return, he said that the High Commissioner considered voluntary repatriation as the primary and natural solution to the refugee situation.

which had to be pursued in preference to any other solution. He felt that the problem of repatriation in the case of displaced persons was somewhat different from the problem of repatriation of refugees proper. He also referred to the possible amendment to Article IV of the Bangkok Principles and the standard of treatment for refugees. He pointed out that out of 33 paragraphs of the U.N. Refugee Convention, twenty-two articles had no corresponding reflection either in the Bangkok Principles or the Tokyo Principles of the Committee on the Status of Aliens. With regard to eight other articles of the 1951 Convention, the Bangkok-Tokyo Principles provided a much more restrictive provision.

The Committee then proceeded to appoint a Sub-Committee with Dr. K. Nishimura, leader of the Delegation of Japan as its Chairman, for detailed consideration of the subject. The Chairman of the Sub-Committee reported in the fifth plenary meeting of the Committee held on the 23rd of January 1970 that the Sub-Committee had adopted the proposal put forward by the Delegate of Jordan concerning displaced persons in the shape of an "Addendum" to the Bangkok Principles, and that, thereafter the work of the Sub-Committee had to be stopped in view of difference of opinion among the members of the Sub-Committee on the scope of the terms of reference of the Sub-Committee. He said that one view expressed was that the work of the Sub-Committee was over after consideration of the Jordan's proposal which should be placed before the Committee for its consideration. The other view was that the Sub-Committee was to consider all other aspects of the problem in the light of Resolution No. X (8) adopted by the Karachi Session. He, therefore, sought the direction of the Committee as to how the Sub-Committee should proceed.

Thereupon the Committee generally discussed the scope of the work that had been entrusted to the Sub-Committee as also the question whether Jordan's proposal which had been

accepted by the Sub-Committee should be considered by the Committee itself. After further discussion on the matter in the sixth meeting held on the 26th of January, 1970, the President of the Committee indicated that the Committee should consider the *Addendum* to the Bangkok Principles which had been adopted by the Sub-Committee and that other topics relating to the subject covered by Resolution No. X (8) should be postponed to a future Session. The *Addendum* proposed by the Delegation of Jordan to the Bangkok Principles was adopted in principle. It was, however, agreed that the Chairman of the Sub-Committee should revise the draft in the light of the comments expressed by the Delegations and thereafter place it before the House for formal adoption.

The Delegate of India made a statement that in the view of his Delegation insofar as the Palestinian Arab Refugees and other displaced Arabs were concerned, their right to return to their homeland or to receive compensation had already been recognised and endorsed by the international community. In regard to the general application of the *Addendum*, the Delegation of India reserved its position.

The Observer for TANZANIA pointed out that certain difficulties might arise if the *Addendum* was to have general application in all situations.

During the seventh meeting held on the 27th of January, 1970, the Chairman of the Sub-Committee on the Rights of Refugees placed before the Committee the revised text of the "*Addendum*" to the Bangkok Principles for formal adoption.

The Delegate of GHANA stated that difficulties might arise if the principles contained in the *Addendum* were made universally applicable as had been pointed out by the Observer for Tanzania at the previous meeting. As universal application could lead to very serious difficulties, he associated himself with the views of the Indian Delegation in reserving his position regarding the universal application of the principles.

he President of the Committee then announced the adoption of the *Addendum* subject to the reservation of the Delegations of India and Ghana being recorded regarding the universal applicability of the principles contained in the *Addendum*. The Delegation of Ghana placed before the House draft resolution No. XI (8) regarding future consideration of the subject of refugees. The resolution was adopted.

IV. "ADDENDUM TO THE PRINCIPLES CONCERNING TREATMENT OF REFUGEES"

(as adopted by the Committee at its Eleventh Session in the Seventh Meeting held on the 27th January, 1970)

WHEREAS it appears to the Committee on further consideration that the principles adopted at its Session held in Bangkok in 1966 mainly contemplate the status of what may be called political refugees who have been deprived of the protection of their own Government and do not provide adequately for the case of other refugees or displaced persons;

AND WHEREAS the Committee considers that such other refugees or displaced persons should enjoy the benefit of protection of the nature afforded by Articles IV and V of those principles;

NOW THEREFORE, the Committee at its Eleventh Session held in Accra between 19th and 29th January, 1970 resolves as follows:

1. Any person who because of foreign domination, external aggression or occupation has left his habitual place of residence, or being outside such place, desires to return thereto but is prevented from so doing by the Government or authorities in control of such place of his habitual residence shall be entitled to return to the place of his habitual residence from which he was displaced.

2. It shall accordingly be the duty of the Government or authorities in control of such place of habitual residence to facilitate by all means at their disposal, the return of all such

persons as are referred to in the foregoing paragraph, and the restitution of their property to them.

3. This natural right of return shall also be enjoyed and facilitated to the same extent as stated above in respect of the dependants of all such persons as are referred to in paragraph 1 above.

4. Where such person does not desire to return, he shall be entitled to prompt and full compensation by the Government or the authorities in control of such place of habitual residence as determined, in the absence of agreement by the parties concerned, by an international body designated or constituted for the purpose by the Secretary-General of the United Nations at the request of either party.

5. If the status of such a person is disputed by the Government or authorities in control of such place of habitual residence, or if any other dispute arises, such matter shall also be determined, in the absence of agreement by the parties concerned, by an international body designated or constituted as specified in paragraph 4 above.

Sd/-

N.Y.B. Adade
President

NOTE: The Addendum was adopted by the Committee subject to reservations made by the Delegates of India and Ghana regarding the universal application of the principles contained in the Addendum as recorded in the minutes of the Sixth & Seventh Meetings of the Committee.

V. RESOLUTION No. XI (8) ADOPTED AT THE ELEVENTH SESSION

The Committee

CONSIDERING that the Government of United Arab Republic by a reference made under article 3 (b) of the Statutes had requested the Committee to consider certain questions relating to Rights of Refugees.

AND CONSIDERING that the Government of Pakistan had requested the Committee to reconsider at its Tenth Session its report on some of the aspects, which request had been supported by the Governments of Iraq, Jordan, and the United Arab Republic.

CONSIDERING FURTHER that it was not possible for the Committee at its Tenth Session to give detailed consideration to the various suggestions made and that by Resolution No. X (8) the Committee had requested the Secretariat to put the item concerning "Rights of Refugees" on the agenda of its Eleventh Session including all the proposals made at the Tenth Session by the delegations of Pakistan and Jordan, and in the meantime, in order to facilitate the work of the Committee, to prepare, in cooperation with the United Nations High Commissioner's Office for Refugees, detailed analysis of the above-mentioned instruments and recommendations including particularly:

- (i) the Protocol relating to the Status of Refugees of 31 January, 1967 [General Assembly Resolution 2198 (XXI)];
- (ii) the United Nations Declaration on Territorial Asylum of 14 December, 1967 [General Assembly Resolution 2312 (XXII)];
- (iii) the Recommendations made by the Addis Ababa Refugee Conference of October, 1967;

- (iv) the OAU Convention governing these specific aspects of refugee problem in Africa adopted by the Assembly of Heads of States and Governments at its Sixth Session in Addis Ababa in September, 1969.

CONVINCED that the above-mentioned new instruments and recommendations made an important contribution towards further development in international law relating to refugees.

REQUESTS the Secretariat to put the item "Rights of Refugees" on the agenda of its next session, if possible, for reconsideration of the Principles concerning the Treatment of Refugees adopted at its Eighth Session, in the light of the above-mentioned international instruments and recommendations with a view to bringing these Principles, as far as appropriate, in line with these instruments and recommendations.

Sd/-
N. Y. B. Adade
President

V. THE LAW OF INTERNATIONAL RIVERS

I. INTRODUCTORY NOTE

The subject "the Law relating to International Rivers" was included in the programme of work of the Asian-African Legal Consultative Committee on a reference made by the Governments of Iraq and Pakistan under Article 3(b) of the Statutes of the Committee during the Committee's Eighth Session held in Bangkok in 1966. At that Session it was decided to place this subject on the agenda of the Ninth Session of the Committee.

At the Ninth Session held in New Delhi in 1967, the Delegates of Iraq and Pakistan made their introductory statements setting forth the issues which they wished to be considered by the Committee. After other Delegates had also expressed their views, the Committee directed its Secretariat to prepare the relevant documentation on the issues raised in the course of discussion at that Session for fuller consideration of the subject at the Tenth Session of the Committee.

At the Tenth Session of the Committee held in Karachi in 1969, the subject could not be given full consideration on account of the Committee's preoccupation with the subject of the Law of Treaties. Nonetheless, the Committee took note of the statements made by the Delegates and the Observer for Nigeria (now full member) present at that Session. The Committee also took note of the work done by the International Law Association and other organisations and bodies concerning the subject. Realising the vital importance of the subject to the development of the countries of Asia and Africa, particularly in the context of their food and agriculture programmes, the Committee appointed an Inter-Sessional Sub-Committee to meet in New Delhi prior to the holding of the Eleventh Session and entrusted to it the task of preparing

draft articles on the subject, particularly in the light of the experience of Asian-African countries and reflecting the high moral and juristic concepts inherent in their own civilisations and legal systems for consideration of the Committee's Eleventh Session. The Secretariat of the Committee was directed to assist the Inter-Sessional Sub-Committee.

Accordingly, the Inter-Sessional Sub-Committee met in New Delhi from the 15th to 20th of December, 1969, under the Chairmanship of Hon. Syed Shariffudin, Pirzada, the then President of the Committee. It was attended by the representatives of Ceylon, Ghana, India, Indonesia, Iraq, Japan, Jordan, Pakistan and Sierra Leone. The Secretariat of the Committee placed two volumes of briefs on the subject before the Sub-Committee. The discussions in the Sub-Committee were not, however, conclusive and it was, therefore, decided to refer the matter to the Committee at its Eleventh Session.

At the Eleventh Session held in Accra (Ghana) in January, 1970, the prolonged discussions in the Committee centred around the question as to whether the joint proposal submitted by the Delegations of Iraq and Pakistan containing certain draft articles on the subject or the proposal of the Indian Delegation regarding the first eight articles of the Helsinki Rules should be taken as the basis of discussion in the Committee. Discussion also took place on the point whether these proposals should be considered at an Inter-Sessional Sub-Committee to be held before the Twelfth Session of the Committee or at the Twelfth Session itself. Eventually, it was agreed that both the proposals, i.e. the joint proposal of Iraq and Pakistan and the proposal of India regarding the Helsinki Rules be circulated to the Governments of the participating countries eliciting their views and observations and that the consideration of the subject be postponed to the Twelfth Session of the Committee.

II. REPORT OF THE INTER-SESSIONAL SUB-COMMITTEE ON INTERNATIONAL RIVERS, 15TH TO 20TH DECEMBER, 1969

C O N T E N T S

1. Report of the Sub-Committee
2. Pakistan Aide-Memoire
3. Draft Principles on the Law of International Rivers proposed by Pakistan
4. Opening Statement of the Iraqi Delegate
5. Draft Principles presented by the Iraqi Delegation
6. Statement by the Ceylonese Representative
7. Statement by the Ghana Representative
8. Statement by the Indian Representative
9. Statement by the Indonesian Representative
10. Oral Statement of the Japanese Representative
11. Statement by the Jordan Representative
12. Further Statement of the Pakistan Representative
13. Further Statement of the Iraqi Representative
14. Further Statement of the Indian Representative

REPORT OF THE SUB-COMMITTEE

The Inter-Sessional Sub-Committee on the Law of International Rivers, constituted pursuant to the Committee's Resolution No. X (6), met in New Delhi from the 15th to 20th of December, 1969, both days inclusive. The representatives of the Governments of Ceylon, Ghana, India, Indonesia, Iraq, Japan, Jordan, Pakistan and Sierra Leone participated. The President and the Secretary of the Committee also attended the meetings of the Sub-Committee.

The Sub-Committee had before it two volumes of Briefs containing material and documents on the subject prepared by the Secretariat of the Committee. The representatives of Ceylon, Ghana, India, Indonesia, Iraq, Japan, Jordan and Pakistan made statements indicating their approach to the problem. The statements form part of and are annexed to this Report.

As the discussions were not conclusive, the Sub-Committee agreed that all matters referred to it may be discussed further at the Accra Session of the Committee.

Adopted on 20 December, 1969.

Sd/-
Syed Sharifuddin Pirzada
President of the Committee

Sd/-
B. Sen
Secretary

PAKISTAN AIDE-MEMOIRE

At the Tenth Session of the Asian-African Legal Consultative Committee, held in Karachi in January, 1969, a resolution [No X(6)] was adopted in which it was decided that a Sub-Committee consisting of the representatives of Member Governments meet at New Delhi for the purpose of preparing a draft of Articles on the Law of International Rivers for consideration of the Committee at its Eleventh Session. The Government of Pakistan attaches great importance to the forthcoming meeting of the Sub-Committee and considers the subject of international rivers of vital concern to the countries of Asia and Africa. It is highly desirable that this important branch of international law should be systematically declared and codified. The Government of Pakistan would welcome the participation of the..... at the Session of the Sub-Committee likely to be held in New Delhi in December 1969. Pakistan intends to put forward at the New Delhi Session, certain proposals in the form of draft Articles for consideration of the Sub-Committee, the salient features of which are explained in the following paragraphs. The Government of Pakistan would be grateful if the.....considers, and comments on these proposals.

2. In Pakistan's view it is essential that the proposed draft Articles include a statement of the international responsibility of a State in respect of acts done within its territory which have a detrimental effect in the territory of a co-riparian State. There are four such principles which are :—

- (i) A State may not take any action in its territory with respect to the flow of an international river which would be against the sovereignty or territorial integrity of a co-riparian State.

- (ii) Where utilisation of an international river by a riparian State may result in damage or injury to a co-riparian State, the prior consent of that State is required and there is also an obligation to indemnify that State for the damage or injury caused. This follows from the general principle of law expressed by the Latin maxim : *Sic utere tuo ut alienum non laedas*, that is, no one may exercise his right when this exercise causes damage to another.
- (iii) Every riparian State must act in good faith in the exercise of its rights in relation to the waters of an international river flowing through its territory. This principle, well-known as the Abuse of Rights principle, has as its corollary the rule that when a particular right can be exercised by more than one method, it is an abuse of right for a riparian State to adopt the method which would cause injury to a co-riparian State.
- (iv) A riparian State may not divert waters of an international river in such a manner that the unconsumed water flows into a channel which is different from the natural course of the river. This not only follows from the principle of Abuse of Rights but is also a general principle of law to be found in Municipal Water Law.

3. Apart from the principles dealing with the responsibility of riparian States, the Government of Pakistan regards it essential that the draft Articles should contain a statement of the well-known principle of international law, in accordance with which each riparian State is entitled, within its territory, to a reasonable and equitable share in the beneficial use of the waters of an international river. This principle has already been affirmed by most of the Delegations during the course of the Tenth Session of the Asian-African Legal Consultative Committee at Karachi, when the subject of international rivers was discussed. The Government of Pakistan

is of the view that in order to determine a reasonable and equitable share regard must be had to all the relevant factors in a particular case.

4. As regards priority of uses, it is well-known that navigation occupied a place of prominence in the past, but that today the development of other uses has put an end to any preferential position that may have been given to navigation. This is specially so in the case of international rivers of Asia and Africa where agricultural and domestic uses, which are the bases of life, have assumed prime importance. In the view of the Government of Pakistan the draft Articles should give due weight to uses that are the very bases of life.

5. Existing reasonable uses also deserve protection to some extent and the draft Articles may provide for this, but not without making provision for the modification or termination of an existing use so as to accommodate a competing use where equity so demands. An existing use may not be protected where the use is established in spite of lawful objections of a co-riparian State that it is contrary to international rights.

6. In consonance with the principle that damage or injury to a co-riparian State must be compensated for, the draft Articles may define the responsibility of a State for substantial injury or damage caused to a co-riparian State by pollution of the waters of an international river.

7. The draft Articles must also reflect the obligations of peaceful settlement of disputes contained in the Charter of the United Nations, *viz.*, that States are under an obligation to settle international disputes as to their legal rights or other interests by peaceful means in such a manner that international peace and security, and justice are not endangered.

The Government of Pakistan looks forward to co-operation between the Delegations of the.....and Pakistan at the forthcoming session of the Sub-Committee on the Law of International Rivers.